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**IN THE UNITED STATES DISTRICT COURT  
 FOR THE NORTHERN DISTRICT OF CALIFORNIA**

CITY OF SAN JOSE, a municipal corporation;  
 and BLACK ALLIANCE FOR JUST  
 IMMIGRATION, a California nonprofit  
 corporation,

Plaintiffs,

vs.

WILBUR L. ROSS, JR., in his official capacity  
 as Secretary of the U.S. Department of  
 Commerce; U.S. DEPARTMENT OF  
 COMMERCE; RON JARMIN, in his official  
 capacity as Acting Director of the U.S. Census  
 Bureau; U.S. CENSUS BUREAU,

Defendants.

Case No. 3:18-cv-2279-RS

**PLAINTIFFS' MOTION FOR PARTIAL  
 SUMMARY JUDGMENT**

Date: December 7, 2018  
 Time: 10:00 a.m.  
 Dept: 3  
 Judge: The Hon. Richard Seeborg  
 Trial Date: January 7, 2019

**NOTICE OF MOTION AND MOTION**

**PLEASE TAKE NOTICE** that at 10:00 a.m. on December 7, 2018 in Courtroom 3 of the United States District Court, located at 450 Golden Gate Avenue in San Francisco, Plaintiffs City of San Jose and Black Alliance For Just Immigration (“Plaintiffs”) will move for partial summary judgment on Count Three and Count Four of the Complaint pursuant to Rule 56(a) of the Federal Rules of Civil Procedure and the Local Rules for the United States District Court for the Northern District of California.

Plaintiffs request an order that Defendants’ decision to add a citizenship question to the 2020 Census short-form questionnaire was not in accordance with law and arbitrary and capricious as a matter of law.

The Motion is based upon this Notice of Motion and Motion, the Memorandum of Points and Authorities, the Declaration of Ana G. Guardado and exhibits thereto, the Declarations of Jeff Ruster, Monique Melchor, Opal Tometi, and Kristen Clements, and any additional matters that the Court may consider at the time of the hearing.

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## MEMORANDUM OF POINTS AND AUTHORITIES

### INTRODUCTION

While there may be “nothing unusual about a new cabinet secretary inclined to favor a different policy direction,” *In Re Dep’t of Commerce, et al.*, 586 U.S. \_\_\_ (2018) (Gorsuch, J., concurring and dissenting), Congress has mandated that agencies abide by the Administrative Procedure Act (“APA”) when they implement such policies. Commerce Secretary Wilbur Ross disregarded the most basic principles of administrative procedure when he added a citizenship question to the 2020 Decennial Census (“Census”). The administrative record<sup>1</sup> reveals conduct on the part of Ross and his subordinates that violated a clear Congressional mandate and broke all the well-established internal rules for changing course with the Census. Ross’s decision, if upheld, would make a shambles of bedrock APA law.

Ross’s deviation from settled law and procedure is extraordinary. He ignored express statutory requirements that required the Census Bureau (“Bureau”) to provide topics for the Census by March 2017, absent “new circumstances” that “necessitate” a change.<sup>2</sup> He ignored settled Bureau protocol for the addition of questions to the Census (and, indeed, his staff appears to have deleted that protocol from a Bureau document without the Bureau’s knowledge). He disregarded the concrete and well-considered conclusions of the entire professional scientific staff of the Bureau that adding the question would impair the quality of Census data, while at the same time would *not* provide reliable citizenship data. And he concocted a charade that some other agency needed a citizenship question on the Census questionnaire. Any one of these undisputed facts, in itself, is sufficient to sustain a finding that Ross’s decision to add a citizenship question to the Census violated the APA. Taken in any combination, these decisions attain a level of arbitrariness and capriciousness rarely witnessed in an administrative action.

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<sup>1</sup> Defendants concede that all documents number stamped from 000001 through 0013099, aside from those created after March 26, 2018, are part of the administrative record in this matter. (*See* Declaration of Ana G. Guardado (“Guardado Decl.”), ¶2, Ex. 1.) Plaintiffs do not waive the right to rely on extra-record discovery ordered by this Court in opposition to any motion for summary judgment filed by Defendants, at trial should this Court deny Plaintiffs’ motion, or in support of their Enumeration Clause claim on which they are do not seek summary judgment.

<sup>2</sup> 13 U.S.C. §§ 141(f)(1)-(3).

**STATEMENT OF UNDISPUTED FACTS**

**I. PLAINTIFFS ARE RELYING ONLY ON THE ADMINISTRATIVE RECORD FOR ALL ISSUES EXCEPT STANDING.**

For purposes of this Motion, Plaintiffs are relying solely on the administrative record produced by Defendants in this action. Plaintiffs are not relying on any documents that were produced pursuant to a finding of “bad faith” by Defendants, and do not rely on any of the “extra-record discovery that has already been produced.” Brief for Petitioner at 7, 14, *In re Dep’t of Commerce, et al., petition filed*, (October 29, 2018) (No. 18-557). The extra-record discovery ordered by this Court and others is certainly relevant and helpful to Plaintiffs claims, but Defendants’ actions are so egregious that the APA violation can be proved by the administrative record.

**II. DEFENDANTS IGNORED STATUTES AND REGULATIONS GOVERNING CHANGING THE CENSUS.**

**A. Ross Chose to Add the Citizenship Question for Reasons that Are Not in the Record.**

Discussions concerning adding the citizenship question began immediately after Wilbur Ross became Secretary of Commerce.<sup>3</sup> In March 2017, Earl Comstock, Director of Policy and Strategic Planning for the Department of Commerce, wrote Ross a response to “Your Question on the Census,” which appears to have been whether non-citizens are counted for Congressional apportionment. (0002521.)<sup>4</sup> A Bureau FAQ page confirmed that they are. (*Id.*) High-level Administration officials also lobbied Ross to add the citizenship question. On April 5, 2017, Ross’s executive assistant wrote to Ross’s wife that “Steve Bannon has asked that the Secretary talk to someone about the Census.” (0002561.) Ross also had discussions with Kansas Secretary of State Kris Kobach about adding the citizenship question, as Kobach reminded Ross in a July 21, 2017 email. (000763.)

But by the time Ross had these conversations, it was too late to change the content of the Census. The Bureau, pursuant to federal law, had already submitted its topics for the Census by

<sup>3</sup> See 163 Cong. Rec. S1455 (Feb. 27, 2017).

<sup>4</sup> The applicable portions of the administrative record are attached as Exhibit 3 to Guardado Decl.

the March 31, 2017 deadline<sup>5</sup> (000194), stating that only five subjects would be included in the Census: age, gender, race/ethnicity, relationship, and homeowner status (000204-000213), and noting that other topics including citizenship would be included on the American Community Survey (“ACS”) as they have been in the past. (000214-67.) Thus, by April 2017, the Bureau had notified Congress that citizenship would not be a topic on the Decennial Census.

Although the statutory deadline had passed, Ross complained to Comstock on May 2, 2017 that he was “mystified why nothing has been done in response to my months['] old request that we include the citizenship question.” (0003710.) Comstock responded that the Bureau had already sent the topics to Congress, but suggested that a question could be added that was not among those topics. (*Id.*) Comstock added that “[w]e need to work with Justice to get them to request that citizenship be added back as a census question[.] . . . I will arrange a meeting with DoJ staff this week to discuss.” (*Id.*)

**B. Commerce Sought Out Another Agency to Request the Question.**

By the next day, Senior White House Advisor Eric Branstad looked for a Department of Justice (“DOJ”) contact “[r]egarding [a] Census and Legislative issue” to put in touch with Comstock. (0003701.) Branstad referred Comstock to Mary Blanche Hankey at DOJ, with whom Comstock met “in person to discuss the citizenship question.” (0002462 and 0012756.) Hankey referred Comstock to James McHenry, the newly-appointed Acting Director of DOJ’s Executive Office of Immigration Review,<sup>6</sup> with whom Comstock spoke several times. (*Id.*)

On July 21, 2017, while Comstock searched for an agency to request the citizenship question, Kobach wrote to Ross “at the direction” of Bannon reminding him how important it was to exclude non-citizens from apportionment counts. Kobach emphasized that, without a citizenship question “aliens who do not actually ‘reside’ in the United States are still counted for congressional apportionment.” (000764.) Kobach sent Ross the exact language of what ultimately

<sup>5</sup> See 13 U.S.C. §§ 141(f)(1)-(3).

<sup>6</sup> See <https://www.justice.gov/opa/pr/attorney-general-sessions-announces-appointment-james-mchenry-director-executive-office>. Plaintiffs seek judicial notice of certain “relevant background information,” such as the identity of individuals named in the record and the history of the census, through government documents, as is proper in APA proceedings. *Ursack, Inc. v. Sierra Interagency Black Bear Grp.*, No. 08-1808 SC, 2009 WL 2422784, at \*6 (N.D. Cal. Aug. 6, 2009), *aff’d*, 639 F.3d 949 (9th Cir. 2011).

1 became the citizenship question that Ross chose to add to the Census. (*Id.*) On August 8, Ross  
 2 wrote to Comstock to ask “where is the DOJ in their analysis? If they still have not come to a  
 3 conclusion please let me know your contact person and I will call the AG.” (001247.)

4 On September 8, 2017, Comstock reported to Ross that “Justice staff did not want to raise  
 5 the question given the difficulties Justice was encountering in the press at the time (the whole  
 6 Comey matter).” (0012756.) Instead, DOJ’s McHenry referred Comstock to an official at the  
 7 Department of Homeland Security (“DHS”), who also declined to request a question on behalf of  
 8 DHS. Comstock reported that attorneys from Commerce were going to “look into the legal issues  
 9 and how Commerce could add the question to the Census itself.” (*Id.*)

10 Ross followed through on his promise to call Attorney General Jeff Sessions. Five days  
 11 after Comstock told Ross that neither DOJ nor DHS would ask the Bureau to put the question on  
 12 the Census, John Gore, the acting head of DOJ’s Civil Rights Division, wrote to Ross’s chief of  
 13 staff to discuss “a DOJ-DOC issue.” (0002652.) By September 17, the Attorney General and Ross  
 14 had spoken. (*Id.*) Danielle Cutrona from the Attorney General’s office told Ross’s Chief of Staff,  
 15 “we can do whatever you all need us to do.” (*Id.*) When DOJ had not asked that Census add a  
 16 citizenship question by November 27, 2017, Ross wrote to Peter Davidson, the General Counsel  
 17 of Commerce: “Census is about to begin translating the questions into multiple languages and has  
 18 let the printing contract. We are out of time. Please set up a call for me tomorrow with whoever is  
 19 the responsible person at Justice. We must have this resolved.” (0011193.) Davidson reassured  
 20 Ross that “I can brief you tomorrow . . . no need for you to call.” (*Id.*) Two weeks later, DOJ  
 21 issued the request that Ross had sought for months.

### 22 **C. DOJ Reverses Course and Asks for a Citizenship Question.**

23 By this time, however, DOJ had already confirmed that it did not want a citizenship  
 24 question on the Census. In accordance with the statutory deadlines described above, DOJ  
 25 formally informed the Bureau that it “had no needs to amend the current content and uses or to  
 26 request new content in the American Community Survey (ACS) for the 2020 Census.” (000311).  
 27 In October 2016, Arthur Gary, General Counsel for the Justice Management Division of DOJ,  
 28 supplemented this letter, formally requesting that the Bureau “consider a new topic in the ACS

1 relating to LGBT populations.” (*Id.*) Thus, as of the statutory deadline for adding new topics,  
 2 DOJ had, consistent with the Bureau’s process, provided its complete update on its needs for the  
 3 Census with no mention of a need for additional citizenship-related data.

4 That changed after Ross spoke with Attorney General Sessions. On December 12, 2017,  
 5 Gary signed a new letter, this one to acting Census Director Ron Jarmin, “to formally request that  
 6 the Census Bureau reinstate on the 2020 Census questionnaire a question regarding citizenship,  
 7 formerly included in the so-called ‘long form’ census.” (000663.) (the “DOJ Request”). Gary  
 8 based his request—which contradicts the one he had sent just a year before—on a purported need  
 9 for “citizen voting-age population data for census blocks, block groups, counties, towns, and  
 10 other locations.” (000664.)

### 11 **III. ROSS IGNORED EVIDENCE FROM BUREAU EXPERTS AND** 12 **STAKEHOLDERS AND IMPOSED HIS PREDETERMINED POSITION.**

#### 13 **A. The Bureau Proposes a Better Means of Providing CVAP Data.**

14 Upon receiving the DOJ Request, the career scientists at the Bureau set out to study how  
 15 best to meet DOJ’s ostensible need for block-level CVAP data. On December 22, they prepared a  
 16 technical memorandum (0011646-49) and an accompanying White Paper (0011634-45). In these  
 17 documents, the experts at the Bureau analyzed the advantages and disadvantages of using a  
 18 citizenship question on the Census to obtain CVAP data, identifying two advantages: (1) the  
 19 provenance of the data is transparent and (2) the data are contemporaneous with the census by  
 20 construction (0011647), and three disadvantages: (1) potential negative impact on voluntary  
 21 cooperation with the census, (2) poorer quality citizenship data than would be available through  
 22 administrative records, and (3) additional cost. (*Id.*)

23 The Bureau noted that the decline in response rate for household with at least one non-  
 24 citizen to the ACS, which contains a citizenship question, was 5.1 percentage points more than  
 25 the decline for all-citizen households. (0011647.) Additionally, the Bureau found that “there is a  
 26 tendency for noncitizen ACS respondents to report being U.S. citizens.” (0011640.) Further, the  
 27 cost of additional non-response follow up (“NRFU”) was calculated at \$32,000,000 based on the  
 28 lower response rate. (0011647.) The Bureau found that administrative records—birth certificates,

1 Social Security data, drivers' licenses, and the like—could be used to cross-reference census data  
 2 and provide DOJ with more accurate block-level CVAP information than using the citizenship  
 3 question, without the drawbacks of adding the question itself. (0011647-48.)

