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11 IN THE UNITED STATES DISTRICT COURT  
 12 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
 13 SAN FRANCISCO DIVISION

15 **STATE OF CALIFORNIA, by and through**  
**Attorney General Xavier Becerra;**  
 16 **COUNTY OF LOS ANGELES; CITY OF**  
 17 **LOS ANGELES; CITY OF FREMONT;**  
 18 **CITY OF LONG BEACH; CITY OF**  
**OAKLAND; CITY OF STOCKTON,**

3:18-cv-01865

**PLAINTIFFS' POST-TRIAL PROPOSED  
 FINDINGS OF FACT**

19 Plaintiffs,

Dept: 3  
 Judge: The Honorable Richard G.  
 Seeborg

20 v.

Trial Date: January 7, 2019  
 Action Filed: March 26, 2018

21 **WILBUR L. ROSS, JR., in his official**  
**capacity as Secretary of the U.S.**  
 22 **Department of Commerce; U.S.**  
 23 **DEPARTMENT OF COMMERCE; RON**  
 24 **JARMIN, in his official capacity as Acting**  
**Director of the U.S. Census Bureau; U.S.**  
 25 **CENSUS BUREAU; DOES 1-100,**

26 Defendants.

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**POST-TRIAL PROPOSED FINDINGS OF FACT**

Plaintiffs State of California, County of Los Angeles, City of Los Angeles, City of Fremont, City of Long Beach, City of Oakland, and City of Stockton respectfully submit the following Post-Trial Findings of Fact.

**I. BACKGROUND FACTS – BASED ON THE ADMINISTRATIVE RECORD AND STIPULATION BETWEEN THE PARTIES**

**A. The Parties**

1. Plaintiffs are the State of California, County of Los Angeles, City of Los Angeles, City of Fremont, City of Long Beach, City of Oakland, and City of Stockton.

2. Plaintiff State of California is one of the fifty states of the United States of America. ECF No. 119 [Joint Pretrial Statement and [Proposed] Order, Exhibit A (Undisputed Facts)]. ¶ 1.

3. Plaintiff County of Los Angeles is a political subdivision of the State of California. *Id.* ¶ 2.

4. Plaintiffs City of Los Angeles, City of Fremont, City of Long Beach, City of Oakland, and City of Stockton are each a municipal corporation organized and existing under the laws of the State of California. *Id.* ¶¶ 3-7.

5. Plaintiff-in-Intervention is Los Angeles Unified School District (LAUSD). LAUSD is the public school district encompassing the City of Los Angeles and several surrounding communities and is the largest school district within California. *Id.* ¶ 8.

6. Defendants are Secretary of Commerce Wilbur L. Ross, Jr.; Ron Jarmin, performing the nonexclusive functions and duties of the Director of the United States Census Bureau; the U.S. Department of Commerce; and the U.S. Census Bureau.

7. Defendant Wilbur L. Ross, Jr. is the Secretary of the Department of Commerce. *Id.* ¶ 11.

8. Defendant United States Department of Commerce is a department of the United States Government. *Id.* ¶ 12.

1           9.       Defendant Ron Jarmin is the former Associate Director for Economic Programs of  
2 the United States Census Bureau and, at the relevant time frame in this litigation, was performing  
3 the nonexclusive functions and duties of the Director of the United States Census Bureau. *Id.* ¶  
4 13.

5           10.       Defendant United States Census Bureau is a Bureau within the Department of  
6 Commerce charged with conducting the decennial census. *Id.* ¶ 14.

7           **B.    Plaintiffs' Fact Witnesses**

8           11.       Douglas Baron is the Senior Manager with the Chief Executive Office of the  
9 County of Los Angeles. Mr. Baron testified about Plaintiff County of Los Angeles's request to  
10 the State of California for an increase in census outreach funding in light of the addition of a  
11 citizenship question to the 2020 Census questionnaire, and the Legislature's allocation of funding  
12 in response to the County's request. ECF No. 132 [Baron Trial Decl.].

13           12.       Amy Bodek is the Director of the Department of Planning for the County of Los  
14 Angeles. Ms. Bodek testified about Plaintiff County of Los Angeles's use of census data for  
15 program and planning efforts. ECF No. 133 [Bodek Trial Decl.].

16           13.       Andrew Westall is the Assistant Chief Deputy of the Office of Los Angeles City  
17 Council President Herb J. Wesson, Jr. Mr. Westall testified about the Plaintiff City of Los  
18 Angeles's use of census data for redistricting and resource allocation purposes. ECF No. 173  
19 [Westall Trial Decl.].

20           14.       Jefferson Crain is the Executive Officer of the Board of Education for the Los  
21 Angeles Unified School District (LAUSD). Mr. Crain testified about Plaintiff-in-Intervention  
22 LAUSD's decennial redistricting, including the formation of a joint city-district redistricting  
23 commission and LAUSD's reliance upon decennial census data to review and, if necessary,  
24 redraw district lines in accordance with state and federal laws. ECF No. 179 [Crain Trial Decl.].

25           **C.    Plaintiffs' Expert Witnesses**

26           15.       Dr. Colm O'Muircheartaigh is a professor in the Harris School of Public Policy  
27 and senior fellow at the National Opinion Research Center (NORC), both at the University of  
28 Chicago. Tr. 33:4-17 (O'Muircheartaigh). He is an expert in survey methods, research design,

1 statistical analysis, and the United States Census. *Id.* at 39:11-16 (O’Muircheartaigh). Dr.  
2 O’Muircheartaigh testified about how the methods of and standards for testing a new question on  
3 the decennial census questionnaire were, and in many cases, were not applied in relation to the  
4 decision to add a citizenship question to the 2020 Census; the deleterious impact of the  
5 citizenship question on data quality and self-response rates, particularly for noncitizens and  
6 Hispanics; and the lack of effectiveness of the Census Bureau’s Non-Response Follow Up  
7 (NRFU) processes in remediating the differential self-response. *Id.* at 39:19-41:17, 113:4-114:3  
8 (O’Muircheartaigh).

9 16. Dr. Matthew Barreto is a professor of political science and Chicano studies at the  
10 University of California, Los Angeles. Tr. 366:12-14 (Barreto). He is an expert in racial and  
11 ethnic politics, public opinion polling, and survey methodology. *Id.* at 373:14-25 (Barreto).  
12 Dr. Barreto testified about social science research and census publications that find that the  
13 citizenship question will lower self-response rates, particularly among immigrants and Latinos,  
14 resulting in harm to the count and quality of the census; how the Census Bureau’s NRFU  
15 processes will be disproportionately ineffective in mitigating the nonresponse of immigrants and  
16 Latinos; and how these circumstances will cause a greater net differential undercount of  
17 immigrants and Latinos, resulting in harm that is more severe in California than in any other state.  
18 *Id.* at 374:3-375:7 (Barreto).

19 17. Dr. Bernard Fraga, assistant professor of political science at Indiana University  
20 Bloomington, is a political data analyst and researcher. ECF No. 130 [Fraga Trial Decl.] He is  
21 an expert in political data analytics, demographic analysis, and census data analysis.” Tr. 616:25-  
22 617:7 (Fraga). Dr. Fraga testified about the impact the citizenship question will have on the 2020  
23 Census population count for California and California’s congressional apportionment, specifically  
24 that adding a citizenship question to the 2020 Census is likely to reduce the congressional  
25 representation apportioned to California. Fraga Trial Decl. ¶¶ 5, 8.

26 18. Dr. Andrew Reamer is a research professor in the George Washington Institute of  
27 Public Policy at The George Washington University in Washington, D.C. ECF No. 182-1  
28 [Reamer Trial Decl.] ¶ 2. He is an expert on the relationship between census data and federal



1 funding. Tr. 661:13-22 (Reamer). Dr. Reamer testified about the impact the citizenship question  
2 will have on the distribution of particular types of federal domestic financial assistance funds to  
3 certain states and localities, specifically that for programs with allocation formulas based on a  
4 state's population relative to the nation, a differential undercount of noncitizens would lead to  
5 measurable fiscal losses for those states, such as California, with percentages of noncitizens  
6 above the nationwide average. Reamer Trial Decl. ¶ 18.

7 19. Dr. Hermann Habermann is a statistician and former Chief Statistician of the  
8 United States and Deputy Director and Chief Operating Officer of the Census Bureau. He is an  
9 expert on the policies and procedures federal statistical agencies follow when designing,  
10 modifying, and implementing statistical instruments. Pursuant to the parties' stipulation,  
11 Plaintiffs submitted prior testimony of Dr. Habermann in the consolidated case of *State of New*  
12 *York v. United States Department of Commerce*, 18-cv-2921 (S.D.N.Y) and *New York*  
13 *Immigration Coalition v. United States Department of Commerce*, 18-cv-5025 (S.D.N.Y) (*State*  
14 *of N.Y. v. U.S. Dep't of Com.*). Dr. Habermann testified by declaration on direct examination, and  
15 live on cross-examination and redirect, about whether the Bureau complied with the federal  
16 policies and procedures for designing, modifying, and implementing statistical instruments when  
17 the Bureau added the citizenship question; and the United Nations' recommendations on  
18 population censuses. PTX-820 [Habermann New York trial testimony (New York Tr.)], PTX-  
19 821 [Habermann Trial Aff.].

20 20. Dr. Lisa Handley holds a Ph.D. in political science from The George Washington  
21 University and is currently a visiting research academic at Oxford Brookes University in the  
22 United Kingdom. PTX-819 [Handley New York trial testimony (New York Tr.)]. She is an  
23 expert in redistricting and voting rights. Pursuant to the parties' stipulation, Plaintiffs submitted  
24 prior testimony of Dr. Handley in *State of N.Y. v. U.S. Dep't of Com.*, in which she testified by  
25 declaration on direct examination, and live on cross-examination and redirect, about the  
26 effectiveness of current Census Bureau data resources for enforcement of section 2 of the Voting  
27 Rights Act (VRA). *Id.*

28

1           21. Pamela Karlan, the Kenneth and Harle Montgomery Professor of Public Interest  
2 Law at Stanford Law School, is an expert in voting rights law. ECF No. 145. Because Ms.  
3 Karlan was unavailable to testify at trial, ECF No. 103 [Stipulation and Order to Conduct Trial  
4 Deposition], Plaintiffs submitted Ms. Karlan's testimony about whether the inclusion of a  
5 question on citizenship status on the Decennial Census would assist the Department of Justice in  
6 enforcing Section 2 of the VRA via a trial deposition transcript, ECF No. 145, and video  
7 recording, ECF No. 180.

8           22. Pia Escudero is the Executive Director of the Division of Student Health and  
9 Human Services for LAUSD. Ms. Escudero testified by declaration about LAUSD's  
10 demographics and geography, student health and human services, and the potential impacts to  
11 student health and human services resulting from adding a citizenship question to the 2020  
12 Census questionnaire as compared to other school districts. ECF No. 126 [Escudero Trial Decl.].

13           23. Karen Ryback is the Executive Director for Federal and State Education Programs  
14 for LAUSD. Ms. Ryback testified by declaration about LAUSD's receipt of funding from federal  
15 programs (Title I, Title II, and Title IV), funding allocation formulas for these programs, LAUSD  
16 demographics relevant to these programs, and the potential funding impacts to LAUSD resulting  
17 from adding a citizenship question to the 2020 Census questionnaire as compared to other school  
18 districts. ECF No. 125 [Ryback Trial Decl.].

19           **D. Defendant-Affiliated Fact Witnesses and Related Persons**

20           24. Dr. John Abowd is the Chief Scientist and Associate Director for Research and  
21 Methodology at the United States Census Bureau. Undisputed Facts ¶ 15. Dr. Abowd testified as  
22 a fact witness for Plaintiffs about his knowledge of and involvement in the decision to add the  
23 citizenship question to the 2020 Census questionnaire.

24           25. Enrique Lamas is performing the nonexclusive functions and duties of the Deputy  
25 Director of the Census Bureau. *Id.* ¶ 16.

26           26. Burton Reist is the Chief of Decennial Communications and Stakeholder Relations  
27 at the Census Bureau. *Id.* ¶ 17.

28

1           27. Victoria Velkoff is Division Chief of the American Community Survey Office at  
2 the U.S. Census Bureau. *Id.* ¶ 18.

3           28. Michael Berning, J. David Brown, Misty Heggeness, Shawn Klimek, Lawrence  
4 Warren, and Moises Yi were members of the “SWAT Team” that prepared analyses of the  
5 inclusion of a citizenship question on the 2020 Census between December 2017 and March 2018.  
6 *Id.* ¶ 19.

7           29. Earl Comstock is the Deputy Chief of Staff and Director of Policy, running the  
8 Office of Policy and Strategic Planning within the Office of the Secretary of Commerce, reporting  
9 directly to Secretary Ross. *Id.* ¶ 20.

10           30. Karen Dunn Kelley is the presidentially-appointed Under Secretary for Economic  
11 Affairs at the US. Department of Commerce responsible for the operations of the Census Bureau.  
12 *Id.* ¶ 21.

13           31. James Uthmeier is Senior Counsel to the General Counsel, Regulatory Reform  
14 Officer, Department of Commerce. *Id.* ¶ 22.

15           32. Wendy Teramoto was a Senior Advisor and Chief of Staff to Secretary Ross. *Id.*  
16 ¶ 23.

17           33. Sahra Park-Su was a Senior Policy Advisor at the Department of Commerce who  
18 reported to both Undersecretary Kelley and Earl Comstock. *Id.* ¶ 24.

19           34. David Langdon is a Policy Advisor within the Office of Policy and Strategic  
20 Planning, reporting to Mr. Comstock. *Id.* ¶ 25.

21           35. Tad Kassinger was the former General Counsel of the Commerce Department and  
22 is one of Secretary Ross’s personal attorneys. *Id.* ¶ 26.

23           36. Peter Davidson is the General Counsel for the Department of Commerce. *Id.* ¶ 27.

24           37. Michael Walsh was the Deputy General Counsel for the Department of Commerce  
25 and is currently the Chief of Staff to Secretary Ross. *Id.* ¶¶ 28-29.

26           38. Jeff Sessions was Attorney General of the United States.

27           39. John Gore is the Acting Assistant Attorney General for Civil Rights at the U.S.  
28 Department of Justice (DOJ). PTX-69.

1           40. Arthur E. Gary is General Counsel for the Justice Management Division in the  
2 U.S. DOJ. PTX-32.

3           41. Stephen Bannon was the White House Chief Strategist and Senior Counselor to the  
4 President.

5           42. Kris Kobach was the Kansas Secretary of State, and served as Vice Chair of the  
6 Presidential Commission on Election Integrity. PTX-19, PTX-444.

7           43. A. Mark Neuman was an outside advisor to Secretary Ross on Census Bureau  
8 matters. PTX-644.

9           44. John Zadrozny is a Special Assistant to President Trump in the area of “Justice and  
10 Homeland Security.” PTX-412 at 4.

11           **E. Defendants’ Expert Witnesses**

12           45. Defendants submitted Census Bureau Chief Scientist Dr. John Abowd’s expert  
13 testimony. Dr. Abowd testified about the impact of the citizenship question on response rates,  
14 data quality, and census costs, as well as the potential for using administrative records to obtain  
15 citizenship data.

16           46. Defendants also submitted the testimony of expert Dr. Stuart Gurrea to provide  
17 rebuttal opinions to those of Plaintiffs’ experts.

18           **F. Overview of the Census, the Citizenship Question, and Processes of the**  
19           **Census Bureau**

20           **1. The Decennial Census in General**

21           47. The U.S. Constitution requires the federal government to conduct a decennial  
22 census counting the total number of “persons”—with no specific reference to citizenship status—  
23 residing in each state. Undisputed Facts. ¶ 30.

24           48. The Constitution provides that Representatives “shall be apportioned among the  
25 several States . . . according to their respective Numbers,” which requires “counting the whole  
26 number of persons in each State.” *Id.* ¶ 31.

27           49. The Constitution requires that this count be an “actual Enumeration” conducted  
28 every ten years. *Id.* ¶ 32.

1           50. Through the Census Act, Congress assigned the responsibility of making this  
2 enumeration to the Secretary of Commerce. *Id.* ¶ 33.

3           51. The central constitutional purpose of the Census Bureau in taking the decennial  
4 census is to conduct an enumeration of the total population. *Id.* ¶ 35.

5           52. The Secretary of Commerce must comply with legal requirements established by  
6 the Constitution, statutes, and regulations governing the census. For example, the Secretary’s  
7 decisions must be consistent with the “constitutional goal of equal representation” and bear a  
8 “reasonable relationship to the accomplishment of any actual enumeration of the population.”  
9 *Wisconsin v. City of New York*, 517 U.S. 1, 19–20 (1996).

10           53. To enable a person-by-person count, the Census Bureau sends a questionnaire to  
11 virtually every housing unit in the United States and all persons living in the United States who  
12 are legally required to respond. Undisputed Facts. ¶¶ 36, 37.

13           54. If the Census Bureau does not receive a response to the questionnaire, it then sends  
14 a Census Bureau staffer known as an enumerator to the housing unit to attempt to conduct an in-  
15 person interview to collect the data. This process is the Non-Response Follow Up (NRFU)  
16 operation. *Id.* ¶ 39.

17           55. In the 2020 Census, the Census Bureau has proposed using administrative records  
18 to enumerate a limited number of those households for which there is high quality administrative  
19 data about the household if the initial NRFU visit does not result in collecting complete data for  
20 that household. *Id.* ¶ 40.

21           56. In the 2020 Census, the U.S. Census Bureau plans to have enumerators attempt to  
22 re-contact in person those households without high-quality administrative records. *Id.* ¶ 41.

23           57. Every case in the NRFU workload will have a maximum of six different contact  
24 days and 12 proxy attempts. *Id.* ¶ 42.

25           58. If a third attempt to contact a household does not yield a response, a case will  
26 become “proxy-eligible.” *Id.* ¶ 43.

27

28

1           59. A proxy is someone who is not a member of the household—such as a neighbor,  
2 landlord, postal worker, or other knowledgeable person who can provide information about the  
3 unit and the people who live there. *Id.* ¶ 44.

4           60. An enumerator will attempt three proxies after each non-interview for a proxy-  
5 eligible case. *Id.* ¶ 45.

6           61. For the 2010 decennial census, after three proxy attempts, a household became  
7 eligible for what is known as “whole-person imputation” or “whole household imputation,” in  
8 which the Bureau imputed the characteristics of the household, including in some circumstances  
9 the household member count. *Id.* ¶ 46.