4 **B. The Bureau's Full Review Concludes Administrative Records Are a Better**  
 5 **Means of Obtaining CVAP Data.**

6 The Bureau's scientific staff then conducted a month-long review into the impact of three  
 7 potential alternatives regarding citizenship and the Census, namely: (A) no change in data  
 8 collection, (B) adding a citizenship question to the Census, and (C) obtaining citizenship status  
 9 from administrative records for the whole population; they set forth their findings in a January 19,  
 10 2018 Memo. (001277-85.) The Bureau compared the self-response rate in the short form census  
 11 to the long form census (which, like the ACS, had contained a citizenship question) and the ACS  
 12 since 2000. For 2000, it found that the decline in self-response from the short form to the long  
 13 form was 3.3 percentage points higher for non-citizen households. (001280.) In 2010, the decline  
 14 in self-response from the short form to the ACS was 5.1 percentage points higher for non-citizen  
 15 households. (*Id.*) The Bureau also found that the item nonresponse rate on the ACS from 2013  
 16 through 2016 was much greater than the comparable rates for other demographic variables. (*Id.*)  
 17 The Bureau concluded that the increased burden<sup>7</sup> of the citizenship question would lead to a  
 18 decline in *overall* self-response, and a larger decline in self-response in non-citizen households.  
 19 The Bureau provided Ross with an estimate that NRFU costs would increase \$27.5 million by  
 20 adding the citizenship question, emphasizing that the estimate was a conservative one. (001282.)  
 21 In comparison, the cost to use administrative data on citizenship instead of adding the question to  
 22 the Census would be between \$500,000 and \$2 million. (*Id.*)

23 The Bureau recommended either Alternative A (no change) or C (using administrative  
 24 records), explaining that Alternative C would meet the stated use in the DOJ Request without  
 25 increasing response burden or harming the quality of the Census count. It concluded that  
 26 Alternative B (adding the citizenship question) would be very costly, would harm the quality of  
 27 the census count, and would use substantially less accurate citizenship status data than are

28 <sup>7</sup> Survey methodologists consider "burden" to include both the direct time costs of responding and the indirect costs  
 arising from nonresponse due to perceived sensitivity of the topic. (001281.)



1 available from administrative sources. (001277.)

2 **C. Ross Conducts Perfunctory Meetings with Stakeholders.**

3 Ross met with numerous stakeholders about the citizenship question, including officials,  
4 academics, and representatives of interest groups, the vast majority of whom rejected the addition  
5 of the citizenship question.<sup>8</sup> On January 26, 2018 six former directors of the Bureau, who served  
6 under administrations of both parties, wrote to Ross opposing adding the citizenship question,  
7 emphasizing that the Bureau's well-established process had been ignored, noting that "adding an  
8 untested question on citizenship status at this late point in the decennial planning process would  
9 put the accuracy of the enumeration and success of the census in all communities at grave risk."  
10 (001057.) They implored Ross to consider the "great deal of evidence that even small changes in  
11 survey question order, wording, and instructions can have significant, and often unexpected,  
12 consequences for the rate, quality, and truthfulness of response." (001058.)

13 **D. Commerce Ignored the Answers to Follow-up Questions to the Bureau**

14 On January 30, 2018, following review of the January 19 Memo, Comstock asked the  
15 Bureau to respond to 35 follow-up questions (0005216), including one asking "[w]hat was the  
16 process that was used in the past to get questions added to the decennial Census or do we have  
17 something similar where a precedent was established?" (0009832-33.) The Bureau responded by  
18 setting forth its well-established process for adding questions:

19 The Census Bureau follows a well-established process when adding or changing content  
20 on the census or ACS to ensure the data fulfill legal and regulatory requirements  
21 established by Congress. Adding a question or making a change to the Decennial Census  
22 or the ACS involves extensive testing, review, and evaluation. This process ensures the  
23 change is necessary and will produce quality, useful information for the nation.

- 24 • The Census Bureau and the Office of Management and Budget (OMB) have laid out a formal process for making content changes.
- 25 • First, federal agencies evaluate their data needs and propose additions or changes to current questions through OMB.

26 <sup>8</sup> Among them were the Senior Vice President of Data Science for Nielsen, Christine Pierce, who stated that in her  
27 experience including a sensitive question "could make people less likely to respond." (001276.) The leader of the  
28 bipartisan United States Conference of Mayors wrote that a citizenship question would "increase the burden on  
respondents, likely heighten privacy concerns around the census, and lower participation by immigrants who fear the  
government will use this information to harm them and their families." (001066.) The attorneys general of Iowa and  
Mississippi opposed the question. (001201 and 001205.) A Chamber of Commerce leader wrote that the question  
could lead to inaccurate census data, which businesses use "to analyze demographic and economic trends required for  
business strategy." (001238.)

- In order to be included, proposals must demonstrate a clear statutory or regulatory need for data at small geographies or for small populations.
- Final proposed questions result from extensive cognitive and field testing to ensure they result in the proper data, with an integrity that meets the Census Bureau's high standards . . . .
- The final decision is made in consultation with OMB.

(0009832-33.)<sup>9</sup>

But this response from the Bureau was not included in the administrative record that Commerce initially produced in this matter. Instead, an entirely new answer, which nothing in the administrative record suggests was ever shown to or approved by anyone at the Bureau, was included. That answer reads:

Because no new questions have been added to the Decennial Census (for nearly 20 years), the Census Bureau did not feed [*sic*] bound by past precedent when considering the Department of Justice's request. Rather, the Census Bureau is working with all relevant stakeholders to ensure that legal and regulatory requirements are filled and that questions will produce quality, useful information for the nation. As you are aware, that process is ongoing at your direction.

(001296.) It was only after Judge Furman ordered completion of the administrative record that Defendants produced the Bureau's original response to Commerce's question 31.

**E. Commerce Demands New Analysis from Census.**

After the Bureau provided its conclusions in the January 19 Memo, Ross demanded analysis of a fourth alternative option, Alternative D, under which the Bureau would include the citizenship question on the Census, but then use administrative records, such as Social Security records, to provide CVAP data. (001316, 0009812.) On March 1, 2018, the Bureau presented its findings, concluding that, because the drop in self-response rate that would come from including a citizenship question would remain, "Alternative D would result in poorer quality citizenship data than Alternative C." (001312.) After all, it "would still have all the negative cost and quality

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<sup>9</sup> This well-established process is derived from the several federal laws that govern the specific manner in which the census is to be developed and conducted, including the Paperwork Reduction Act of 1995, *see* 44 U.S.C. §§ 3504(e)(3)(A), 3506(e)(4); 5 C.F.R. § 1320.18(c). The Bureau itself has issued Statistical Quality Standards applicable to "all information products released by the Bureau and the activities that generate those products"—including the decennial census. *See* Statistical Quality Standards, U.S. Census Bureau, July 2013, *available at* [https://www.census.gov/content/dam/Census/about/about-the-bureau/policies\\_and\\_notices/quality/statistical-quality-standards/Quality\\_Standards.pdf](https://www.census.gov/content/dam/Census/about/about-the-bureau/policies_and_notices/quality/statistical-quality-standards/Quality_Standards.pdf) at ii. These standards are discussed in the administrative record. (001093-95.)



1 implications of Alternative B” set forth in the January 19 Memo. (*Id.*) But it would not resolve  
 2 any concerns about using administrative records instead of the question, because those people  
 3 “refusing to self-respond due to the citizenship question are particularly likely to refuse to  
 4 respond in NRFU as well, resulting in a proxy response.” (001311; *see also* 0009816 (discussing  
 5 further problems with Alternative D).)

6 **F. Ross Issued His Decision Without Considering Key Findings and Without**  
 7 **Disclosing that He Asked DOJ to Make the Request**

8 On March 22, 2018, despite having worked for nearly a year to get DOJ, then DHS, then  
 9 DOJ again, to issue a request for the citizenship question, Ross testified under oath to the House  
 10 Ways and Means Committee that “[DOJ], as you know, initiated the request for inclusion of the  
 11 citizenship question.”<sup>10</sup> This testimony was consistent with Ross’s memo, (“Decision Memo”) issued  
 12 four days later, in which he wrote that DOJ “requested” that he add the citizenship  
 13 question and that “[f]ollowing receipt” of this request, he took a “hard look” at the issue.  
 14 (001313-20.) Nowhere in the Decision Memo did Ross discuss his and his staff’s strenuous  
 15 efforts to get DOJ to make this request.

16 In the Decision Memo, Ross dismissed the concerns of statistical experts, former Bureau  
 17 chiefs, and others who had warned that adding a citizenship question would lower data quality.  
 18 When considering Option C (the administrative record only option), Ross emphasized inaccurate  
 19 response rates and dismissed administrative records, but when considering Option D (adding the  
 20 citizenship question and using administrative records), he ignored inaccurate responses and  
 21 praised administrative records. (001317.) Ross did not consider concerns of experts that the  
 22 question needed to be tested in the context and on the instrument that it was going to be used  
 23 because some question having something to do with citizenship had been asked “in some form or  
 24 another for nearly 200 years.”<sup>11</sup> He dismissed the higher costs associated with adding the

25 <sup>10</sup> See Transcript of a Hearing Before the Committee on Ways and Means, U.S. House of Representatives, March  
 26 22, 2018, serial no. 115-FC09, *available at* <https://docs.house.gov/meetings/WM/WM00/20180322/108053/HHRG-115-WM00-Transcript-20180322.pdf>.

27 <sup>11</sup> As the Bureau notes, this statement is not true. Aside from a question in 1870 that was used to count freed slaves  
 28 who were denied the right to vote, no citizenship question was asked between 1820 and 1890, and none was asked in  
 1950. See *History, 2000 Census of Population and Housing*, U.S. Census Bureau, December 2009 p. 131, *available at* <https://www.census.gov/history/pdf/Census2000v1.pdf>. From 1950 through 2000, the question was asked only as  
 part of a survey on the “long-form” questionnaire, and since 2010, the question was asked as part of the American

question. (001319.) He concluded by stating that “[t]he citizenship data provided to DOJ will be more accurate with the question than without it” without citing to any study, authority, or expert for this conclusion. (*Id.*)

**G. Ross Discloses Some of the Truth After Litigation Begins.**

After Plaintiffs filed a motion to expand discovery based on evidence of improper influence, Ross issued a “supplement” to his administrative determination indicating that, indeed, “senior governmental officials” had discussed adding a citizenship question months before DOJ “initiated” the issue. (001321.)

**IV. ADDING THE QUESTION HAS HARMED, IS HARMING, AND WILL HARM PLAINTIFFS**

**A. San Jose is Spending Money on Outreach Now to Reduce the Negative Impact of Including a Citizenship Question.**

Aware that adding the citizenship question to the Census will depress self-response rates, the Bureau and Commerce have publicly stated that local communities need to do more than they have in past decades to protect their interest in a full count. In July 2018, Ross wrote to the United States Commission on Civil Rights asking “Federal, state, and local leaders” to conduct outreach regarding the citizenship question, and that “[b]y encouraging non-citizens, their friends, and their families to respond to the census, these community leaders can help the Census Bureau conduct a complete and accurate count.”<sup>12</sup> On October 2, 2018 Ross issued a public statement about how Commerce has “encouraged [states] to establish so-called ‘Complete Count Committees’” that would work to “encourage participation in the Census.”<sup>13</sup>

San Jose has already spent, and will continue to spend, precious municipal resources to encourage participation in the Census *specifically because* a citizenship question will be added. Jeff Ruster, San Jose’s Assistant Director of Economic Development, has detailed the expenses

Community Survey. (0005477.)

<sup>12</sup> Letter from Secretary Ross to Catherine Lhamon, United States Commission on Civil Rights, July 5, 2018, <https://www.usccr.gov/press/2018/07-17-18-letter.pdf>. The letter and other “government documents” in this section are subject to judicial notice under Fed. R. Evid. 201; going outside the administrative record to establish standing is routine in APA cases. *See, e.g., Northwest Nw. Envtl. Def. Ctr. v. Bonneville Power Admin.*, 117 F.3d 1520, 1527–28 (9th Cir. 1997) (considering affidavits for the limited purpose of standing).

<sup>13</sup> *See* <https://www.commerce.gov/news/secretary-speeches/2018/10/remarks-secretary-wilbur-l-ross-us-census-national-partnership-press>.

1 that San Jose has already incurred, and will continue to incur, directly traceable to the inclusion of  
 2 the citizenship question. Ruster personally assisted in the preparations for a “Complete Count  
 3 Committee,” just as Ross recommended, bringing together over 100 representatives from  
 4 community-based, educational, government, and private sector organizations. (Ruster Decl. ¶ 7.)  
 5 He has worked to identify low visibility housing and developed programs to encourage hard-to-  
 6 count populations to participate. (Ruster Decl. ¶ 5.) In working directly on these outreach  
 7 programs, Ruster heard firsthand from community representatives about concerns due to the  
 8 citizenship question being added. (Ruster Decl. ¶ 8.) Community members have informed him  
 9 that hard-to-count populations, including non-citizens, will not respond to the Census if it  
 10 includes a citizenship question. (Ruster Decl. ¶ 8.) In fact, at the presentation of the Santa Clara  
 11 County Complete Count Committee meeting in September 2018, the very first obstacle listed was  
 12 “Citizenship Question.” (Ruster Decl., Ex. 1, SJBAJI00020.)