10           62. After the NRFU process is completed, the Census Bureau then counts the  
11 responses from every household, including those completed through the NRFU process, as well  
12 as the data from the other enumeration operations, to determine the population count in each state.  
13 *Id.* ¶ 47.

14           63. Data from the decennial census are reported down to the geographic unit known as  
15 a “census block.” *Id.* ¶ 48.

16           64. The population data collected through the decennial census determines the  
17 apportionment of seats in the U.S. House of Representatives among the states. *Id.* ¶ 49.

18           65. The population data collected through the decennial census also determines the  
19 number of electoral votes each state has in the Electoral College. *Id.* ¶ 50.

20           66. States, counties, cities, and local public entities also use decennial census data to  
21 draw congressional, state, and local legislative districts. *Id.* ¶ 51.

22           67. The federal government also uses decennial census data to allocate hundreds of  
23 billions of dollars in public funding each year, including to states and local governments. *Id.* ¶  
24 52.

25           68. Approximately 132 programs used Census Bureau data to distribute hundreds of  
26 billions of dollars in funds during fiscal year 2015. *Id.* ¶ 53.

27           69. In 2010, there was a statistically insignificant net overcount of the total U.S.  
28 population by approximately 0.01 percent. *Id.* ¶ 58.

1           70.     Some demographic groups have proven more difficult to count in the decennial  
2 census than others. The Census Bureau refers to these groups as “hard-to-count.” *Id.* ¶ 59.

3           71.     Racial and ethnic minorities, immigrant populations, and non-English speakers  
4 have historically been some of the hardest groups to count accurately in the decennial census. *Id.*  
5 ¶ 60.

6           72.     Individuals identifying as Hispanic were undercounted by almost 5 percent in the  
7 1990 decennial census. *Id.* ¶ 61.

8           73.     The 2010 Census undercounted on net more than 1.5 million Hispanic and African  
9 American individuals. *Id.* ¶ 62.

10          74.     The Census Bureau describes the undercounting of a particular racial and ethnic  
11 group in comparison to the overall net undercount or overcount of the population as a whole as a  
12 “differential undercount,” as distinct from a “net undercount” of the entire population. *Id.* ¶ 63.

13          75.     The Census Bureau has developed a range of strategies to address the differential  
14 undercount of “hard-to-count” populations—including targeted marketing and outreach efforts,  
15 partnerships with community organizations, deployment of field staff to follow up with  
16 individuals who do not respond, and retention of staff with foreign language skills. *Id.* ¶ 64.

17                   **2.     History of the Citizenship Question on the Census, the Long Form,**  
18                   **and the American Community Survey**

19          76.     Not since 1950 have the census questions submitted to each household included a  
20 question on citizenship. *Id.* ¶¶ 76-77.

21          77.     A question concerning citizenship did not appear on the decennial census  
22 questionnaire sent to every household in the United States (commonly referred to as the “short  
23 form”) in 1970, 1980, 1990, 2000, or 2010. *Id.* ¶ 77.

24          78.     In 1960, the Census Bureau asked 25 percent of the population for the  
25 respondent’s birthplace and that of his or her parents. It also asked all residents of New York and  
26 the foreign-born residents of Puerto Rico about citizenship — the former “at the expense of the  
27 State, to meet State constitutional requirements for State legislative apportionment” and the latter,  
28 at the request of a census advisory committee, “to permit detailed studies of migration.” *Id.* ¶ 76.

1           79. From at least the 1970 decennial census through the 2000 decennial census, in lieu  
2 of the short-form questionnaire, the Census Bureau sent a long form questionnaire to  
3 approximately one in six households. *Id.* ¶ 78.

4           80. Data collected from the sample households surveyed with the long form were used  
5 to generate statistical estimates. *Id.* ¶ 79.

6           81. In the 1970, 1980, 1990, and 2000 decennial censuses, the long form decennial  
7 census questionnaire contained a question about citizenship status. *Id.* ¶ 80.

8           82. In the 1990 and 2000 decennial censuses, the citizenship status question on the  
9 long form questionnaire was preceded by a question about place of birth. *Id.* ¶ 81.

10           83. The citizenship data collected from the long form questionnaire was reported by  
11 the Census Bureau at the census block group level. *Id.* ¶ 82.

12           84. After the 2000 decennial census, the functions performed by the long form were  
13 replaced by the American Community Survey (ACS). *Id.* ¶ 83.

14           85. The ACS is a yearly survey of approximately 2 percent of households across the  
15 United States. *Id.* ¶ 85.

16           86. A question concerning citizenship status currently appears as one of more than 50  
17 questions on the 28-page ACS questionnaire. *Id.* ¶ 86.

18           87. The citizenship status question on the ACS is preceded by a question asking where  
19 the person was born. *Id.* ¶ 87.

20           88. The data collected by the ACS allows the Census Bureau to produce estimates of  
21 Citizen Voting Age Population (CVAP). *Id.* ¶ 90.

22           89. CVAP data based on responses to the ACS are reported by the Census Bureau  
23 down to the census block group level. *Id.* ¶ 91.

24           90. Margins of error are reported with the ACS estimates and provide a measure of the  
25 sampling error associated with each estimate. *Id.* ¶ 92.

26           91. The ACS is intended to provide information on characteristics of the population,  
27 and the social and economic needs of communities. *Id.* ¶ 93.

28



1           92. Unlike the decennial census, the ACS is not a complete enumeration, but rather a  
2 sample survey that is used to generate statistical estimates. *Id.* ¶ 94.

3           93. Because ACS estimates are statistical estimates based on a sample, the tabulations  
4 are weighted to reflect sampling probabilities and to determine eligibility for follow-up, and are  
5 controlled to align with official population totals as established by the Population Estimates  
6 program. *Id.* ¶ 95.

7           94. The ACS produces Census Bureau annual estimates for “census tract[s]” and  
8 “census-block groups.” *Id.* ¶ 96.

9           95. Although the ACS survey is conducted annually, ACS data from individual years  
10 can also be aggregated to produce multi-year estimates (commonly referred to as “1-year”, “3-  
11 year,” or “5-year” estimates, depending on the number of years aggregated together). *Id.* ¶ 97.

12           96. Multi-year ACS estimates have larger sample sizes than 1-year ACS estimates.  
13 Cumulating the five-year pooled estimates yields approximately a one-in-every-eight-household  
14 sample. *Id.* ¶ 98.

15           97. Multi-year ACS estimates have greater levels of statistical precision for estimates  
16 concerning smaller geographical units. *Id.* ¶ 99.

17           98. 1-year ACS estimates produce “[d]ata for areas with populations of 65,000+”; 1-  
18 year supplemental ACS estimates produce “[d]ata for areas with populations of 20,000+”; 3-year  
19 ACS estimates produced “[d]ata for areas with populations of 20,000+” until they were  
20 discontinued after the 2011-2013 3-year estimates; and 5-year ACS estimates produce “[d]ata for  
21 all areas.” *Id.* ¶ 100.

### 22           **3. The 2020 Decennial Census**

23           99. The 2020 Census will also be a “short form only” census. *Id.* ¶ 102.

24           100. The ACS will continue to be distributed each year, as usual, and will continue to  
25 include a citizenship question. *Id.* ¶ 103.

26           101. The text of the question to be included on the 2020 Census in response to  
27 Secretary Ross’s decision memorandum reads, “Is this person a citizen of the United States?,”  
28 with the answer options “Yes, born in the United States”; “Yes, born in Puerto Rico, Guam, the

1 U.S. Virgin Islands, or Northern Marianas”; “Yes, born abroad of U.S. citizen parent or parents”;  
2 “Yes, U.S. citizen by naturalization – Print year of naturalization”; and “No, not a U.S. citizen.”  
3 *Id.* ¶ 104.

4 102. In a December 12, 2017 letter to the Secretary of the Department of Commerce,  
5 the Department of Justice “formally request[ed] that the Census Bureau reinstate on the 2020  
6 Census questionnaire a question regarding citizenship,” explaining that “[t]his data is critical to  
7 the Department’s enforcement of section 2 of the Voting Rights Act and its important protections  
8 against racial discrimination in voting.” *Id.* ¶105.

9 103. As in past years, the 2020 Census questionnaire will pose a number of questions,  
10 including questions regarding sex, Hispanic origin, race, and relationship status. *Id.* ¶ 106.

11 104. A planned question on the 2020 Census short form questionnaire asks “Is this  
12 person of Hispanic, Latino, or Spanish origin?” *Id.* ¶ 107.

13 105. A planned question on the 2020 Census short form questionnaire asks “What is  
14 this person’s race?” *Id.* ¶ 108.

15 106. A planned question on the 2020 Census short form questionnaire asks how each  
16 person in the household is related to the person filling out the questionnaire. *Id.* ¶ 109.

17 107. A planned question on the 2020 Census short form questionnaire asks, “What is  
18 this person’s sex?” *Id.* ¶ 110.