13 Even if the Bureau were to compensate for the lowered self-response rate entirely through  
 14 the use of NRFU, San Jose will have already diverted funds from other activities to lessen the  
 15 impact of the question. San Jose has allocated \$300,000 to such efforts, expects to allocate at least  
 16 \$300,000 more, and will divert resources from other programs to “outreach specifically aimed at  
 17 increasing participation among groups more likely to resist responding because of the inclusion of  
 18 a citizenship question.” (Ruster Decl. ¶ 13). These funds will be diverted before the Census takes  
 19 place, and will therefore be used—if the citizenship question is included—whether or not NRFU  
 20 procedures ultimately correct any initial undercount. (Ruster Decl. ¶¶ 14-15.) If the Bureau is  
 21 enjoined from putting the citizenship question on the Census, San Jose would be able to use these  
 22 funds for other purposes. (Ruster Decl. ¶ 16.)

23 **B. Including the Citizenship Question Will Lower Self-Response Rates, Leading**  
 24 **to Incorrect Enumerations and a Likely Differential Undercount.**

25 In its post-enumeration analysis of the 2010 Decennial Census, the Bureau found that  
 26 even though the census “did not have a significant percent net undercount” it had a significant  
 27 undercount by race or Hispanic origin.<sup>14</sup> With the citizenship question, these undercounts are

28 <sup>14</sup> See 2010 Census Coverage Measurement Memorandum Series #2010-G-01 (“Census Coverage Memo”), available  
 at [https://www.census.gov/coverage\\_measurement/pdfs/g01.pdf](https://www.census.gov/coverage_measurement/pdfs/g01.pdf). The Bureau found a net undercount of 2.06% in the

likely to be even higher. As long ago as 1980, and as recently as 2016, the Bureau has held that a citizenship question would “enhance the problems of enumerating minorities thereby exacerbating the undercount”<sup>15</sup> and lead to a “reduced rate of response overall and an increase in inaccurate response.”<sup>16</sup> In analyzing the DOJ Request, the Bureau calculated that on instruments including a citizenship question, the “decline in self-response was 5.1 percentage points greater for noncitizen households than for citizen households.” (001280.) While the Bureau will attempt to follow up with non-respondents using NRFU, it emphasized that “[t]hose refusing to self-respond due to the citizenship question are particularly likely to refuse to respond in NRFU as well, resulting in a proxy response.” (001311.) If the Bureau was unable to obtain an accurate count of Blacks and Latinos without a citizenship question, it is pure speculation on their part that they will obtain an accurate count with one.

**C. San Jose Has a Substantial Risk of Being Harmed by the Addition of the Citizenship Question.**

According to the Bureau, 174,510 of San Jose’s 1,009,363 residents—over 17%—are non-citizens, while under 7% of the national population are non-citizens. San Jose’s population is 32.6% Hispanic, nearly double the national percentage of 17.3%.<sup>17</sup> Any undercount of non-citizens will therefore disproportionately affect San Jose.

Kristen Clements administers grants programs, including the Community Development Block Grant program (“CDBG”) and the Home Investment Partnerships Program (“HOME”) for San Jose. (Clements Decl. ¶¶ 1, 3, 4.) Both programs receive funding based on federal formulas linked to census data. (Clements Decl. ¶¶ 12, 14, 22.) If the Census underreports the population of San Jose relative to jurisdictions with fewer non-citizens, San Jose will receive less funding than it otherwise would. (Clements Decl. ¶¶ 23-27.)

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black population in the 2010 Census, a net undercount of 1.54% for the Hispanic population, a net undercount of 4.88% in the American Indian population, and a net *overcount* of almost a percent of the white population. *Id.* at 1-2.

<sup>15</sup> Defendants’ Reply Memorandum and Opposition to Plaintiffs’ Motion for Summary Judgment, *Federation for American Immigration Reform (FAIR), et al., v. Philip M. Klutznick, et al.*, 79-3269 (D.D.C. Jan 3, 1980) 1980 WL 683642 at 22.

<sup>16</sup> Brief of Former Directors of the U.S. Census Bureau as Amici Curiae in Support of Appellees, *Evenwel v. Abbott*, 136 S. Ct. 1120 (2016), 2015 WL 5675832 at 23-26.

<sup>17</sup> The Bureau’s data on ACS are available at <https://factfinder.census.gov/faces/nav/jsf/pages/index.xhtml> (enter “San Jose” or “United States” and click under “2016 American Community Survey”).

Monique Melchor oversees San Jose’s programs funded through the Workforce Innovation and Opportunity Act (“WIOA”). (Melchor Decl. ¶¶ 1,3.) Funds allocated through WIOA are awarded based on several factors, including data from the Bureau of Labor Statistics (“BLS”) and the Bureau. (Melchor Decl. ¶¶ 5,6.) Because this funding is allocated, in part, on data provided by the Bureau, an undercount of San Jose relative to cities with a lower population of non-citizens would result in a reduction in funding and a decrease in services provided to this vulnerable population. (Melchor Decl. ¶¶ 10,11.)

**D. BAJI Has Suffered and Will Suffer Harm Unless the Question Is Removed.**

Plaintiff Black Alliance for Just Immigration (“BAJI”) is a California nonprofit corporation with offices in Oakland, Los Angeles, and New York. (Declaration of BAJI’s Executive Director Opal Tometi (“Tometi Decl.”) ¶ 2.) It is a membership organization with approximately 1200 members, predominantly Black immigrants, refugees, and/or African Americans concentrated in Oakland and other parts of the Bay Area, San Jose, Los Angeles, New York, Miami, Atlanta, and Washington, D.C. BAJI’s core mission is to educate and engage Black immigrant communities to organize and advocate for racial, social and economic justice for themselves and other underrepresented communities. (Tometi Decl. ¶¶ 4–7.)

Several of BAJI’s members have told BAJI that they would be reluctant to participate in the Census if it contains a question about their citizenship status, expressing fears about confidentiality and privacy, particularly in the context of the heightened anti-immigrant political rhetoric. Others have expressed concern about the effects of the question, such as political dilution and the loss of federal funding, on the historically underrepresented communities whom BAJI represents. (Tometi Decl. ¶¶ 9–11.)

To address, and attempt to mitigate, the effects of the addition of a citizenship question to the Census, BAJI has diverted time and money from other important organizational activities to educate its constituents about the citizenship question and advocate against its inclusion and prepare additional outreach efforts to mobilize their constituents to respond to the Census so that they may be properly counted. (Tometi Decl. ¶¶ 12–14.) BAJI has engaged partner organizations and donors in conversations about census outreach, begun preparing strategies to engage Black

immigrant communities in the Census, and is soliciting potential funding for census outreach and education. (Tometi Decl. ¶ 18.) Outreach to encourage the participation of its constituents in the Census will require the expenditure of additional money, staff time, and operational expenses, including materials, computers, telephones, and other office equipment. (Tometi Decl. ¶ 14.) To date, BAJI has dedicated numerous staff hours to addressing the addition of a citizenship question to the Census and expects to allocate at least an additional \$200,000 in the next two years. (Tometi Decl. ¶¶ 19–20.) The inclusion of a citizenship question on the Census will therefore require BAJI to divert its limited and essential resources prior to the date the Census is conducted, regardless of whether the Bureau’s NRFU procedures ultimately correct any initial undercount and the ultimate impact of the question itself. (Tometi Decl. ¶¶ 16, 19.)

### **STANDARD OF REVIEW**

Summary judgment shall be granted if the record shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a). Under the APA, this Court “shall hold unlawful and set aside agency action” that is “found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law,” “contrary to constitutional right, power, privilege, or immunity,” “in excess of statutory jurisdiction, authority, or limitations,” or “without observance of procedure required by law.” 5 U.S.C. §706(2). Plaintiffs’ third and fourth counts, that Defendants’ decision to add the question was “in excess of statutory jurisdiction, authority, or limitations, or short of statutory right” and “arbitrary and capricious” under the APA, are appropriate for summary judgment. *See NW Motorcycle Ass’n v. United States Dep’t Agric.*, 18 F.3d 1468, 1472 (9th Cir. 1994) (Finding that where a review of a final agency determination is limited to administrative record, resolution of the matter does not require fact finding, does not present any genuine issues of material fact and summary judgment is appropriate).

### **ARGUMENT**

#### **I. PLAINTIFFS HAVE STANDING TO CHALLENGE ROSS’S DECISION.**

To satisfy Article III’s standing requirements, “a plaintiff must show (1) it has suffered an ‘injury in fact’ that is (a) concrete and particularized and (b) actual or imminent, not conjectural



1 or hypothetical; (2) the injury is fairly traceable to the challenged action of the defendant; and (3)  
 2 it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable  
 3 decision.” *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 180–81,  
 4 (2000). Both San Jose and BAJI easily meet these standards.

5 **A. Injury to San Jose and BAJI Is Both Actual and Reasonably Imminent.**

6 Ross himself acknowledged the need for entities like San Jose and BAJI to try to  
 7 ameliorate the effects of the citizenship question in his imploring them to conduct outreach to  
 8 encourage responses to the Census.<sup>18</sup> But this costs money, so “both the challenged conduct” (the  
 9 decision to add the citizenship question) and “the attendant injury” (the expenditures made by San  
 10 Jose, and BAJI, as directed by Ross, to protect its interest in an accurate count) “have already  
 11 occurred.” *Robins v. Spokeo, Inc.*, 867 F.3d 1108, 1118 (9th Cir. 2017), *cert. denied*, 138 S. Ct.  
 12 931 (2018).

13 Additionally, the Ninth Circuit has held that plaintiffs have standing to challenge a  
 14 procedural action when “it is reasonably probable that the challenged action will threaten their  
 15 concrete interests.” *Citizens for Better Forestry v. U.S. Dep’t of Agric.*, 341 F.3d 961, 969–70 (9th  
 16 Cir. 2003). A plaintiff need not “demonstrate that it is literally certain that the harms they identify  
 17 will come about.” *Clapper v. Amnesty Int’l USA*, 568 U.S. 398, 414 n.5 (2013); *see also Susan B.*  
 18 *Anthony List v. Driehaus*, 134 S. Ct. 2334, 2341 (2014). At a minimum, the Bureau’s analyses of  
 19 the need and impact of a citizenship question and Ross’s own pleas for cities and organizations to  
 20 take extra steps reflect Defendants’ own knowledge that the posing of the citizenship question  
 21 will lead to a higher non-response rate and a more difficult NRFU process. Defendants  
 22 themselves know that the risk is real.

23 Moreover, however confident Defendants might be that they will be able to count  
 24 everyone, their own track record says the opposite: even without a citizenship question, they have  
 25 fallen significantly short in counting the very populations—notably Latinos and Blacks—who are  
 26 likely to be disproportionately among the immigrant populations whom Defendants acknowledge  
 27

28 <sup>18</sup> See notes 12 and 13, *supra*.

are going to be difficult to count accurately.<sup>19</sup> If these populations cannot be counted accurately when there is no citizenship question, the risk they will not be counted accurately when the Census contains the citizenship question is substantial.

**B. San Jose Has Standing.**

**1. San Jose Has Suffered and Will Suffer an Injury in Fact.**

When plaintiffs identify a “substantial risk” of harm and “reasonably incur costs to mitigate or avoid that harm,” those costs establish Article III standing. *Clapper*, 568 U.S. at 414 n.5. At summary judgment, facts set forth in the undisputed declaration of a city official “sufficiently demonstrate[] Article III injury.” *City of Sausalito v. O’Neill*, 386 F.3d 1186, 1198 (9th Cir. 2004). As set forth above, San Jose has already diverted money to encourage hard-to-count populations to participate in the Census *specifically* because the Bureau has announced that it will include a citizenship question and asked that cities perform more outreach. Loss of money is the prototypical “concrete, actual injury.” *See Mendoza v. Zirkle Fruit Co.*, 301 F.3d 1163, 1172 (9th Cir. 2002). And the expenditures—both now and in the future—are “actual or imminent.” *Friends of the Earth, Inc.*, 528 U.S. at 180.

The loss of funds that will result from a likely undercount constitutes an additional concrete injury. Based upon Defendants’ admissions of the obstacles to an accurate count caused by the citizenship question, it is reasonably likely that there will be some undercount in San Jose that would not have occurred absent the citizenship question. Any differential undercount attributable to the citizenship question will harm San Jose to some degree for purposes of standing. *See Van Patten v. Vertical Fitness Grp., LLC*, 847 F.3d 1037, 1043 (9th Cir. 2017) (receipt of two unwanted text messages sufficient to confer Article III standing).