## 19 **II. THE COMPOSITION OF THE ADMINISTRATIVE RECORD**

20 108. Defendants produced an Administrative Record along with a certification and  
21 index on June 8, 2018, consisting of only 1,320 pages. *See* PTX-1 (AR 1-1320). These materials  
22 refer to, but contain little documentation of, internal discussions that took place before December  
23 2017, as well as communications between the Departments of Commerce and Justice about the  
24 citizenship question. *Id.*

25 109. On June 21, 2018, Defendants filed a supplemental memorandum composed by  
26 Secretary Ross that significantly revised their existing narrative as to the origin and genesis of  
27 how a citizenship question came to be placed on the decennial census. PTX-2.  
28

1           110. On July 3, 2018, and memorialized in the July 5, 2018 order, Defendants were  
2 ordered to supplement the Administrative Record in *State of N.Y. v. U.S. Dep't of Com.*, ECF No.  
3 199.

4           111. In response to that order, Defendants produced supplemental Administrative  
5 Record documents on July 23, 2018 (Bates 0001322-0003735) and July 27, 2018 (Bates  
6 0003736-0012464). *State of N.Y. v. U.S. Dep't of Com.*, ECF Nos. 212, 216, 217; PTX-3, PTX-  
7 4A through PTX-4D.

8           112. Defendants' July 23 and 27, 2018, productions contain additional information  
9 about Department of Commerce deliberations preceding the December 12, 2017 letter from DOJ,  
10 and communications between the Commerce Department and DOJ. PTX-3, PTX-4A through  
11 PTX-4D.

12           113. Defendants released additional Administrative Record documents after review by  
13 the Census Bureau's Disclosure Review Board (DRB) on August 28, 2018 and September 4,  
14 2018, without Bates numbers. PTX-5.

15           114. Defendants produced additional small supplements to the Administrative Record  
16 on September 11, 2018 (Bates 0012464-0012543). PTX-7.

17           115. Defendants produced additional sets of documents, including in responses to  
18 motions to compel, on various dates (Bates 00012544-0012826). PTX-8; PTX-9; PTX-10; PTX-  
19 11; PTX-12.

20           116. Defendants produced an additional Administrative Record production on October  
21 1, 2018 (Bates 0012827-0013022), PTX-13, along with further documents (Bates 0013023-  
22 0013024) on October 1, 2018, PTX-14.

23           117. The parties agreed that all documents bearing prefix-less Bates stamps between  
24 000001 and 0013024 are part of the Administrative Record. ECF No. 119 [Joint Pretrial  
25 Statement and [Proposed] Order] at 11-13.

26           118. The initially-filed administrative record was compiled by Sahra Park-Su, a Senior  
27 Policy Advisor at the Department of Commerce. ECF No. 175-8 [Park-Su Dep.] 185-186.  
28

1           119. Ms. Park-Su compiled the Administrative Record solely by keeping materials that  
2 were provided to her by others. *Id.* at 186-189.

3           120. No one provided Ms. Park-Su with any guidance on how to compile documents for  
4 the Administrative Record. *Id.* at 187:20-25

5           **III. THE DEFENDANTS’ DECISION-MAKING PROCESS FOR ADDING THE CITIZENSHIP**  
6           **QUESTION – BASED ONLY ON THE ADMINISTRATIVE RECORD**

7           **A. Events Prior to DOJ’s Request for the Citizenship Question**

8           121. In 2016, Arthur Gary of DOJ sent two letters to the Census Bureau about DOJ’s  
9 potential need to amend the content of the ACS or 2020 Census. PTX-17. In its letter of July 1,  
10 2016, DOJ stated that it had no need to amend any content. *Id.* In its letter of November 4, 2016,  
11 DOJ requested that the Census Bureau consider adding a topic to the ACS related to LGBT  
12 populations. *Id.* In neither letter did the DOJ request or reference a citizenship question or any  
13 need for additional CVAP data. *Id.*

14           122. Secretary Ross admits that he discussed the issue of adding a citizenship question  
15 to the census with “senior administrative officials” even before he became Secretary in early  
16 2017. PTX-2.

17           123. Secretary Ross was interested in census topics in early February 2017. PTX-30.

18           124. In March 2017, Secretary Ross submitted a report to Congress identifying the  
19 subjects planned for the 2020 Census. PTX 264. The subjects did not include citizenship or  
20 immigration status. *Id.* at 5-15.

21           125. In March 2017, Secretary Ross exchanged emails with his Deputy Chief of Staff  
22 and Director of Policy, Earl Comstock, regarding whether noncitizens are included in the census  
23 count for the purposes of congressional apportionment. PTX-30; PTX-55.

24           126. In early April, 2017, Stephen Bannon contacted Secretary Ross and connected him  
25 with Kris Kobach to discuss adding a citizenship question to the census. PTX 19; PTX-58.

26           127. Mr. Kobach told Secretary Ross by phone that a citizenship question was  
27 necessary to address the “problem that aliens who do not actually ‘reside’ in the United States are  
28 still counted for congressional apportionment purposes.” PTX-19.

1           128. A few days after Secretary Ross was contacted by Mr. Bannon, Mark Neuman  
2           emailed Earl Comstock with the subject line “One of the Supreme Court cases that informs  
3           planning for the 2020 Census. . . .” PTX-182. The email contained only a link to the Supreme  
4           Court’s decision in *LULAC v. Perry*, which considered citizen voting age population in assessing  
5           claims under section 2 of the VRA. *Id.*

6           129. On April 13, 2017, Mr. Comstock emailed Mr. Neuman, asking when the Census  
7           Bureau would need to notify Congress of the questions that would appear on the 2020 Census.  
8           PTX-88; PTX-181.

9           130. Mr. Neuman responded to Mr. Comstock on April 14, 2017, that the notification  
10          deadline for topics had already passed, and that “[t]here would be another opportunity next year.”  
11          PTX-88.

12          131. By May 2, 2017, Secretary Ross emailed Comstock to complain, “Worst of all  
13          they emphasize that they have settled with congress on the questions to be asked. I am mystified  
14          why nothing have [*sic*] been done in response to my months old request that we include the  
15          citizenship question. Why not?” PTX-89. Mr. Comstock responded in part, “On the citizenship  
16          question we will get that in place... We need to work with Justice to get them to request that  
17          citizenship be added back as a census question. . . .” *Id.*

18          132. Other than as stated in the emails referred to above, there is no mention in the  
19          Administrative Record of the Secretary’s obligations under 13 U.S.C. § 141(f)(1) and (3) with  
20          respect to adding a citizenship question.

21          133. On May 4, 2017, Comstock contacted Senior White House Advisor Eric Branstad  
22          and inquired as to the “best counterpart to reach out to at DOJ – Regarding Census and  
23          Legislative issue?” PTX-85.

24          134. In response, Mr. Branstad referred Comstock to Mary Blanche Hankey who  
25          previously served as legislative counsel to then-Senator Jeff Sessions, and was the White House  
26          liaison at the DOJ. *Id.*; PTX-370.

27          135. On May 4, Mr. Comstock sent an email to Ms. Hankey, asking to speak with her  
28          sometime that day. PTX-51.

1           136. Mr. Comstock and Ms. Hankey met in person to “discuss the citizenship issue.”  
2 PTX-363. A few days later, she referred Comstock to James McHenry at DOJ. PTX-370.

3           137. Comstock spoke “several times” with James McHenry of DOJ about adding a  
4 citizenship question to the census. *Id.*

5           138. McHenry ultimately informed Comstock that the DOJ did not want to request the  
6 citizenship question “given the difficulties Justice was encountering in the press at the time (the  
7 whole Comey matter).” *Id.*

8           139. McHenry therefore referred Comstock to the Department of Homeland Security.  
9 *Id.*

10           140. Department of Homeland Security likewise declined to request the citizenship  
11 question. *Id.*

12           141. Following his failed discussions with the Department of Homeland Security, Mr.  
13 Comstock asked James Uthmeier to investigate “how Commerce could add the question to the  
14 Census itself.” *Id.*

15           142. On May 24, 2017, at least Secretary Ross and David Langdon met “all afternoon.”  
16 PTX-151 at 2.

17           143. During that meeting, Secretary Ross asked questions about the content of the  
18 decennial Census and “seemed . . . puzzled why citizenship is not included in the 2020” census.  
19 PTX-86

20           144. Late that afternoon, Burton Reist, Chief of Decennial Communications and  
21 Stakeholder Relations at the Census Bureau emailed Mr. Langdon a 1988 internal DOJ  
22 memorandum that opined that the Constitution does not mandate the counting of undocumented  
23 U.S. residents in the census apportionment count. PTX-448, PTX-449 at 1-2.

24           145. That evening, Mr. Langdon requested further information from Census Bureau  
25 staff including Mr. Reist regarding “the criteria used to pick topics for 2020 versus ACS. Say,  
26 citizenship.” PTX-151.

27           146. Also on May 24, 2017, Mr. Langdon sent an email to Mr. Comstock entitled  
28 “Counting of illegal immigrants,” which states “the counting of illegal immigrants (or of the

1 larger group of noncitizens) has a solid and fairly long legal history . . . [there is] a Bush 41 era  
2 DOJ opinion that proposed legislation to exclude illegal aliens from the decennial census was  
3 illegal.” PTX-397.

4 147. Mr. Comstock responded to Mr. Langdon that day, asking for further information  
5 on the selection of questions for the census versus the ACS, and passing along the Supreme Court  
6 decision of *LULAC v. Perry* that Mr. Neuman had previously provided for the proposition that the  
7 government might have a use for citizenship data. *Id.*; *see also* PTX-182.

8 148. On July 14, 2017, Mr. Kobach emailed Secretary Ross to remind him of their prior  
9 telephone discussion “a few months ago.” PTX-19.

10 149. Mr. Kobach wrote that during their earlier discussion, he and Secretary Ross  
11 “talked about the fact that the US census does not currently ask respondents about their  
12 citizenship,” and further advised Secretary Ross that the absence of such a question “leads to the  
13 problem that aliens who do not actually ‘reside’ in the United States are still counted for  
14 congressional apportionment purposes.” *Id.*

15 150. Mr. Kobach further wrote that “it was essential that one simple question be added  
16 to the upcoming 2020 census” and that a variant of the question that appears on the American  
17 Community Survey “needs to be added to the census.” *Id.*

18 151. On July 21, 2017, Mr. Kobach called Ms. Teramoto. He also emailed her,  
19 forwarding his July 14 email to Secretary Ross stating that he had spoken to Secretary Ross about  
20 adding a citizenship question to the 2020 Census “at the direction of Steve Bannon....” *Id.*

21 152. Following their conversation, Ms. Teramoto arranged a call between Mr. Kobach  
22 and Secretary Ross for a few days later. *Id.*

23 153. On August 8, 2017, Secretary Ross received a memorandum with census updates  
24 including that Representative Steve King of Iowa had announced that he would introduce  
25 legislation to add a citizenship question to the 2020 Census questionnaire. PTX-18 at 2.

26 154. Later that day, Secretary Ross emailed Comstock, asking “where is DOJ in their  
27 analysis” of whether to add a citizenship question to the 2020 Census, and advising “[i]f they still  
28

1 have not come to a conclusion please let me know your contact person and I will call the AG.”  
2 PTX-98.

3 155. On August 9, Mr. Comstock emailed Ross, stating “we are preparing a memo and  
4 full briefing for you on a citizenship question. The memo will be ready by Friday . . . Since this  
5 issue will go to the Supreme Court we need to be diligent in preparing the administrative record.”  
6 PTX-96, PTX-362.

7 156. Secretary Ross responded to Mr. Comstock the next day, “I would like to be  
8 briefed on Friday by phone . . . we should be very careful about everything, whether or not it is  
9 likely to end up in the SC.” *Id.*

10 157. On August 11, Mr. Comstock and Mr. Uthmeier exchanged edits on briefing  
11 materials for Secretary Ross related to a citizenship question. During this exchange, Mr. Uthmeier  
12 wrote that he had “recommendations on execution,” stating that he thought “our hook” was  
13 “ultimately, we do not make decisions on how the [citizenship] data will be used for  
14 apportionment, that is for Congress (or possibly the President) to decide.” PTX-437.

15 158. On August 11, Mr. Comstock emailed Secretary Ross and Ms. Teramoto a  
16 memorandum prepared by James Uthmeier concerning the addition of a citizenship question to  
17 the decennial census. PTX-3 at AR 2461; PTX-147. The memorandum has not been produced.

18 159. On September 1, 2017, Secretary Ross complained to Mr. Comstock and Ms.  
19 Teramoto about a number of issues, including that he had “received no update [on] the issue of  
20 the census question” and Mr. Comstock responded, “Understood. Wendy and I are working on  
21 it.” PTX-45; PTX-97.

22 160. On September 6, Secretary Ross and his senior staff (including Messrs. Comstock,  
23 Hernandez, Davidson, Uthmeier, and Ms. Teramoto, Undersecretary Kelley, and Ms. Park-Su)  
24 had a meeting to discuss adding a citizenship question to the decennial census. PTX-31; PTX-35;  
25 PTX-36; PTX-46; PTX-47.

26 161. The next day, September 7, Secretary Ross requested from his staff an update on  
27 “progress since the discussion yesterday regarding the citizenship question.” PTX-37, PTX-49.  
28



1           162. During the responding email exchange, Mr. Davidson wrote to Mr. Comstock, Mr.  
2 Uthmeier, and Ms. Teramoto that, in a meeting the day before regarding the citizenship question,  
3 Secretary Ross had discussed Mr. Kobach, but Mr. Davidson was “concerned about” contacting  
4 Mr. Kobach directly, and recommended contacting a trusted advisor, such as Mark Neuman,  
5 “before we do anything externally.” PTX-444.

6           163. The following day (September 8, 2017), Mr. Uthmeier contacted Mr. Neuman to  
7 discuss “some Census legal questions for the Secretary.” PTX-38.

8           164. Also on September 8, Mr. Comstock sent Secretary Ross a memo reporting on his  
9 efforts to identify someone who would request that a citizenship question be added to the 2020  
10 Census, and advising that, as of that date, he had not been successful. PTX-48; PTX-134.

11           165. Mr. Comstock later forwarded that memorandum to Ms. Teramoto, PTX-58; PTX-  
12 134; PTX-363; PTX-370, presumably to prepare her for an upcoming call she was to have with  
13 DOJ regarding a citizenship question.

14           166. In mid-September, John Gore of DOJ contacted and later had a phone call with  
15 Ms. Teramoto “about a DOJ-DOC” issue. PTX-59; PTX-60. Because Mr. Gore’s email to Ms.  
16 Teramoto was produced as part of the Administrative Record for this case, and considering all of  
17 the circumstances, it is apparent that the “DOJ-DOC” issue was the citizenship question.

18           167. Following that conversation, Mr. Gore worked with an aide to Attorney General  
19 Sessions to set up a phone call between Secretary Ross and A.G. Sessions. PTX-63, PTX-67,  
20 PTX-68

21           168. A.G. Sessions’ aide emailed, “From what John [Gore] told me, it sounds like we  
22 can do whatever you all need us to do and the delay was due to a miscommunication. The AG is  
23 eager to assist.” PTX-67; PTX-68.

24           169. Secretary Ross and A.G. Sessions proceeded to speak on the phone regarding the  
25 subject of Mr. Gore and Ms. Teramoto’s earlier conversation, presumably about adding the  
26 citizenship question to the census. PTX-57; PTX-61; PTX-62.

27           170. On Sunday, October 8, Secretary Ross sent an email to Mr. Davidson with the  
28 subject line, “Letter from DOJ” and asking “what is its status.” PTX-52.

1 171. Mr. Davidson responded, “I’m on the phone with Mark Neuman right now . . . he  
2 is giving me a readout of his meeting last week.” *Id.*

3 172. On the evening of November 27, 2017, Secretary Ross emailed Peter Davidson,  
4 stating, “Census is about to begin translating the questions into multiple languages and has let the  
5 printing contract. We are out of time. Please set up a call for me tomorrow with whoever is the  
6 responsible person at Justice. We must get this resolved.” PTX-144.

7 173. There is no writing of any kind in the Administrative Record authored by the  
8 Secretary or anyone at the Commerce Department (or anyone else) that describes the reasons why  
9 the Secretary wanted to add a citizenship question as early as the first quarter of 2017. The  
10 Administrative Record does indicate that, at the same time the Secretary was discussing adding a  
11 citizenship question to the census in the spring and summer of 2017, he was asking Mr. Comstock  
12 questions about whether congressional apportionment based on the census included noncitizens,  
13 he was informed that including noncitizens in congressional apportionment was legally required,  
14 but that Mr. Kobach was advising him that it was nonetheless a “problem.” PTX-19; PTX-55;  
15 PTX-58; PTX-86; PTX-89; PTX-151; PTX-397; PTX-437; PTX-444.

16 **B. Census Bureau Memorandum Re: “Respondent Confidentiality Concerns”**  
17 **(PTX-157)**

18 174. The Administrative Record includes a September 20, 2017, “Memorandum For  
19 Associate Directorate for Research and Methodology (ADRM)” from the Census Bureau’s Center  
20 for Survey Measurement (CSM), with the subject line “Respondent Confidentiality Concerns”  
21 (CSM Memo). PTX-157.

22 175. The CSM Memo began:

23 “CSM researchers have noticed **a recent increase in respondents spontaneously**  
24 **expressing concerns about confidentiality** in some of our pretesting studies  
25 conducted in 2017. We recommend systematically collecting data on this  
26 phenomenon, and development and pretesting of new messages **to avoid increases in**  
27 **nonresponse among hard-to-count populations for the 2020 Census** as well as  
28 other surveys like the American Community Survey (ACS).”

*Id.* at 1 (emphasis added).

1           176. The findings of the memo were drawn from over 50 focus groups and other  
2 studies. *Id.*

3           177. The memo reported that CSM had “heard respondents express new concerns about  
4 topics like the “Muslim ban,” discomfort “registering” other household members by reporting  
5 their demographic characteristics, the dissolution of the “DACA” (Deferred Action for Childhood  
6 Arrival) program, repeated references to Immigration and Customs Enforcement (ICE), etc. *Id.*

7           178. Bureau field staff emphasized that this was a “new phenomenon” and that  
8 immigrant respondents’ fears had markedly increased during the year. *Id.*

9           179. According to the CSM Memo, respondents reported being told by community  
10 leaders not to open the door without a warrant and field staff “observed respondents falsifying  
11 names, dates of birth, and other information on household rosters.” *Id.*

12           180. Field staff also noted household members being left off of rosters due to  
13 immigration concerns. *Id.* at 2-3.

14           181. The CSM Memo stated, “[i]t should be noted that this level of deliberate  
15 falsification of the household roster, and spontaneous mention of concerns regarding negative  
16 attitudes toward immigrants, is largely unprecedented in the usability interviews that CSM has  
17 been conducting since 2014 in preparation for the 2020 Census.” *Id.* at 3.