**2. San Jose’s Injury Is Fairly Traceable to the Citizenship Question.**

To demonstrate that an injury is fairly traceable to a government action, a plaintiff must show that the “government’s unlawful conduct is at least a substantial factor motivating the third parties’ actions.” *Mendina v. Garcia*, 768 F.3d 1009, 1012 (9th Cir. 2014) (quotation omitted). The particular efforts that San Jose has undertaken which constitute the basis of its injury are

<sup>19</sup> Census Coverage Memo at 1-2 (finding differential undercounts by race and Hispanic origin in the 2010 census).



those precisely suggested by Defendants to mitigate the potential undercounts likely to be caused by inclusion of the citizenship question in the Census. Further, the potential loss of funds by San Jose is directly related to the reasonably likely undercount, which is directly traceable to the inclusion of a citizenship question. “[W]hat matters is not the length of the chain of causation, but rather the plausibility of the links that comprise the chain.” *Mendina*, 768 F.3d at 1012–13 (quotation and citation omitted); *Presidio Golf Club v. Nat’l Park Serv.*, 155 F.3d 1153, 1160 (9th Cir. 1998) (finding that harm to a golf club, in the form of losing membership, is “fairly traceable” to agency building a rival clubhouse that lured members away).

### 3. San Jose’s Injury Will Be Redressed by Removing the Citizenship Question.

“[T]o have standing, a federal plaintiff must show only that a favorable decision is *likely* to redress his injury, not that a favorable decision *will inevitably* redress his injury.” *Beno v. Shalala*, 30 F.3d 1057, 1065 (9th Cir. 1994). If there is no citizenship question, that portion of the undercount attributable to the citizenship question—and San Jose’s subsequent funding loss—will be eliminated as well. Because San Jose’s “injuries will not occur if the Plan is not implemented,” it has Article III standing. *City of Sausalito*, 386 F.3d at 1199.

#### C. BAJI Has Standing.

##### 1. BAJI Has Suffered and Will Suffer an Injury in Fact Due to a Diversion of Its Resources and the Frustration of Its Mission.

BAJI has standing for similar reasons. An injury in fact is established where a nonprofit organization shows “a drain on its resources from both a diversion of its resources and frustration of its mission.” *Fair Hous. of Marin v. Combs*, 285 F.3d 899, 905 (9th Cir. 2002); *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 378 (1982). As set forth above, adding the citizenship question has forced and will continue to force BAJI to divert resources. Moreover, the question is reasonably likely to disproportionately impact immigrant-rich communities and therefore frustrate BAJI’s mission to foster racial, economic, and social equality for Black immigrants.

Harm caused by infringement on “noneconomic values” also provides BAJI standing through its members. *Ass’n of Data Processing Serv. Organizations, Inc. v. Camp*, 397 U.S. 150, 154 (1970). Several BAJI members expressed fear as to the confidentiality of their citizenship

status. A loss of privacy, like other “aesthetic, emotional or psychological harms also suffice for standing purposes.” *Baker v. Castle & Cooke Homes Hawaii, Inc.*, No. CIV. 11-00616 SOM, 2012 WL 1454967, at \*4 (D. Haw. Apr. 25, 2012). Injury can stem from a loss of “reputational and privacy interests that have long been protected in the law.” *Spokeo*, 867 F.3d at 1114.<sup>20</sup>

Here, Defendants’ stated purpose for adding the question is to provide the Bureau with block-level data on residents’ citizenship status. But the Bureau publishes CVAP data, and census blocks are so small (sometimes only a single household) that making such information public will intrude on BAJI members’ privacy interests.<sup>21</sup>

## 2. BAJI’s Injury Is Fairly Traceable to the Citizenship Question and Will Be Redressed By Its Removal.

Because it is the addition of the citizenship question that is frustrating BAJI’s mission and leading to the diversion of its resources to mitigate harmful effects of the question and BAJI’s members’ privacy concerns, the removal of the untimely question would directly resolve the injury. BAJI’s injury is concrete, traceable to the citizenship question, and will be redressed setting aside Defendants’ action. *See, e.g., Fair Hous. of Marin*, 285 F.3d 899.

## II. THE DECISION TO ADD THE CITIZENSHIP QUESTION WAS MADE IN EXCESS OF STATUTORY JURISDICTION, AUTHORITY, OR LIMITATIONS.

Courts must set aside agency actions that are made “in excess of statutory jurisdiction, authority, or limitations, or short of statutory right.” 5 U.S.C. § 706(2)(C). Defendants failed to follow the “unambiguously expressed intent of Congress” when they added the citizenship question to the Census, so their decision must be set aside. *Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837, 843 (1984). When “a statute’s language carries a plain meaning, the duty of an administrative agency is to follow its commands as written, not to supplant those commands with others it may prefer.” *SAS Inst., Inc. v. Iancu*, 138 S. Ct. 1348, 1355 (2018).

<sup>20</sup> The burden of filling out the question on the form itself is at least as much of an imposition as receiving an unwanted text message, and that alone confers standing on every one of BAJI’s members. *Van Patten*, 847 F.3d at 1043.

<sup>21</sup> Harm to the privacy interests of BAJI members provides them standing not only because of the psychological damage it entails, but also because it is protected by law. The Census Act requires that no “officer or employee of the Department of Commerce or bureau or agency thereof” may “make any publication whereby the data furnished by any particular establishment or individual under this title can be identified.” 13 U.S.C. § 9(a)(2).

1           **A. The Secretary Is Required to Submit Census Topics Three Years in Advance**  
 2           **and May Not Modify Them Unless He Find “New Circumstances.”**

3           While the Census Act provides the Secretary of Commerce the right to conduct a census  
 4           “in such form and content as he may determine,” the *process* in which Ross must develop and set  
 5           forth that form and content is strictly regulated by federal law. That process is clear:

6           (f) With respect to each decennial and mid-decade census conducted under  
 7           subsection (a) or (d) of this section, the Secretary shall submit to the committees of  
 8           Congress having legislative jurisdiction over the census—

9           (1) not later than 3 years before the appropriate census date, a report  
 10           containing the Secretary’s determination of the subjects proposed to be included,  
 11           and the types of information to be compiled, in such census;

12           (2) not later than 2 years before the appropriate census date, a report  
 13           containing the Secretary’s determination of the questions proposed to be included  
 14           in such census; and

15           (3) after submission of a report under paragraph (1) or (2) of this  
 16           subsection and before the appropriate census date, if the Secretary finds new  
 17           circumstances exist which necessitate that the subjects, types of information, or  
 18           questions contained in reports so submitted be modified, a report containing the  
 19           Secretary’s determination of the subjects, types of information, or questions as  
 20           proposed to be modified.

21           13 U.S.C. § 141(f). For the Census, Ross was required to submit a report regarding the “subjects  
 22           proposed to be included, and the types of information to be compiled, in such census” by March  
 23           2017. Once that report was submitted, those “subjects” and “types of information” could be  
 24           modified only if Ross submitted to Congress a report in which he “finds *new circumstances exist*  
 25           which *necessitate*” that those subjects change. 13 U.S.C. § 141(f)(3) (emphasis added). Ross did  
 26           not follow this mandate.

27           **B. The Statute Is Unambiguous and this Court Need Not Apply Chevron**  
 28           **Deference.**

29           “Where the statute speaks to the direct question at issue, we afford no deference to the  
 30           agency’s interpretation of it and ‘must give effect to the unambiguously expressed intent of  
 31           Congress.’” *North Carolina v. E.P.A.*, 531 F.3d 896, 906 (D.C. Cir.), *on reh’g in part*, 550 F.3d  
 32           1176 (D.C. Cir. 2008) *quoting Chevron U.S.A., Inc.*, 467 U.S. at 842–43. When evaluating a  
 33           statute, a court begins, as it does in any context, with the plain language of “the existing statutory  
 34           text.” *Lamie v. U.S. Tr.*, 540 U.S. 526, 534 (2004). Courts may also apply “the canon against  
 35           reading conflicts into statutes” along with “other traditional canons” of construction to determine  
 36           whether a statute is ambiguous. *Epic Sys. Corp. v. Lewis*, 138 S. Ct. 1612, 1630 (2018). Where,

1 interpreted under these canons, “a statute’s language carries a plain meaning, the duty of an  
 2 administrative agency is to follow its commands as written, not to supplant those commands with  
 3 others it may prefer.” *SAS Inst., Inc.*, 138 S. Ct. at 1355. Although agency interpretations of  
 4 ambiguous statutes are accorded deference, when a statute is unambiguous, or “the canons supply  
 5 an answer, ‘*Chevron* leaves the stage.’” *Epic Sys. Corp.*, 138 S. Ct. at 1630 (quotation omitted).

6 The controlling statute in this case is not ambiguous. 13 U.S.C. § 141(f) states that the  
 7 Secretary “shall” submit the required reports. “The word ‘shall’ generally imposes a  
 8 nondiscretionary duty . . .” *SAS Inst., Inc.*, 138 S. Ct. at 1351. The two reports are distinct and  
 9 have separate contents: the first must set forth the “subjects” and “types of information” on the  
 10 census, and the second must set for the “questions proposed to be included in such census.” 13  
 11 U.S.C. §§ 141(f)(1), (2). The Secretary may “modify” those subjects, types of information, or  
 12 questions only if he “finds new circumstances exist which necessitate” the change, and *submits*  
 13 *another report* setting forth those new circumstances. 13 U.S.C. § 141(f)(3).

14 The statute plainly prohibits submitting a question that is not among the “topics”  
 15 submitted the previous year without a finding of “new circumstances” for two reasons. First, if  
 16 the topics included in Section 141(f)(1) impose no limitations on the questions, then Section  
 17 141(f)(1) is entirely superfluous, as the Secretary could submit a report listing any number of  
 18 topics, or none at all, and simply modify those topics when submitting questions a year later. Of  
 19 the canons of construction, “one of the most basic” is that a “statute should be construed so that  
 20 effect is given to all its provisions, so that no part will be inoperative or superfluous, void or  
 21 insignificant.” *Corley v. United States*, 556 U.S. 303, 314 (2009) (quotations omitted). Second,  
 22 adding a question that is not among the topics submitted the year before would by necessity add a  
 23 topic (the topic of the new question) and therefore require a finding of “new circumstances.” 13  
 24 U.S.C. § 141(f)(3). Finally, moving a topic from the ACS to the Census qualifies as  
 25 “modify[ing]” the topic, and therefore requires the same finding as adding a topic. *Id.*

### 26 C. Commerce Violated the Census Act.

27 Defendants submitted their topics in March 2017 as required by law. (000194-270.) In  
 28 March of 2018, after Ross issued the Decision Memo, Commerce submitted its “Questions

Planned for the 2020 Census and American Community Survey.”<sup>22</sup> While the report states that the “statistics” are “essential” for enforcing the Voting Rights Act, it fails to identify any “new circumstances” that support its addition, and certainly none that “necessitate” the change. In fact, neither Ross’s Decision Memo nor the DOJ Request even hint at any “new circumstances” that precipitated DOJ’s request.

While precedent on what constitutes “new circumstances” under the Census Act is scarce, courts have interpreted the phrase in other contexts. Certain environmental regulations require agencies to supplement reports when “new circumstances or information relevant to environmental concerns” arise. 40 C.F.R. § 1502.9(c)(1)(ii). The Ninth Circuit has held that this obligation “extends only to new information or circumstances regarding environmental impacts that may not have been appreciated or considered when the EIS was prepared,” and that agencies need not “consider new alternatives that come to light after issuance of the EIS.” *N. Idaho Cmty. Action Network v. U.S. Dep’t of Transp.*, 545 F.3d 1147, 1155 (9th Cir. 2008). No such “new circumstances” exist here. Ross violated the statute, and his decision must be overturned.

### **III. THE DECISION TO ADD A CITIZENSHIP QUESTION MUST BE STRUCK DOWN AS ARBITRARY AND CAPRICIOUS.**

The APA requires courts to set aside agency actions that are “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706 (2)(A); *see Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 41 (1983) (“*State Farm*”). Agency action is arbitrary and capricious when any of the following factors are met: “the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.” *State Farm* at 43. While there is some deference in arbitrary and capricious review, “the agency must examine the relevant data and articulate a satisfactory explanation for its action including a rational connection between the facts found and

<sup>22</sup> Available at <https://www2.census.gov/library/publications/decennial/2020/operations/planned-questions-2020-acs.pdf>. Although Ross stated in the Decision Memo that the citizenship question would be placed last (001320), the Bureau’s submission lists it second.

the choice made.” *State Farm* at 43 (quotation and citation omitted). When the agency’s “new policy rests upon factual findings that contradict those which underlay its prior policy; or when its prior policy has engendered serious reliance interests that must be taken into account,” it must provide a “reasoned explanation” for the change. *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515-516 (2009).