18           182. The CSM Memo concluded with two main recommendations to address these new  
19 issues. *Id.* at 7. First, it recommended a “systematic pretesting study evaluating respondent  
20 confidentiality concerns to shed light on the nature and prevalence of these concerns among non-  
21 English speakers and immigrants.” *Id.* Second, it recommended designing a pretesting language  
22 in mailing materials to allay these concerns, with the particularly suggestion that the text could  
23 inform respondents that the Census Bureau does not collect information on immigration status.  
24 *Id.*

### 25           **C. The DOJ Letter Requesting the Citizenship Question**

26           183. On December 12, 2017, Arthur Gary of DOJ sent a formal letter to Ron Jarmin,  
27 Acting Director of the Census Bureau, requesting that a citizenship question be added to the 2020  
28 Census (December 12 Letter). PTX-32.

1           184. The December 12 Letter requests to add a citizenship question for purposes of  
2 VRA enforcement, and provides no other justification. *Id.*

3           185. The December 12 Letter sent to the Census Bureau requesting a citizenship  
4 question does not state that a citizenship question is necessary for the purposes of VRA  
5 enforcement to collect CVAP data through the census questionnaire. *Id.*

6           186. Rather, the letter contends, “the Department [of Justice] believes that decennial  
7 census questionnaire data regarding citizenship, if available, would be more appropriate for use in  
8 redistricting and in Section 2 litigation than the ACS citizenship estimates.” *Id.* at 2.

9           187. The December 12 Letter cites numerous published cases for the proposition that,  
10 “in order to assess and enforce compliance with Section 2’s protection against discrimination in  
11 voting, the Department needs to be able to obtain citizen voting-age population data for census  
12 blocks...where potential Section 2 violations are alleged or suspected.” *Id.*

13           188. The December 12 Letter states that one of the reasons that decennial census data  
14 on citizenship would be preferable to ACS data concerns the margin of error: “The ACS  
15 estimates are reported at a ninety percent confidence level, and the margin of error increases as  
16 the sample size—and, thus, the geographic area—decreases . . . By contrast, decennial census  
17 data is a full count of the population.” *Id.* at 3.

18           189. The December 12 Letter does not state that any plaintiffs had lost any section 2  
19 enforcement actions due to insufficient CVAP data from the ACS. *Id.* at 1-2.

20           190. The Administrative Record contains no evidence that any plaintiffs have lost any  
21 section 2 enforcement action due to insufficient CVAP data from the ACS.

22           191. The December 12 Letter does not state that DOJ had declined to bring any section  
23 2 enforcement actions due to insufficient CVAP data from the ACS. PTX-32.

24           192. The Administrative Record contains no evidence that DOJ has declined to bring  
25 any section 2 enforcement actions due to insufficient CVAP data from the ACS.

26           193. On December 31, Special Assistant to President Trump John Zadrozny exchanged  
27 emails with James Uthmeier regarding a Pro Publica news article on the December 12 Letter.  
28 PTX-412. Mr. Zadrozny asked Mr. Uthmeier to schedule a phone call to discuss. *Id.* at 2.

1           **D. The Census Bureau’s Review of and Recommendation Against Adding a**  
2           **Citizenship Question to the Census**

3           194. Soon after the Census Bureau received the December 12 Letter, Dr. Abowd  
4 directed senior professional staff at the Census Bureau (nicknamed the “SWAT Team”), to  
5 formulate a response to the suggestion that a citizenship question be added, which Dr. Abowd  
6 managed and reviewed. PTX-75; PTX-4 at AR 9339; PTX-148; PTX-101; PTX-22; PTX-133;  
7 Undisputed Facts ¶ 19.

8           195. In a series of technical reports, responses to questions posed by Secretary Ross,  
9 and other briefing documents, the Census Bureau repeatedly and consistently recommended  
10 against adding a citizenship question to the 2020 Census. PTX-148; PTX-101; PTX-22, PTX-  
11 133.

12           196. The Census Bureau repeatedly and consistently concluded that the stated goals of  
13 DOJ with respect to enforcement of the VRA could be accomplished, in a less costly and more  
14 effective manner, by linking Census responses to other administrative data sets available to the  
15 federal government. PTX-148; PTX-101; PTX-22; PTX-133.

16           197. The Census Bureau concluded that including a citizenship question on the  
17 decennial census is not necessary to provide complete and accurate data in response to DOJ's  
18 request. PTX-22; PTX-101; PTX-148.

19           198. The Census Bureau repeatedly and consistently concluded that adding a  
20 citizenship question would involve substantial additional cost as opposed to non-action and the  
21 use of administrative records. PTX-148; PTX-101; PTX-22; PTX-133.

22           199. The Census Bureau concluded that using administrative records would result in  
23 more accurate citizenship data than adding a citizenship question to the census. PTX-22; PTX-  
24 101; PTX-148.

25           200. The Census Bureau also concluded that using administrative records alone would  
26 result in more accurate citizenship data than using administrative records and adding a citizenship  
27 question to the census. PTX-24; PTX-25.

28

1           201. The Census Bureau examined the initial drop in self-response due to the  
2 citizenship question, as well as the potential costs of NRFU as a result of that drop. PTX-148;  
3 PTX-101; PTX-22; PTX-133. Yet the Administrative Record does not contain any information  
4 showing that the Bureau ever considered whether, in fact, NRFU could or would fully mitigate  
5 the nonresponse or whether the citizenship question would cause an undercount. *See* PTX-148;  
6 PTX-101; PTX-22; PTX-133.

7           **E. The Census Bureau Repeatedly Communicated Its Recommendation**  
8           **Against the Citizenship Question to the Commerce Department**

9           202. On or about December 15, 2017, Dr. Abowd directed senior executives and expert  
10 employees of the Census Bureau to evaluate alternative methods of providing estimates of the  
11 CVAP to support redistricting under Public Law 94 -171 (P.L. 94-171) and section 2 of the VRA.  
12 PTX-4 at AR 9339; PTX-148.

13           **1. December 22 Memo (PTX-148)**

14           203. This evaluation is reflected in a memorandum dated December 22, 2017, and  
15 provided to the Commerce Department (December 22 Memo). PTX-148.

16           204. The December 22 Memo reflected the work of six professional Census Bureau  
17 employees: Michael Berning, J. David Brown, Misty Heggeness, Shawn Klimek, Lawrence  
18 Warren, and Moises Yi, who analyzed two potential sources of citizenship data requested by the  
19 DOJ in the December 12 Letter to Dr. Jarmin. PTX-148.

20           205. The December 22 Memo identified eight administrative sources of citizenship  
21 information either already in use by the Census Bureau or available for acquisition by the Census  
22 Bureau. *Id.* at 3.

23           206. The December 22 Memo included the following conclusions:

- 24           • Numident, an administrative source already in use by the Census Bureau, was “the most  
25 complete and reliable administrative record source of citizenship data currently  
26 available.” *Id.* at 3.
- 27           • Use of these administrative records to assess CVAP was “potentially a more accurate  
28 measure of citizenship” and was also “cost efficient.” *Id.* at 11.

- 1 • Including a citizenship question in the 2020 Census could affect response rates for the  
2 2020 Census because “[h]ouseholds with noncitizens could be particularly sensitive to  
3 the inclusion of citizenship questions.” *Id.* at 6.
- 4 • “To collect [citizenship] information through self-report by adding questions to the 2020  
5 decennial would require additional unnecessary costs and burden to the Bureau.” *Id.* at  
6 11.
- 7 • Including a citizenship question in the 2020 Census could lower the rate of voluntary  
8 compliance and would require expanded field operations for the implementation of the  
9 2020 Census. *Id.* at 12.

10 207. As a result of the conclusions, the December 22 Memo recommended that the best  
11 way to meet DOJ’s stated need was to provide it with citizenship data from administrative  
12 records. *Id.* at 11.

13 208. The memo concluded that, if the recommendation were followed, “[t]he 2020  
14 Census questionnaire would not be altered, and the field operations would not have to be  
15 expanded to compensate for the lower rate of voluntary compliance predicted for a census that  
16 asks the citizenship question directly.” *Id.* at 12.

## 17 **2. January 3 Memo from Dr. Abowd to Dr. Jarmin (PTX-101)**

18 209. Following the December 22 Memo, the Census Bureau further memorialized its  
19 research and analysis of potential sources of citizenship data in a January 3, 2018 memorandum,  
20 from Dr. Abowd to Dr. Jarmin (January 3 Memo). PTX-101.

21 210. The January 3 Memo explained that the Census Bureau currently produced CVAP  
22 data in “two related data products: the P.L. 94-171 redistricting data produced by April 1st of the  
23 year following a decennial census under the authority of 13 U.S.C. Section 141, and the Citizen  
24 Voting Age Population by Race and Ethnicity (CVAP) tables produced every February from the  
25 most recent five-year American Community Survey data.” *Id.* at 1. The memo explained that  
26 while the P.L. 94-171 data are released at the census block level, the CVAP data are released at  
27 the census block group level. *Id.*

28

1           211. The January 3 Memo analyzed the cost and data quality implications of three  
2 alternative methods of meeting DOJ’s request for census block-level estimates of CVAP:  
3 Alternative A, Alternative B, and Alternative C. *Id.*

4           212. Alternative A was to “[m]aintain the status quo for data collection, preparation and  
5 publication,” but then prepare a special product for DOJ that combines the P.L. 94-171 and  
6 CVAP tables to produce the Bureau’s best estimate of block-level CVAP data. PTX-101 at 1.  
7 Alternative A was estimated to cost approximately \$200,000. *Id.* at 2.

8           213. The January 3 Memo concluded that Alternative A was “not very costly and does  
9 not harm the quality of the census count.” *Id.* at 3.

10           214. Alternative B was to “[a]dd the citizenship question to the 2020 Census  
11 questionnaire.” The memo estimated that Alternative B would increase census nonresponse rates  
12 by at least 5.1 percent of all households with one or more noncitizens, or 700,000 households. *Id.*  
13 at 2. This would increase the NRFU workload and increase the cost of the 2020 Census by “at  
14 least \$27.5 million.” *Id.*

15           215. The January 3 memo concluded that while Alternative B suited DOJ’s stated uses  
16 better than Alternative A, it would be “very costly” and, because NRFU is less accurate than self-  
17 responses, harm the accuracy of the census. *Id.* at 2, 3.

18           216. Alternative C was to not add a citizenship question to the census, but instead create  
19 block-level citizenship data using administrative records. *Id.* at 1. Alternative C was estimated to  
20 cost less than \$1 million. *Id.* at 2.

21           217. The January 3 memo concluded that Alternative C would deliver higher quality  
22 citizenship data than Alternative B because the administrative records provide “very accurate”  
23 citizenship information. *Id.* at 3. The memo explained this is because the administrative record  
24 data required proof of citizenship, citizenship information is self-reported less accurately, and  
25 proxies report citizenship even less accurately. *Id.*

26           218. The Census Bureau therefore expressly recommended Alternative C in the January  
27 3 memo, reasoning that, compared to Alternatives A and B, Alternative C “even better meets  
28



1 DoJ's stated uses, is comparatively far less costly than Alternative B, and does not harm the  
2 quality of the census count." *Id.*

3 219. On January 4, 2018, Dr. Abowd wrote to various census officials, including Dr.  
4 Jarmin, "Ron reports that he has discussed this with the Under Secretary and she agrees with the  
5 recommendation of alternative C, but Alternative A remains a possibility as well." PTX-121.

6 **3. January 19 Memo from Dr. Abowd to Secretary Ross (PTX-22)**

7 220. On January 19, 2018, Dr. Abowd sent a memorandum to Secretary Ross on the  
8 "Technical Review of the Department of Justice Request to Add Citizenship Question to the 2020  
9 Census" (January 19 Memo). PTX-22.

10 221. The January 19 Memo presents the view of Dr. Abowd and his technical team  
11 evaluating Alternatives A, B and C. *Id.* It contains the same recommendation and rationale as in  
12 the January 3 Memo, along with some additional details of their analysis. *Id.*

13 222. The January 19 Memo examined the issue of item nonresponse to the citizenship  
14 question, i.e. nonresponse to only the particular question, rather than the whole questionnaire. *Id.*  
15 at 4. It stated that item nonresponse rates for the citizenship question "are much greater than the  
16 comparable rates for other demographic variables like sex, birthdate/age, and race/ethnicity." *Id.*  
17 And, between 2013 and 2016, item nonresponse rates of Hispanics to the citizenship question had  
18 been approximately double than of non-Hispanic whites. *Id.*

19 223. The January 19 Memo also examined the break-off rate for internet responses to  
20 the 2016 ACS, i.e. at what question people stopped taking the survey. *Id.* at 5. The memo found  
21 that "[b]ecause Hispanics and non-Hispanic non-whites breakoff much more often than non-  
22 Hispanic whites, especially on the citizenship-related questions, their survey response quality is  
23 differentially affected." *Id.*

24 224. The January 19 Memo explained the Census Bureau's estimate based on the 2010  
25 census and ACS that Alternative B would cause a 5.1 percent drop in self response from  
26 households containing at least one noncitizen. *Id.* at 4-5. It explained that while both citizen and  
27 noncitizen households responded to the ACS (which had a citizenship question) at lower rates  
28

1 than to the census (which did not), the decline between the two surveys was 5.1 percent greater  
2 for noncitizen households. *Id.* at 4.

3 225. The memo explained, “Survey methodologists consider burden to include both the  
4 direct time costs of responding and the indirect costs arising from nonresponse due to perceived  
5 sensitivity of the topic.” *Id.* at 5. Thus, a citizenship question “would make the 2020 Census  
6 modestly more burdensome in the direct sense, and potentially much more burdensome in the  
7 indirect sense that it would lead to a larger decline in self-response for noncitizen households. *Id.*

8 226. The January 19 Memo explained that lowered self-response rates would lower  
9 census data quality because data obtained in NRFU have greater rates of erroneous enumeration  
10 and whole-person imputation. *Id.* at 5-6. (Erroneous enumerations are enumerations of a person  
11 who should not have been counted and whole-person imputations are enumerations of all  
12 characteristics of a person. *Id.* at 5.) In support, the January 19 Memo cites a memo in the  
13 Bureau’s coverage analysis for the 2010 census, which is in the Administrative Record (PTX-  
14 211) (G-01 Memo). *Id.* The January 19 Memo does not discuss the differential undercount  
15 results from the G-01 Memo or the potential effect of lowered self-response on a differential  
16 undercount of any subpopulation. *See* PTX-22.

17 227. The January 19 Memo stated the Census Bureau’s conclusion that the \$27.5  
18 million increased cost estimate of Alternative B “is a conservative estimate because the other  
19 evidence cited in this report suggests that the differences between citizen and noncitizen response  
20 rates and data quality will be amplified during the 2020 Census compared to historic levels.  
21 Hence, the decrease in self-response for [non]citizen households in 2020 could be much greater  
22 than the 5.1 percentage points we observed during the 2010 Census.” *Id.* at 6.

23 228. According to the January 19 Memo, Alternative C would yield more accurate  
24 citizenship data than Alternative B because based on historical census and ACS data, noncitizens  
25 misreport themselves as citizens “for no less than 23.8% of the cases, and often more than 30%.”  
26 *Id.* at 7.

1           229. Alternative C would also provide more accurate data because administrative  
2 record citizenship data is “verified” because it requires proof of citizenship or legal resident alien  
3 status. *Id.*

4           230. According to the January 19 Memo, Alternative B would increase the burden on  
5 census respondents, whereas Alternative C would not. *Id.* at 1.

6           231. The Census Bureau concluded that adding a citizenship question to the decennial  
7 census, “is very costly, harms the quality of the census count, and would use substantially less  
8 accurate citizenship status data than are available from administrative sources.” *Id.*

9                           **4. The Set of 35 Questions from the Department of Commerce to the**  
10                           **Census Bureau and the Commerce Department’s Changes to the**  
11                           **Census Bureau’s Answer to Question 31**

12           232. Following the January 19 Memo, Mr. Comstock and Mr. Uthmeier developed and  
13 sent to the Census Bureau a set of 35 questions for the Census Bureau to answer about the  
14 analysis in the January 19 Memo. PTX-377.

15           233. The Census Bureau’s responses to the questions was submitted to the Commerce  
16 Department on March 1, 2018, along with Dr. Abowd’s March 1 memorandum to Secretary Ross.  
17 PTX-133.

18           234. Question 31 asked, “What was the process that was used in the past to get  
19 questions added to the decennial Census or do we have something similar where a precedent was  
20 established?” *Id.* at 21.

21           235. The Census Bureau answered Question 31:

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

28           The Census Bureau and the Office of Management and Budget (OMB) have  
laid out a formal process for making content changes.

- First, federal agencies evaluate their data needs and propose additions or changes to current questions through OMB.

- 1 • In order to be included, proposals must demonstrate a clear
- 2 statutory or regulatory need for data at small geographies or for
- 3 small populations.
- 4 • Final proposed questions result from extensive cognitive and field
- 5 testing to ensure they result in proper data, with an integrity that
- 6 meets the Census Bureau's high standards.
- 7 • This process includes several opportunities for public comment.
- 8 • The final decision is made in consultation with OMB.

9 *Id.* at 21-22.

10 236. The description of the "well-established" process in the Census Bureau's response

11 to Question 31 is consistent with other Census Bureau documents describing the process to add a

12 question or change the content of the decennial census. PTX-4 at AR 3890, 3560, 9867; PTX-

13 135; PTX-141.

14 237. The Administrative Record shows that, despite the fact that the questions were

15 directed to the Census Bureau, Commerce Department Deputy General Counsel Michael Walsh

16 drafted a different answer to Question 31. That answer states:

17 No new questions were added to the 2010 Decennial Census, so there is no recent

18 precedent for considering a request to add questions to a Decennial Census.

19 Consistent with longstanding practice for adding new questions to the ACS survey,

20 the Census Bureau is working with relevant stakeholders to ensure that legal and

21 regulatory requirements are fulfilled and that the question would produce quality,

22 useful information for the nation. As you are aware, that process is ongoing. Upon its

23 conclusion, you will have all of the relevant data at your disposal to make an

24 informed decision about the pending request from the Department of Justice.

25 PTX 14; PTX 1 at AR 1296.

26 238. In Defendants' first production of documents in the Administrative Record, which

27 they represented at the time constituted the complete administrative record, they included only a

28 version of the 35 questions and answers that included only Mr. Walsh's answer to Question 31.