**A. Ross’s Explanation for the Decision Was Implausible and Pretextual.**

The administrative record shows that Ross’s stated reason for adding the question—that DOJ approached the Bureau asking for the question to better enforce the Voting Rights Act—is pretextual and implausible. Rather, this decision has always been about, at a minimum, apportionment.<sup>23</sup> In March 2017, just weeks after Ross took office, he and Comstock were exchanging emails about the citizenship question which expressly connected the issue to citizens being counted for congressional apportionment. (0002521.) By May 2, 2017, Ross’s “request that we include the citizenship question” was already “months[’s]old.” (0003710.) He had met with White House Chief Strategist Stephen Bannon and Election Integrity Commission Vice-Chair Kris Kobach, and had Earl Comstock, his chief policy officer research whether non-citizens are counted in apportionment. (0002521.) Kobach’s July 2017 email to Ross not only provided him with the exact language that would find its way into the citizenship question in the Census, but was sent “at the direction of Steve Bannon.” (000764.) Kobach specifically stated that the citizenship question could be used to exclude non-citizens from apportionment counts, noting that

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<sup>23</sup> A citizenship question in the Census has long been sought by those who wish to exclude non-citizens from congressional apportionment. Steven Camarota, the author of a number of papers recommending excluding non-citizens from apportionment, wrote that to do so, the citizenship question would “have to move to the short form in order to exclude non-citizens.” *The Impact of Non-Citizens on Congressional Apportionment*, Center for Immigration Studies, December 6, 2005 available at <https://cis.org/Impact-NonCitizens-Congressional-Apportionment>. When Dr. Camarota met with Ross, he explained that he no longer thinks the question would lower citizen participation, and that “concerns about decreased participation are unfounded.” (001206.) Then-United States Senator David Vitter introduced an amendment to an appropriations act in 2009 that would have required the Bureau to add a citizenship question to the short form of the 2010 Decennial Census. *See Vitter-Bennet Amendment No. 2644 to the Commerce, Justice Science and Related Agencies Appropriations Act of 2010*, available at <https://www.congress.gov/congressional-record/2009/10/13/senate-section/article/S10339-2..> At the time, Senator Vitter said on the floor of the Senate, “If you vote against this amendment, you are voting for your State having less representation in the House of Representatives than they would if illegals are not counted in reapportionment. *See Congressional Record*, October 7, 2009, SR10192, available at <https://www.congress.gov/crec/2009/10/07/CREC-2009-10-07-pt1-PgS10181-2.pdf>. Judicial notice as relevant background is proper because courts “regularly take judicial notice of congressional records.” *Hadley v. Kellogg Sales Co.*, 243 F. Supp. 3d 1074, 1087 (N.D. Cal. 2017)).



1 without it, “aliens who do not actually ‘reside’ in the United States are still counted for  
2 congressional apportionment.” (*Id.*) Prior to the issuance of the DOJ Request in December 2017,  
3 there is no evidence in the record of any reason for adding the citizenship question other than  
4 removing non-citizens from apportionment counts.

5 Ross wanted the Bureau to add the citizenship question, but no agency had asked for it. So  
6 Comstock, with Ross’s express approval, set out on a scheme to engineer a request from another  
7 agency—any agency—by reaching out first to the White House and then DOJ. (0002462,  
8 0003701.) When DOJ initially refused to order the Bureau to add the citizenship question,  
9 Comstock sought help from DHS and was again rebuffed. (0012756.) Only after Ross followed  
10 through on a promise to “call the AG” was the DOJ Request issued. (001247, 0002652.)

11 Agency decisions may be set aside for improper political influence when “the pressure  
12 was intended to and did cause the [Agency’s] actions to be influenced by factors not relevant  
13 under the controlling statutes.” *Sokaogon Chippewa Cmty. (Mole Lake Band of Lake Superior*  
14 *Chippewa) v. Babbitt*, 961 F. Supp. 1276, 1286 (W.D. Wis. 1997). While the Census Act requires  
15 that the Bureau strive towards accuracy, Commerce in fact acted at the political direction of the  
16 executive branch and Ross, and took steps to conceal the fact that it was doing so. When an  
17 agency rationale is concocted for no reason except to “provide a pretext for the ulterior motive”  
18 of the decision-maker, that decision is arbitrary and capricious. *Woods Petroleum Corp. v. U.S.*  
19 *Dep’t of Interior*, 18 F.3d 854, 859 (10th Cir. 1994) (invalidating agency decision as arbitrary and  
20 capricious where action was pretext for ulterior motive).

21 Ross did not even hint that DOJ had not, in fact, initiated the request for the citizenship  
22 question when he testified before Congress on March 22, 2018 or anywhere in his decision  
23 memorandum of March 26, 2018. (001313-20). Only after this litigation was filed, did Ross  
24 supplement the administrative record and own up to the fact that the issue was first raised by  
25 “high government officials,” and not DOJ. (001321.) *See Home Box Office, Inc. v. F.C.C.*, 567  
26 F.2d 9, 54-55 (D.C. Cir. 1977) (“[W]here, as here, an agency justifies its actions by reference  
27 only to information in the public file while failing to disclose the substance of other relevant  
28 information that has been presented to it, a reviewing court cannot presume that the agency has

acted properly . . . but must treat the agency’s justifications as a fictional account of the actual decisionmaking process and must perforce find its actions arbitrary”) (per curiam).

The covert nature of Comstock’s scheme, Ross’s collusion with Bannon, Kobach, and Sessions, and the ensuing secrecy and contradictory statements demonstrate that “impartial evaluation of the project envisioned by the statute was impermissibly distorted by extraneous pressures.” *D.C. Fed’n of Civic Assoc’ns v. Volpe*, 459 F.2d 1231, 1237 (D.C. Cir. 1971) (Bazelon, J.) (overturning an agency decision because “[e]ven if the Secretary had taken every formal step required by every applicable statutory provision, reversal would be required, in my opinion, because extraneous pressure intruded into the calculus of considerations on which the Secretary’s decision was based”). Ross’s shifting and contradictory accounts of this process provide compelling evidence that the stated reason for the change was pretextual. Courts have struck down actions by agencies for acting “in bad faith and in response to political pressure” on more minor transgressions than those set forth here. *Tummino v. Torti*, 603 F. Supp. 2d 519, 548 (E.D.N.Y. 2009), *amended sub nom. Tummino v. Hamburg*, No. 05-CV-366 ERK VVP, 2013 WL 865851 (E.D.N.Y. Mar. 6, 2013) (negating FDA refusal to approve medication when director overruled agency scientific staff).

**B. Defendants Departed From Long-Standing Census Procedure, Then Altered the Bureau’s Description of Its Procedure Without Its Knowledge.**

“It is well settled that an agency, even one that enjoys broad discretion, must adhere to voluntarily adopted, binding policies that limit its discretion.” *Padula v. Webster*, 822 F.2d 97, 100 (D.C. Cir. 1987) (citation omitted)). Here, not only did Ross fail to follow the Bureau’s well-established process for changing census content, Commerce altered the description of the process in the record.

**1. The Evidence Shows that Ross Deviated from Pre-Testing Protocols.**

Ross departed from the ordinary review process that the Bureau and Commerce use to add new questions. The Bureau’s Statistical Quality Standards require pre-testing before adding questions to the Census, and even on those “rare occasions” where “cost or schedule constraints may make it infeasible to perform complete pretesting” it still requires a detailed procedure



1 including obtaining a formal waiver before any content may be added to a survey.<sup>24</sup> The  
 2 Statistical Quality Standards specifically state that “All Census Bureau employees and Special  
 3 Sworn Status individuals *must* comply with these standards.”<sup>25</sup> The failure of an agency to  
 4 comply with its own regulations and policies constitutes arbitrary and capricious conduct. *De*  
 5 *Loss v. Dep’t of Hous. & Urban Dev.*, 714 F. Supp. 1522, 1534 (S.D. Iowa 1988).

6 Moreover, when in this matter, Commerce asked the Bureau about its process for adding  
 7 questions, the Bureau provided a summary to Commerce of the above-described “well-  
 8 established process.” Sometime after this document was received by Commerce on March 1, this  
 9 section had been deleted and replaced. (001296.) The removal of the Bureau’s description of its  
 10 testing process presents one of two possibilities, both of which evince arbitrariness. Either  
 11 Commerce removed the Bureau’s opinion before it was presented to Ross, in which case  
 12 Commerce “so distort[ed] the record that an agency decisionmaking body can no longer rely on  
 13 [it] in meeting its obligations under the law.” *Nat’l Small Shipments Traffic Conference, Inc. v.*  
 14 *I.C.C.*, 725 F.2d 1442, 1450–51 (D.C. Cir. 1984) (holding that inaccurate staff-prepared  
 15 summaries of adverse comments required that the decision-maker be independently informed of  
 16 the comments themselves). Or Ross reviewed the statement from the Bureau and ignored it, and  
 17 then it was altered in the record, resulting in a “revisionist” administrative review that is not  
 18 entitled to deference. *Brooklyn Heights Ass’n v. Nat’l Park Serv.*, 818 F. Supp. 2d 564, 569  
 19 (E.D.N.Y. 2011) (vacating agency decision that relied on a decision that ignored its “own  
 20 regulations as well as its . . . manual”). Concealing evidence that undermines an agency decision  
 21 is the kind of “administrative misconduct not covered by the other more specific paragraphs” that  
 22 renders a decision arbitrary and capricious. *Assoc. of Data Processing Serv. Orgs., Inc. v. Bd. of*  
 23 *Governors of Fed. Reserve Sys.*, 745 F.2d 677, 683 (D.C. Cir. 1984) (Scalia, J.).

## 24 **2. The Evidence Shows that Adding the Question Without Testing Will** 25 **Have Unpredictable Adverse Consequences.**

26 Ross wrote in his Decision Memo that the citizenship question “has been well tested”  
 27 because a question regarding citizenship “had been asked in some form or another for nearly 200

28 <sup>24</sup> Statistical Quality Standards, U.S. Census Bureau, July 2013, Standard A2, Subrequirement A2-3, p. 8.

<sup>25</sup> *Id.* p. ii (emphasis added).

years.” (001318.) Not only is this statement false,<sup>26</sup> but Ross failed to consider that the context and form of such questions—to say nothing of the fact that the early censuses were conducted entirely in-person—determine whether the specific question he approved needs to be tested in 2018. In 1820, for example, the question was simply a checkbox on a column, reading “ALIENS – foreigners not naturalized” and was to be asked of “White Persons” only.<sup>27</sup> In 1870, enumerators counted whether a respondent was “a male citizen of the United States of 21 years or upwards whose right to vote is denied or abridged on grounds other than ‘rebellion or other crime,’ ” hardly a citizenship count of the entire population.<sup>28</sup> And the question has not appeared on any census asked of the entire population since 1950.<sup>29</sup>

Ross was given extensive evidence that testing questions is context-dependent. Six former Bureau chiefs emphasized that a “great deal of evidence that even small changes in survey question order, wording, and instructions can have significant, and often unexpected, consequences for the rate, quality, and truthfulness of response.” (001058.) In the ACS, the citizenship question follows the question, “Where was this person born,” which contextualizes the request for citizenship.<sup>30</sup> Defendants cannot point to any context in which the citizenship question has ever been asked in the form that they now propose. By stating that prior tests of different questions on a similar topic were sufficient, despite concerns from those who know best, Ross “ignore[d] critical context” and “cherry-pick[ed] evidence.” *Water Quality Ins. Syndicate v. United States*, 225 F. Supp. 3d 41, 69 (D.D.C. 2016). “In light of the serious reliance interests at stake, the Department’s conclusory statements do not suffice to explain its decision.” *Encino Motorcars, LLC v. Navarro*, 136 S. Ct. 2117, 2127 (2016).

<sup>26</sup> Aside from a question in 1870 counting freed slaves denied the right to vote, no citizenship question was asked between 1820 and 1890, and none was asked in 1960. See *History, 2000 Census of Population and Housing*, U.S. Census Bureau, December 2009 p. 131, available at <https://www.census.gov/history/pdf/Census2000v1.pdf>.

<sup>27</sup> See Historical Census Records, available at <https://www.census.gov/history/pdf/1830-2-042018.pdf>.

<sup>28</sup> See Historical Census Records, available at [https://www.census.gov/history/www/through\\_the\\_decades/index\\_of\\_questions/1870\\_1.html](https://www.census.gov/history/www/through_the_decades/index_of_questions/1870_1.html). The question was used to enforce the Fourteenth Amendment, which reduced apportionment counts for denying voting rights to “any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime.” U.S. Const. Am. XIV.

<sup>29</sup> See *History, 2000 Census of Population and Housing*, U.S. Census Bureau, December 2009 p. 131, available at <https://www.census.gov/history/pdf/Census2000v1.pdf>.

<sup>30</sup> See American Community Survey, available at <https://www2.census.gov/programs-surveys/acs/methodology/questionnaires/2017/quest17.pdf>.

1           **C.     Ross’s Explanation Runs Counter to the Evidence Before the Agency.**

2           The Ninth Circuit has emphasized that “a policy change violates the APA if the agency  
3 ignores or countermands its earlier factual findings without reasoned explanation for doing so”  
4 *Organized Vill. of Kake v. U.S. Dep’t of Agric.*, 795 F.3d 956, 966 (9th Cir. 2015) (quotation and  
5 citation omitted). Ross “offered an explanation for its decision that runs counter to the evidence  
6 before the agency” and must be set aside. *State Farm* at 43.

7                       **1.     The Evidence Shows that Adding the Question Will Decrease Response**  
8                       **Rates and Increase Burdens.**

9           Ross wrote that Commerce’s review found only “limited empirical evidence exists about  
10 whether adding a citizenship question would decrease response rates materially.” (001317.) In  
11 fact, such evidence was overwhelming and unrebutted. In its January 19 memo, the Bureau  
12 concluded that households with at least one non-citizen failed to respond to a survey containing  
13 the citizenship question at higher rates. Ross discounted this conclusion but did not rebut the  
14 Bureau’s finding that the only difference between groups that responded less frequently was “the  
15 presence of at least one noncitizen in noncitizen households.” (001281.) The Bureau also found  
16 that the breakoff rate (the rate at which a respondent stops completing the survey) was **nine times**  
17 **higher** for Hispanics than for non-Hispanic Whites specifically at the citizenship question. (*Id.*)  
18 Ross did not address the findings on the breakoff rate in his Decision Memo and “failed to  
19 explain how the other sources it relied on provide substantial evidence.” *Genuine Parts Co. v.*  
20 *Env’tl. Prot. Agency*, 890 F.3d 304, 315 (D.C. Cir. 2018).

21           Moreover, Ross acknowledged that the Bureau found there would be an “increased  
22 burden” on those who answered the question but wrote that there would be no “additional  
23 imposition” unless the respondent is a non-citizen. (001317.) But the Bureau made clear that the  
24 burden, or imposition, would be borne by **everyone** who answers the question. The Bureau wrote  
25 that “[s]urvey methodologists consider burden to include both the direct time costs of responding  
26 and the indirect costs arising from nonresponse due to perceived sensitivity of the topic.”  
27 (001281.) When an agency relies on an inaccurate definition of a key term for its decision, that  
28 decision must be set aside. *See Am. Motorcycle Ass’n Dist. 37 v. Norton*, Nos. C 03-03807 SI, C

03-02509 SI, 2004 WL 1753366 at \*11 (N.D. Cal. Aug. 3, 2004) (setting aside an agency decision based on a flawed definition of “adverse modification”). Ross ignored the burden that will be imposed upon *all* respondents by adding the question.

## 2. Ross Ignored the Impact of Inaccurate Responses and the Value of Administrative Records.

In its January 19 Memo, the Bureau found that direct citizenship questions provide “substantially less accurate citizenship status data than are available from administrative sources.” (001277.) This was one of the reasons that the Bureau recommended increasing accuracy by linking responses to “an accurate, edited citizenship variable from administrative records to the final 2020 Census microdata files.” (001283.) In its analysis of Option D (adding the question and using administrative records), the Bureau emphasized that these concerns would remain—the option would “still have all the negative cost and quality implications” of adding the question and “result in poorer quality data” than using administrative records alone. (001312.)

Considering Option C (using administrative records), Ross noted that the Bureau would have to correct for inaccurate responses, noting the Bureau’s finding that, when asked a citizenship question, a significant number of non-citizens “inaccurately mark ‘citizen’” (001316.) His analysis of Option D omits this finding, noting only that asking the citizenship question “gives each respondent the opportunity to provide an answer.” (001317.) And while he discounted administrative records when considering Option C, writing that the “Bureau is still evolving its use of administrative records” he wrote that the Bureau could “further enhance its administrative record data sets,” when using those records under Option D. (001316-17.)

In short, Ross dismissed administrative records and highlighted self-response error when evaluating Option C, but praised administrative records and dismissed self-response error when evaluating Option D. (001316-17.) Also, Ross wrote that “The citizenship data provided to DOJ will be more accurate with the question than without it.” (001319.) Not only did Ross cite no evidence for this conclusion (none exists), he simply “ignore[d] evidence contradicting [his] position,” rendering the decision arbitrary and capricious.” *Butte Cty., Cal. v. Hogen*, 613 F.3d 190, 194 (D.C. Cir. 2010); *see also Michigan v. E.P.A.*, 135 S. Ct. 2699, 2707 (2015) (holding

that an EPA regulation that entirely ignores costs is arbitrary and capricious).

**3. Ross’s Decision Relied on a Flawed and Incredible DOJ Request that Was Itself Contrary to the Record Evidence.**

The only evidence that Ross mustered in support of the citizenship question was the DOJ Request. The essential credibility of DOJ’s request is completely belied not only by the fact that DOJ had only months earlier stated it did not need any different data from the Census, but also from the tooth-pulling by Ross to get DOJ to ask the question. Beyond that, it fails to distinguish between the information it supposedly seeks—CVAP data for census blocks (00664)<sup>31</sup>—and the means of obtaining that information. It asks that a specific method—putting the citizenship question on the Census—for obtaining the data but “provides no analysis or factual data to support this concern” over other means of doing so. *State v. Bureau of Land Mgmt.*, 286 F. Supp. 3d 1054, 1065 (N.D. Cal. 2018).

And while the DOJ Request does not provide any technical or scientific analysis to support its need for a citizenship *question* to obtain citizenship *data*, the Bureau scientists found a better means of obtaining these data. (001277-85.) Nevertheless, Ross simply implemented DOJ’s recommendation. “While the action agency is not required ‘to undertake an independent analysis’ of another agency’s conclusions, it may not ‘blindly adopt [those] conclusions.’” *Ergon-W. Virginia, Inc. v. United States Env’tl. Prot. Agency*, 896 F.3d 600, 610 (4th Cir. 2018) *quoting City of Tacoma, Washington v. F.E.R.C.*, 460 F.3d 53, 76 (D.C. Cir. 2006).

**IV. RELIEF SOUGHT.**

Ordinarily, after striking down an agency action, courts “should remand a case to an agency for decision.” *I.N.S. v. Orlando Ventura*, 537 U.S. 12, 16 (2002). But remand is not required when there is “no conceivable circumstance” in which remand could produce a different outcome. *Mulry v. Driver*, 366 F.2d 544, 550 (9th Cir. 1966). If, for example, this Court finds that the Secretary’s decision violated the law because the topic of citizenship was not timely submitted to Congress, it is not possible that a remand could produce a different outcome.

Even if the administrative determination is overturned on grounds of arbitrariness and

<sup>31</sup> Plaintiffs do not concede the accuracy of this statement and reserve their right to introduce evidence to refute it at trial or in opposition to Defendants’ summary judgment motion if appropriate.

1 capriciousness, remand could not lead to a different outcome. After remand, an agency is “bound  
2 to deal with the problem afresh.” *Sec. & Exch. Comm’n v. Chenery Corp.*, 332 U.S. 194, 201  
3 (1947). First, there is simply no time for Defendants to reconsider the citizenship question. The  
4 deadline to submit citizenship as a topic passed in March 2017. Census materials will be printed  
5 in 2019. There are no conceivable circumstances in which Defendants could conduct a review of  
6 the citizenship question in compliance with the APA before the deadline to print and deliver  
7 census forms. Second, given that a finding of arbitrariness and capriciousness would rest on one  
8 or more grounds of failure by Defendants to refute the procedural obstacles and substantive  
9 objections by career staff, it is difficult to imagine a scenario where a remand could change the  
10 outcome. Finally, a remand cannot cure Ross’s pre-judging of the issue and creation of a false  
11 scenario, which permeated the entire decision-making process.

12 Should this Court grant this motion and nevertheless remand, it should bar Ross and  
13 Commerce from participating in such consideration because the record provides clear and  
14 convincing evidence that Ross and Commerce have “an unalterably closed mind on matters  
15 critical to the disposition of the proceeding.” *Ass’n of Nat’l. Advertisers, Inc. v. F.T.C.*, 627 F.2d  
16 1151, 1170 (D.C. Cir. 1979). Ross and Commerce’s secretive scheme demonstrate that their  
17 decision was pre-made and that they should not participate in any future consideration of the  
18 citizenship question. *See Nehemiah Corp. of Am. v. Jackson*, 546 F. Supp. 2d 830, 847 (E.D. Cal.  
19 2008) (barring HUD Secretary from participating in reconsideration based on public statement  
20 that “HUD intends to approve the new rule by the end of the year even if the agency receives  
21 critical comments”). Any further consideration should be undertaken by the Bureau alone.

### 22 CONCLUSION

23 Plaintiffs respectfully request that the Court set aside Ross’s decision to add the  
24 citizenship question and enjoin Defendants from taking steps to add the question to the Census.  
25  
26  
27  
28

Respectfully submitted,

Dated: November 2, 2018

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By: s/ John F. Libby

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**CITY OF SAN JOSE and BLACK ALLIANCE FOR  
JUST IMMIGRATION**



**FILER'S ATTESTATION**

Pursuant to Civil Local Rule 5-1(i)(3), regarding signatures, Ana G. Guardado hereby attests that concurrence in the filing of this document has been obtained from all the signatories above.

Dated: November 2, 2018

s/ Ana G. Guardado  
Ana G. Guardado



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**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

CITY OF SAN JOSE, a municipal  
corporation; and BLACK ALLIANCE FOR  
JUST IMMIGRATION, a California  
nonprofit corporation,

Plaintiffs,

vs.

3:18-cv-02279-RS

**DECLARATION OF KRISTEN  
CLEMENTS**

1 WILBUR L. ROSS, JR., in his official  
2 capacity as Secretary of the U.S. Department  
3 of Commerce; U.S. DEPARTMENT OF  
4 COMMERCE; RON JARMIN, in his  
5 official capacity as Acting Director of the  
6 U.S. Census Bureau; U.S. CENSUS  
7 BUREAU,

8 Defendants.

9  
10 I, Kristen Clements, declare under penalty of perjury pursuant to 28 U.S.C. § 1747 that the  
11 below is true and correct:

12 1. I am the Division Manager for the City of San Jose's Department of Housing,  
13 overseeing the Policy and Planning Team, the Grants Management team, and the Housing &  
14 Community Development Commission. I submit this declaration in support of Plaintiff San Jose's  
15 motion for summary judgment in the above-referenced matter.

16 2. I have been in my current position for approximately 1.5 years, and with the  
17 Housing Department for over 13 years.

18 3. As part of my official duties, I administer grant programs in which the City of San  
19 Jose awards federal, State, and local funding to local nonprofits, developers, and other City  
20 departments to undertake a range of capital projects and service activities.

21 4. Among the grant programs that I oversee for the City of San Jose are the  
22 Community Development Block Grant program ("CDBG") and the Home Investment  
23 Partnerships Program ("HOME").

24 5. The CDBG and HOME programs are administered by the United States  
25 Department of Housing and Urban Development ("HUD").

26 6. HUD awards the City of San Jose, as an entitlement jurisdiction, an annual  
27 allocation of CDBG and HOME funding.  
28

1           7.     I regularly communicate with HUD officials regarding the CDBG and HOME  
2 programs.

3           8.     Funding provided to San Jose by HUD under the CDBG program is allocated by  
4 one of two Federal formulas: Formula A or Formula B.

5           9.     Formula A is based on a jurisdiction's share of population, poverty rate, and  
6 housing overcrowdedness relative to all entitlement jurisdictions.

7           10.    Formula B is based on each jurisdiction's weighted relative share of poverty,  
8 housing built before 1940, and the lag in population growth rate relative to the total for all  
9 entitlement communities.

10          11.    HUD reports that San Jose's funding is allocated pursuant to Formula A.

11          12.    The population, poverty rate, and housing overcrowdedness of Formula A are  
12 calculated based on data reported by the United States Census Bureau ("Census") based on the  
13 census conducted every ten years (the "Decennial Census") and the subsequent American  
14 Community Survey ("ACS").

15          13.    Funding provided to San Jose by HUD under the HOME program is based on the  
16 following factors:

17               13.1   A jurisdiction's relative inadequacy of housing supply,

18               13.2   A jurisdiction's supply of substandard rental housing,

19               13.3   The jurisdiction's number of low-income families in rental housing units  
20 likely to be in need of rehabilitation,

21               13.4   The cost of producing housing in the jurisdiction,

22               13.5   The incidence of poverty in the jurisdiction, and

23               13.6   The fiscal incapacity to carry out housing activities without Federal  
24 assistance in the jurisdiction.  
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1           **14.**     The jurisdiction's relative inadequacy of housing supply, its supply of substandard  
2 rental housing, its number of low-income families in rental housing units likely to be in need of  
3 rehabilitation, and its incidence of poverty are calculated based on data reported by the United  
4 States Census Bureau ("Census") based on the census conducted every ten years (the "Decennial  
5 Census") and the subsequent American Community Survey ("ACS").  
6

7           **15.**     In 2015, San Jose received \$8,259,253.00 in CDBG funding and \$2,381,725.00 in  
8 HOME funding.

9           **16.**     In 2016, San Jose received \$8,389,991.00 in CDBG funding and \$2,573,775 .00 in  
10 HOME funding.

11           **17.**     In 2017, San Jose received \$8,196,038.00 in CDBG funding and \$ 2,512,787.00 in  
12 HOME funding.

13           **18.**     In 2018, San Jose received \$8,927,311.00 in CDBG funding and \$ 3,550,726.00 in  
14 HOME funding.

15           **19.**     The City of San Jose uses federal funding to pay for community-serving priorities  
16 in four areas identified as priorities in its current Consolidated Plan cycle 2015-2020, as follows:  
17

18                   **19.1**    To increase housing opportunities,

19                   **19.2**    To respond to homelessness and its effects on the community;

20                   **19.3**    To strengthen neighborhoods; and

21                   **19.4**    To promote fair housing.  
22

23           **20.**     The City of San Jose recently has used CDBG for a range of uses including the  
24 following:

25                   **20.1**    Providing services to homeless people, seniors, low-income renters, job  
26 trainees, and neighborhood leaders, among other groups,  
27  
28

1                   **20.2**    Improving neighborhood infrastructure, including by adding upgrades  
2 such as curb cuts and LED lighting,

3                   **20.3**    Targeted code enforcement, and ‘green’ alleyway improvements to  
4 promote safety, walkability and sustainability in low-income neighborhoods;  
5

6                   **20.4**    Building community-serving capital projects such as community gardens,  
7 libraries, and community centers;

8                   **20.5**    Rehabilitating homes for low-income homeowners;

9                   **20.6**    Rehabilitating nonprofit facilities such as homeless shelters and services  
10 spaces; and,

11                   **20.7**    Acquiring land and infrastructure supporting affordable housing creation.  
12

13           **21.**    The City of San Jose recently has used HOME for the following purposes:

14                   **21.1**    Developing new affordable rental housing,

15                   **21.2**    Acquiring and rehabilitating existing market-rate housing to create newly  
16 affordable rental housing,

17                   **21.3**    Making loans to low-income homebuyers to encourage home ownership,

18                   **21.4**    Providing tenant-based rental subsidies to vulnerable populations including  
19 formerly homeless individuals and families.  
20

21           **22.**    The population, poverty rate, and housing overcrowdedness of San Jose as  
22 reported by the Decennial Census are an elements in the funding calculation for CDBG  
23 allocations.

24           **23.**    Therefore, if the Decennial Census underreports the population of San Jose  
25 relative to other Participating Jurisdictions receiving funds from HUD by formula, the City will  
26 receive less CDBG funding.  
27  
28

1       **24.**     The inadequacy of housing supply relative to San Jose's population, San Jose's  
2 supply of substandard rental housing, San Jose's number of low-income families in rental housing  
3 units likely to be in need of rehabilitation, and San Jose's incidence of poverty—as reported by  
4 the Decennial Census—are elements in the funding calculation for HOME allocations.  
5

6       **25.**     Therefore, if the Decennial Census underreports the population of San Jose  
7 relative to other Participating Jurisdictions receiving funds from HUD by formula, the City will  
8 receive less HOME funding.

9       **26.**     If the City of San Jose receives less CDBG funding, it will not be able to provide  
10 as many of the services described in paragraph 20 above.

11       **27.**     If the City of San Jose receives less HOME funding, it will not be able to provide  
12 as many of the services described in paragraph 21 above.  
13

14       I declare under penalty of perjury pursuant to 28 U.S.C. § 1747 that the foregoing is true  
15 and correct:

16       Dated November 2, 2018



Kristen Clements

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IMMIGRATION

*[Additional Counsel Listed on Signature Page]*

**IN THE UNITED STATES DISTRICT COURT**  
**FOR THE NORTHERN DISTRICT OF CALIFORNIA**  
**SAN FRANCISCO DIVISION**

CITY OF SAN JOSE, a municipal  
corporation; and BLACK ALLIANCE FOR  
JUST IMMIGRATION, a California  
nonprofit corporation,

Plaintiffs,

3:18-cv-02279-RS

**DECLARATION OF MONIQUE  
MELCHOR**



1  
2 vs.

Assigned to the Honorable Richard G.  
Seeborg

3 WILBUR L. ROSS, JR., in his official  
4 capacity as Secretary of the U.S. Department  
5 of Commerce; U.S. DEPARTMENT OF  
6 COMMERCE; RON JARMIN, in his  
7 official capacity as Acting Director of the  
8 U.S. Census Bureau; U.S. CENSUS  
9 BUREAU,

10 Defendants.

11 I, Monique Melchor, declare under penalty of perjury pursuant to 28 U.S.C. § 1747 that the  
12 below is true and correct:

13 1. I am the Director of work2furutre, Workforce Development Board, Office of  
14 Economic Development for the City of San Jose.

15 2. I have been in my current position for approximately 2 years.

16 3. As part of my official duties, I oversee programs funded by federal grand money  
17 awarded pursuant to the Workforce Innovation and Opportunity Act ("WIOA").

18 4. Funds provided pursuant to WIOA are used to support adults, dislocated workers,  
19 and youth as they seek employment.

20 5. Funding provided pursuant to WIOA is based on a number of factors, as set forth  
21 below:

22 5.1 The average number of unemployed individual for Areas of Substantial  
23 Unemployment ("ASU"s) for the prior July through June 12-month period, as prepared by the  
24 states under the direction of the Bureau of Labor Statistics (BLS) in each state compared to the  
25 total number of unemployed individuals in ASUs in all states.

1           **5.2**     The number of excess unemployed individuals or excess unemployed  
 2 individuals in ASU (depending on which is higher) averages for the same 12-month period,  
 3 compared to the total excess individuals or ASU excess in all states, and

4           **5.3**     The number of disadvantaged youth (15-21) excluding college students in  
 5 the workforce and military, from special tabulations of data from the American Community  
 6 Survey ("ACS") in each state compared to the total number of disadvantaged youth in all states.

7           **6.**       Pursuant to WIOA, all allotments to states and outlying areas shall be based on the  
 8 latest available data and estimates satisfactory to the Secretary. All data relating to disadvantaged  
 9 adults and disadvantaged youth shall be based on the most recent satisfactory data from the  
 10 Bureau of the Census. (WIOA Section 182(a)).

11           **7.**       Once funding is delivered to the State of California under WIOA, it is delivered to  
 12 sub-divisions of the state according to the statutory formula for subs-state allocations, which  
 13 considers:

14           **7.1**     For youth activities:

- 15                   (a)     The local area relative share of total unemployed in ASUs,
- 16                   (b)     The local area relative share of excess unemployed, and
- 17                   (c)     The local area share of disadvantaged youth (using ACS data).

18           **7.2**     For adult activities:

- 19                   (a)     The local area relative share of total unemployed in ASUs,
- 20                   (b)     The local area relative share of excess unemployed, and
- 21                   (c)     The local area share of disadvantaged adults (using ACS data).

22           **7.3**     For dislocated workers:

- 23                   (a)     Insured unemployment data,
- 24                   (b)     Unemployment concentrations,

- (c) Plant closing and mass layoff data,
- (d) Declining industries data,
- (e) Farmer-rancher economic hardship data, and
- (f) Long-term unemployment data.

8. The City of San Jose uses funding received through WIOA on a variety of programs that benefit the unemployed and dislocated workforce population of San Jose.

9. These programs include:

9.1 Adult, Dislocated and Youth service: This program provides career counseling, occupational skills training, and job placement assistance. In addition, it offers support services, including employment referrals, to adults, dislocated workers, and youth.

9.2 Work2future, services: Services provided through the work2future program, supported by WIOA funds, are based on the sector-strategies and career-pathways focus, with a focused and robust employer-engagement approach.

(a) Any individual 18 and older with the right to work can enroll for intensive services with work2future.

(b) Basic services are available to all individuals. These basic services include the use of the career lab, enrollment in workshops, and participation in employer recruitment drives.

(c) The program can pay client training costs. Trainings are provided by over 40 organizations and provide participants with nationally-recognized employment credentials.

(d) The program also provides a wide array of workshops, including workshops on resume preparation, interviewing techniques, computer skills training, and entrepreneur training.

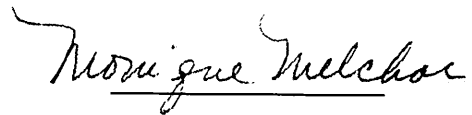
1 (e) The program also serves hundreds of employers annually,  
2 providing them with recruitment, on-the-job training, and layoff aversion support.

3 10. Because WIOA funding is allocated, in part, on data provided by the Census  
4 Bureau, if the Census Bureau were to provide lower-than-accurate population data for the City of  
5 San Jose relative to other cities receiving WIOA funding, the City o San Jose would receive less  
6 funding through WIOA than it would if the data were accurate.  
7

8 11. Were San Jose to receive less funding through WIOA, it would not be able to  
9 provide the same level of services to this population.

10 I declare under penalty of perjury pursuant to 28 U.S.C. § 1747 that the foregoing is true  
11 and correct.

12 November 2, 2018



13  
14 Monique Melchor

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IMMIGRATION

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

CITY OF SAN JOSE, a municipal  
corporation; and BLACK ALLIANCE FOR  
JUST IMMIGRATION, a California  
nonprofit corporation,

Plaintiffs,

vs.

3:18-cv-02279-RS

**DECLARATION OF OPAL TOMETI**

Assigned to the Honorable Richard G.  
Seeborg

1 WILBUR L. ROSS, JR., in his official  
2 capacity as Secretary of the U.S. Department  
3 of Commerce; U.S. DEPARTMENT OF  
4 COMMERCE; RON JARMIN, in his  
official capacity as Acting Director of the  
U.S. Census Bureau; U.S. CENSUS  
BUREAU,

5 Defendants.

6  
7 **DECLARATION OF OPAL TOMETI**

8 I, Opal Tometi, declare as follows:

9 1. I am the Executive Director of the Black Alliance for Just Immigration (“BAJI”).

10 I have been in my current position for approximately six years. I have personal knowledge of the  
11 facts set forth below and if called upon to testify, I could and would do so competently as follows:

12 2. BAJI is a California nonprofit corporation with offices in Oakland, California; Los  
13 Angeles, California; and New York, New York.

14 3. BAJI was founded in April 2006 in response to the mobilization of immigrant  
15 communities and their supporters against repressive immigration bills that were pending before  
16 the United States Congress at the time.

17 4. BAJI currently has approximately 1200 members who are predominantly Black  
18 immigrants, refugees, and/or African Americans. Though its membership is nationwide, BAJI’s  
19 members are concentrated in Oakland, California and other parts of the California Bay Area,  
20 including San Jose; Los Angeles, California; New York, New York; Miami, Florida; Atlanta,  
21 Georgia; and Washington, D.C.

22 5. BAJI receives funding from individual donors.

23 6. Propelled by the belief that a thriving multiracial democracy requires racial, social,  
24 and economic justice for all, BAJI’s core mission is to educate and engage African American and  
25  
26  
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1 Black immigrant communities to organize and advocate for racial, social and economic justice for  
2 themselves and other underrepresented communities.

3 7. BAJI fulfills its mission through various means, including, but not limited to,  
4 dialogues, presentations, workshops, publications, technical assistance, and trainings.

5 8. BAJI also builds coalitions and initiates campaigns to advance racial justice, and,  
6 at the local and regional levels, provides its partner organizations with relevant training and  
7 technical assistance to promote culture shifts necessary to secure equal rights for  
8 underrepresented minority communities.

9 9. BAJI's mission is harmed because the addition of the citizenship question to the  
10 2020 Decennial Census creates a legitimate risk of a heightened undercount of immigrant  
11 populations. The impact of such an undercount, including a dilution of political power and a loss  
12 of federal funding, on the very immigrant communities that BAJI serves impedes its mission to  
13 advance these communities' access to racial, social, and economic justice.

14 10. Additionally, because BAJI's members are typically concentrated in immigrant-  
15 rich metropolitan regions, the impact of an undercount will be disproportionately felt in these  
16 discrete locations.

17 11. BAJI has heard from several of its members who are concerned about the inclusion  
18 of a citizenship question on the 2020 Decennial Census. Many have expressed reluctance about  
19 participating in the 2020 Decennial Census because of the addition of this question. The fears of  
20 BAJI's members about responding to a citizenship question have been further heightened by the  
21 current political environment, including a perceived increase in relentless anti-immigrant rhetoric.  
22 Several more are apprehensive about the effects of the question, such as a decline in their political  
23 representation and, with that, a decrease of critical federal funding. BAJI's members are  
24  
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1 concerned that such an impact can exacerbate the inequality experienced by their communities  
2 which have already been historically underrepresented.

3 12. BAJI has also taken steps to divert some of its essential and limited resources—  
4 including time and money—from other important matters that BAJI ordinarily would have been  
5 addressing to respond to the addition of the citizenship question to the 2020 Decennial Census  
6 and to counteract the harmful effects of the question.

7 13. These outreach and mitigation efforts will divert, and already have diverted, time  
8 and money that would otherwise be spent on BAJI's core mission.

9 14. To ensure that BAJI's members are properly counted in the 2020 Decennial  
10 Census, BAJI will also be compelled to conduct additional outreach to these communities to  
11 encourage them to participate in the 2020 Census questionnaire. BAJI has determined that such  
12 outreach will require the expenditure of additional resources, such as money, staff time, and  
13 operational expenses, including, but not limited to, materials, computers, telephones, and other  
14 office equipment.

15 15. The inclusion of a citizenship question on the 2020 Decennial Census will  
16 therefore require BAJI to divert its limited and essential resources prior to the date the Census is  
17 conducted, regardless of the ultimate impact of the question itself.

18 16. Because these resources will be diverted and used to encourage participation  
19 among groups likely to be affected by the citizenship question before the 2020 Decennial Census  
20 takes place, including Black immigrants and other historically underrepresented minority groups,  
21 these resources will be expended regardless of whether the Census Bureau's Non-Response  
22 Follow Up ("NRFU") procedures ultimately correct any initial undercount.

23 17. As a result of an anticipated undercount of Black immigrants and other historically  
24 underrepresented communities that BAJI serves, BAJI will have to further divert resources to  
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1 investigate the scope of the harm of the undercount on its members and core mission. BAJI will  
2 also have to divert its resources to combat any resulting reduction in political representation, loss  
3 of federal funding, and other harmful effects suffered by the communities it serves.


4 18. BAJI has begun to prepare for these harmful effects by engaging partner  
5 organizations and donors in conversations about census outreach, preparing strategies to engage  
6 Black immigrant communities in the Census, and soliciting potential funding for census outreach  
7 and education.

8 19. The aforementioned impact of the addition of a citizenship question to the 2020  
9 Decennial Census, and BAJI's diversion of its resources to address the same, has impaired BAJI's  
10 ability to carry out its mission to fostering racial, economic, and social equality for Black  
11 immigrants and other historically underrepresented communities.

12 20. To date, BAJI has expended many hours of additional staff time and related  
13 financial resources to field phone calls, provide updates, and answer questions from its  
14 constituents, and other community members, about the addition of a citizenship question to the  
15 2020 Decennial Census. Given the nature of the census taking process, BAJI is reserving the  
16 majority of the expenditure it will use to address the addition of the citizenship question –  
17 resources that will likely be diverted from its other essential services – for its efforts to bolster  
18 census participation among its members and other underrepresented minority communities who  
19 are fearful about responding to the citizenship question. Accordingly, BAJI expects to allocate at  
20 least an additional \$200,000 in the next two (2) years to addressing the addition of a citizenship  
21 question to the 2020 Decennial Census and attempting to mitigate its harmful effects.  
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1 I declare under penalty of perjury under the laws of the United States that the foregoing is  
2 true and correct. Executed on November 2, 2018 in Los Angeles, California.

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*Attorneys for Plaintiffs*  
CITY OF SAN JOSE and BLACK ALLIANCE FOR JUST  
IMMIGRATION

*[Additional Counsel Listed on Signature Page]*

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

CITY OF SAN JOSE, a municipal  
corporation; and BLACK ALLIANCE FOR  
JUST IMMIGRATION, a California  
nonprofit corporation,

Plaintiffs,

3:18-cv-02279-RS

**DECLARATION OF JEFF RUSTER**

Assigned to the Honorable Richard G.

Seeborg

vs.

WILBUR L. ROSS, JR., in his official capacity as Secretary of the U.S. Department of Commerce; U.S. DEPARTMENT OF COMMERCE; RON JARMIN, in his official capacity as Acting Director of the U.S. Census Bureau; U.S. CENSUS BUREAU,

Defendants.

I, Jeff Ruster, declare under penalty of perjury pursuant to 28 U.S.C. § 1747 that the below is true and correct:

1. I am the Assistant Director in the Office of Economic Development of the City of San Jose.

2. I have been in my current position for approximately 5 years.

3. As part of my official duties, I am overseeing the preparations the City of San Jose is taking for the 2020 Decennial Census.

4. These preparations include outreach programs designed to encourage so-called hard-to-count populations to participate in the 2020 Decennial Census.

5. These preparations have also included the Local Update of the Census Area programs aimed to identify so-called “low visibility housing” – including garages, sheds, and trailers.

6. The Local Update of the Census Area programs has included public meetings, community outreach sessions, and identification of low visibility housing units.

7. I assisted in the preparations for a Complete Count Committee meeting in September of 2018 with over 100 representatives from a number of community-based, educational, government, and private sector organizations to discuss the City of San Jose’s and



1 Santa Clara County's outreach efforts for the 2020 Decennial Census. A true and accurate copy  
2 of a document I received at the Complete Count Committee meeting, as prepared by the County  
3 of Santa Clara is attached hereto as **Exhibit A** and number stamped SJBAJI00011-SJBAJI00026.

4  
5 8. Many of these representatives shared concerns at this meeting and at other forums  
6 that hard-to-count populations, including non-citizens, would not respond to the 2020 Census if it  
7 includes a citizenship question.

8 9. In partnership with the County of Santa Clara and other organizations, the City of  
9 San Jose is currently developing outreach programs designed to encourage hard-to-count  
10 populations to respond to the 2020 Census.

11 10. These outreach programs will require the City of San Jose to divert funds and use  
12 additional sources of City funding not currently designated for census-related outreach.

13 11. To date, the City of San Jose has allocated approximately \$300,000 preparing for  
14 the 2020 Decennial Census.

15 12. The City of San Jose expects to allocate at least an additional \$300,000 in  
16 preparing and implementing outreach strategies for the 2020 Decennial Census.

17 13. If the 2020 Decennial Census includes a citizenship question, some of these  
18 resources will be diverted to outreach specifically aimed at increasing participation among groups  
19 more likely to resist responding because of the inclusion of a citizenship question.

20 14. These funds will be diverted and used to encourage participation among groups  
21 likely to be affected by the citizenship question before the 2020 Decennial Census takes place.

22 15. The inclusion of a citizenship question on the 2020 Census will therefore require  
23 the City of San Jose to expend funds prior to the date the Census is conducted, regardless of the  
24 ultimate impact of the question itself.  
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1           **16.**     If the citizenship question were removed from the 2020 Census, the City of San  
2 Jose would not have to spend additional time or effort to specifically mitigate the impact of the  
3 inclusion of the citizenship question on the 2020 Census.  
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5  
6 I declare under penalty of perjury pursuant to 28 U.S.C. § 1747 that the foregoing is true and  
7 correct:

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9                     October 9, 2018

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12                                     Jeff Ruster  
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# EXHIBIT 1

# Census 2020

## Census 101 and the Work of the Complete Count Committee



Presentation to the  
**Santa Clara County CCC Convening**  
Paul R. Kumar  
Policy Consultant to the CEO  
September 28, 2018 SJBAJI00011



# Census 101

# WHAT – United States Census 2020

## Purpose:

To conduct a census of population and housing and disseminate the results to the President, the States, and the American People



Apportion representation among states as mandated by Article 1, Section 2 of the U.S. Constitution:

**Representatives and direct Taxes shall be apportioned among the several States which may be included within this union, according to their respective Numbers ...**

The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and **within every subsequent Term of ten years**, in such Manner as they shall by Law direct.

# WHY – Primary Uses of U.S Census Data

- Draw federal, state, and local political districts
- Distribute federal dollars to the states and their subdivisions
- Inform government planning and policy making
- Inform private sector planning and decision making dependent on population data

## WHY – Stakes for Santa Clara County Residents

- Ensure Santa Clara County residents get their fair share of federal resources and fair political representation by ensuring their full participation in the 2020 U.S. Census.
- Ensure residents are counted accurately: once, only once, and in the right place.

# WHEN: Phases of 2020 Census Work

Phase 1:	Establish Where to Count	July 2017- June 2018
<b>Phase 2:</b>	<b>Motivate People to Respond And Create Counting Capacity</b>	<b>July 2018-March 2020</b>
Phase 3:	Count the Population	March-July 2020
Closeout:	Finish Non-Response Follow Up, Results, Report, Wrap Up	July-December 2020



# The 2020 Census: A New Design for the 21<sup>st</sup> Century

## Motivate People to Respond

**Conduct a nation-wide communications and partnership campaign**

- Maximize outreach using traditional and new media
- Target ads to specific audiences
- Work with trusted sources to inspire participation



TELEPHONE  
AND PAPER SELF-  
RESPONSE

NONRESPONSE  
FOLLOWUP



INTERNET SELF-RESPONSE

## Count the Population

**Collect data from all households, including group and unique living arrangements**

- Make it easy for people to respond anytime, anywhere
- Encourage people to use the new online response option
- Use the most cost-effective strategy to contact and count nonrespondents
- Knock on doors only when necessary
- Streamline in-field census-taking

## Establish Where to Count

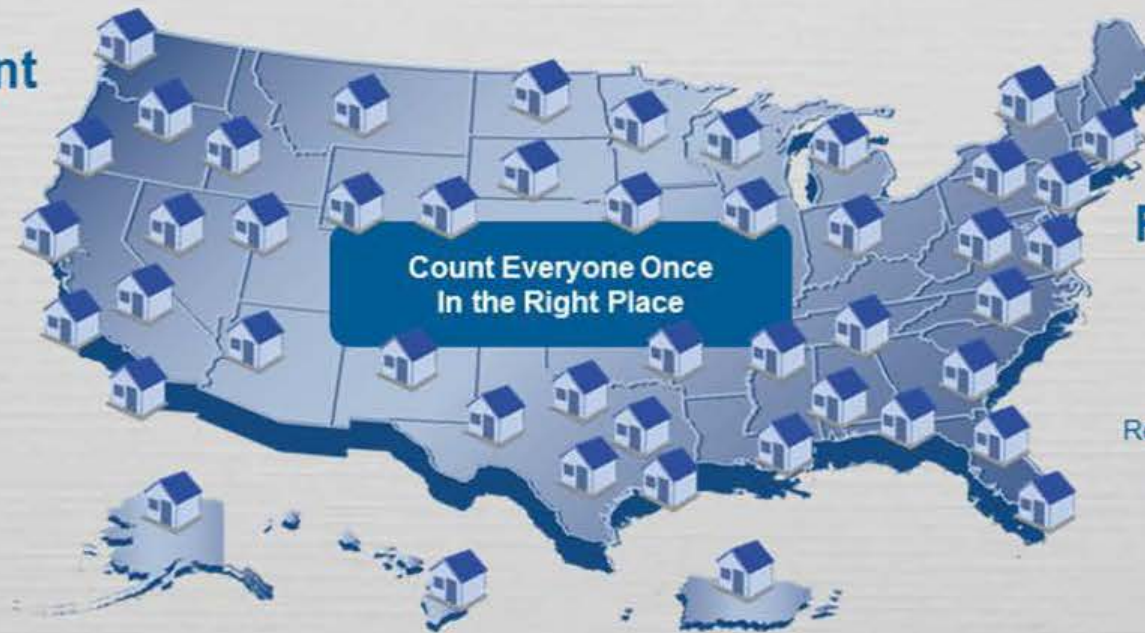
**Identify all addresses where people could live**

IN-FIELD

IN-OFFICE



- Conduct a 100% review and update of the nation's address list
- Minimize field work with in-office updating
- Use multiple data sources to identify areas with address changes
- Get local government input



**Count Everyone Once  
In the Right Place**

## Release Census Results

**Process and Provide Census Data**

- Deliver apportionment counts to the President by December 31, 2020
- Release counts for redistricting by April 1, 2021
- Make it easier for the public to get data



# HOW – Focus on Hard to Count Populations (partial list)

- Immigrants
- Individuals with limited English proficiency
- Minority ethnic/national groups
- People with disabilities
- Seniors
- LGBTQ
- Children under 5
- Veterans
- Unemployed individuals
- Non-high school graduates
- Homeless people
- Single parent households
- Renters
- Residents of dense, low-income communities

# HOW – Contact, Convince, Count

## Ground Game

- Goal: Trusted messengers motivate in targeted locations and door-to-door
- Community-based organizations engage their HTC constituents
- State & local governments conduct outreach at points of contact with HTC groups
- Large workplaces and high traffic public locations have census kiosks and assistance
- Door-to-door canvasses in low response geographies

## Air Game

- Goal: Blanket media saturation with messages to encourage response
- Paid Media – multi-lingual, multi-media buys to targeted audiences
- Social Media – promote peer-to-peer contact on appropriate platforms
- Ethnic Media – make use of in-language media outlets
- Digital Ads

# HOW: Overcome Obstacles (partial list)

- (Potential) Citizenship Question
  - Immigration enforcement concerns
- First Digital Census with Online Self-Response
  - Internet access, disinformation, cybersecurity
- Sufficient Linguistic and Culturally Appropriate Enumerators
  - Tight job market, language capacity, cultural sensitivity
- Census Bureau's Reduction of Funding and Effort
  - Truncated Tests, Less Office Help, Fewer Door Knocks

# **Complete Count Committee and Subcommittees**

# WHO: Complete Count Committee

- Countywide steering committee established to coordinate among the many, diverse subcommittees working on the frontlines to maximize Santa Clara County's census count, which are focused on:
  - Hard to count communities
  - Points of contact with these communities
  - Tools and techniques for reaching these communities
- Appointed by the County Executive Officer from government and stakeholder groups, based on subcommittee nominations
- Consensus seeking process to provide recommendations for the efficient, effective, and equitable allocation of County resources



# WHO: Subcommittees

- Some subcommittees have already begun forming, including ones focused on homeless outreach and the enumerator workforce
- Today's main work will be building out more subcommittees with missions focused on but not limited to the categories noted above:
  - Hard to count communities
  - Points of contact with these communities
  - Tools and techniques for reaching these communities
- It is these subcommittees, closest to the grassroots, that will lead the detailed planning and execution to maximize our census count

# **Show Me the Money: County Resources for Census 2020**

# Three-Year Funding Request (FY 19 Approved)

Item	FY19	FY20	FY21	Total
<b>Object 1</b>				
<b>Office of the County Executive</b>				
Program Manager II – U	\$130,581	\$164,944	\$164,944	\$460,469
Program Manager I – U	\$119,806	\$151,334	\$113,501	\$384,641
Community Outreach Specialist – U	\$84,868	\$107,202	\$80,402	\$272,472
<b>Planning Department</b>				
Geographic Information Systems Analyst	\$131,960	\$131,960	\$131,960	\$395,880
<b>Technology Services and Solutions</b>				
Geographic Information Systems Analyst	\$ -	\$102,600	\$ -	\$102,600
<b>Additional positions</b>	\$ -	\$405,763	\$202,881	\$608,644
<b>Object 2</b>				
Research and planning	\$175,000	\$50,000	\$ -	\$225,000
Communications	\$135,000	\$650,000	\$100,000	\$885,000
Outreach	\$200,000	\$1,350,000	\$ -	\$1,550,000
Workforce	\$50,000	\$300,000	\$ -	\$350,000
Meeting and engagement expenses	\$25,000	\$175,000	\$50,000	\$250,000
Travel, conferences, and equipment	\$20,000	\$62,000	\$20,000	\$102,000
Professional services	\$200,000	\$100,000	\$100,000	\$400,000
<b>Subtotal</b>	\$1,272,215	\$3,750,803	\$963,687	\$5,986,705
<b>Funds Remaining from March 2018 Census Appropriation</b>	\$553,672	n/a	n/a	n/a
<b>Appropriation Request August 2018</b>	\$718,543	n/a	n/a	n/a

# Questions? 😊