*See* PTX-1 at 1296; *see also* PTX 1 at AR 1-1320. The Census Bureau's March 1 response to

Question 31 was produced later and only as a result of the New York court's order to supplement

the record. *See* PTX-133.

239. Question 1 of the 35 questions asked, "With respect to Alternatives B and C, what

is the difference, if any, between the time when the data collected under each alternative would be

available to the public?" PTX-133 at 11.

1           240. The Census Bureau answered Question 1 by stating, between Alternatives B and  
2 C, there was no difference in the timing in which the citizenship data could be offered to the  
3 public. *Id.*

4           241. There is no evidence in the Administrative Record indicating that it would take  
5 longer to provide citizenship data using administrative records than a citizenship question.

6           **5. February 12 Meeting Between Census Bureau and Secretary Ross**

7           242. The Administrative Record contains evidence of only one meeting between the  
8 Census Bureau and Secretary Ross on the topic of the citizenship question, on February 12, 2018.  
9 PTX-128.

10           **6. March 1 Memo from Census Bureau to Secretary Ross (PTX-133)**

11           243. Following his receipt of the January 18 Memo, Secretary Ross directed the Census  
12 Bureau to consider a fourth alternative combining Alternatives B (adding a citizenship question to  
13 the census) and Alternative C (obtaining citizenship data from administrative records. PTX-133  
14 at 2.

15           244. On March 1, 2018, Dr. Abowd sent an additional recommendation memorandum  
16 to Secretary Ross performing this analysis of this fourth alternative, “Alternative D.” PTX-133  
17 [March 1 Memo].

18           245. In the March 1 Memo, the Census Bureau concluded that, “Alternative D would  
19 result in poorer quality citizenship data than Alternative C. It would still have all the negative  
20 cost and quality implications of Alternative B outlined in the draft January 19, 2018 memo to the  
21 Department of Commerce.” *Id.* at 5.

22           246. The Census Bureau also identified additional problems with Alternative D in the  
23 March 1 Memo.

24           247. First, census responses would be unreliable for filling in the data gaps for those  
25 who do not match to administrative records, because undocumented immigrants “have a strong  
26 incentive to provide an incorrect [citizenship] answer, if they answer at all.” *Id.* at 4.

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1           248. Second, lowered self-response rates due to the citizenship question would decrease  
2 the number of people who can be linked to administrative records, because NRFU personal-  
3 identifying information (PII) is lower quality than self-response PII. *Id.*

4           249. Just as in all previous Census Bureau memoranda on the subject, the March 1  
5 Memo recommended against adding a citizenship question to the 2020 Census. *Id.* at 5.

6                   **7. Memorandum Addressing “Key Differences Between Alternative C  
7 and Alternative D” (PTX-24)**

8           250. The Administrative Record also includes a memorandum entitled “Summary  
9 Analysis of the Key Differences Between Alternative C and Alternative D.” PTX-24.

10           251. Like the March 1 Memo, this memorandum also recommends using administrative  
11 data alone (Alternative C) and not adding a citizenship question, and is otherwise consistent with  
12 the Census Bureau’s other memoranda on the issue. *Id.* at 1-2.

13           252. The Census Bureau explained that while both Alternative C and D will require the  
14 citizenship of a portion of the population to be imputed, or “modeled,” Alternative D will suffer  
15 from accuracy issues because many noncitizens self-report as citizens, which also will, in turn,  
16 systematically bias the modeling in Alternative D. *Id.* at 2. In contrast, the modeling in  
17 Alternative A will be benchmarked against the more accurate “truth deck” of the administrative  
18 records. *Id.* at 13.

19           253. None of the memoranda above analyzed whether NRFU would fully mitigate the  
20 nonresponse. *See* PTX-148; PTX-101; PTX-22; PTX-133. No other evidence Administrative  
21 Record shows that the Defendants analyzed this issue, or whether such an undercount would have  
22 any effects on federal funding or congressional apportionment.

23           254. None of the memoranda above analyzed the effect of the drop in self-response on  
24 count and characteristic data quality at the local level, including its effect on local governments.  
25 *See* PTX-148; PTX-101; PTX-22; PTX-133. No other evidence Administrative Record shows  
26 that the Defendants analyzed this issue.

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1           255. None of the memoranda above mentioned the CSM Memo on Respondent  
2 Confidentiality Concerns or any of its findings or recommendations regarding pretesting. *See*  
3 PTX-148; PTX-101; PTX-22; PTX-133.

4           **F. DOJ Refused to Discuss Its Request with the Census Bureau**

5           256. Following the Census Bureau’s receipt of the December 12 Letter from DOJ,  
6 Census Bureau sought to meet with DOJ to discuss its stated need for block-level citizenship data.  
7 PTX-72; PTX-4 at AR 8651.

8           257. Dr. Jarmin emailed an initial response to the December 12 Letter on December 22.  
9 PTX-72. In that letter, he advised Mr. Gary that “the best way to provide P.L. 94-171 block-level  
10 data with citizen voting population by race and ethnicity would be through utilizing a linked file  
11 of administrative and survey data the Census Bureau already possesses. This would result in  
12 higher quality data produced at a lower cost.” PTX-72.

13           258. In Dr. Jarmin’s December 22 letter, he suggested to Mr. Gary a “meeting of  
14 Census and DOJ technical experts to discuss the details of this proposal.” *Id.*

15           259. On January 2, 2018, Director Jarmin sent a follow-up email to Mr. Gary requesting  
16 a meeting during the following week. PTX-102.

17           260. On January 9, 2018, Director Jarmin emailed Mr. Gary and again requested to  
18 meet, stating that they “have a pretty short clock to resolve the request” and that it would be  
19 “good to meet with your team as soon as possible.” PTX-192.

20           261. On January 10, Jarmin and Gary exchanged emails agreeing to a time and place for  
21 the meeting. PTX-191.

22           262. However, on February 6, 2018, Dr. Jarmin reported to Karen Dunn Kelley at the  
23 Commerce Department, “I spoke with Art Gary. He has spoken with DOJ leadership. They  
24 believe the letter requesting citizenship to be added to the 2020 Census fully describes their  
25 request. They do not want to meet.” PTX-3 at AR 3460.

26           263. The Administrative Record contains no evidence that before Secretary Ross issued  
27 his ultimate decision memorandum on March 26, 2018 (Decision Memo), DOJ ever met with  
28

1 either the Census Bureau or the Commerce Department to discuss the request in the December 12  
2 Letter.

3 **G. Outside Stakeholders Urged Secretary Ross Not to Add the Citizenship**  
4 **Question to the Census**

5 264. Prior to issuing the Decision Memo, Secretary Ross received a large number of  
6 communications from outside stakeholders expressing concern that adding the citizenship  
7 question would put at risk a complete and accurate census count. These included  
8 communications from:

- 9
- 10 • Six former Directors of the Census Bureau (PTX-1 at AR 1057 (“There is a well-proven  
11 multi-year process to suggest and test new questions. We strongly believe that adding  
12 an untested question on citizenship status at this late point in the decennial planning  
13 process would put the accuracy of the enumeration and success of the Census in all  
14 communities at grave risk.”));
  - 15 • Members of the Census Bureau’s Census Scientific Advisory Committee (PTX-1 at AR  
16 794 (“We hold the strong opinion that including citizenship in the 2020 Census would  
17 be a serious mistake which would result in a substantial lowering of the response  
18 rate.”));
  - 19 • Arturo Vargas of NALEO Educational Fund (PTX-1 at AR 778);
  - 20 • Senators Feinstein, Harris, Carper, Schatz, and Cortez Masto, as well as numerous other  
21 members of Congress (PTX-1 at AR 780, 840, 908, 1086, 1223).

22 *See also, e.g.*, PTX-1 at AR 787, 798, 1053, 1073, 1082, 1090, 1122, 1150, 1222, 1235, 1239,  
23 1269; PTX-3 at AR 3605, 3608.

24 265. Numerous stakeholder letters advised that a citizenship question was not necessary  
25 for section 2 VRA enforcement. *See e.g.*, PTX-1 at AR 799 [letter from The Leadership  
26 Conference on Civil and Human Rights], 1122 [letter from national Jewish organizations]; PTX-3  
27 at AR 3605-06 [letter from Constitutional Accountability Center].

28 266. In January and February 2018, before Secretary Ross issued the March 26 decision  
memo, the Leadership Conference on Civil and Human Rights, the Constitutional Accountability



1 Center, and more than 15 other external stakeholders and voting rights experts, submitted letters  
2 to Secretary Ross explaining that that enforcement of section 2 of the VRA has never once  
3 previously depended upon having enumerated citizenship data since the statute's enactment in  
4 1965. PTX-1 at AR 798-800, AR 1122-23; PTX-3 at AR 3605-06.

5 267. Conversely, Defendants attempted to enlist stakeholders to express support for the  
6 citizenship question, but had trouble doing so. PTX-71; PTX-1 at AR 1206, 1261; PTX-3 at AR  
7 4849.

8 268. On February 13, 2018, Dr. Jarmin wrote to an individual at the American  
9 Enterprise Institute (AEI) that "We are trying to set up some meetings for Secretary Ross to  
10 discuss the proposed citizenship question on the 2020 Census with interested stakeholders. Most  
11 stakeholders will speak against the proposal. We're looking for someone thoughtful who can  
12 speak to the pros of adding such a question...." PTX-71.

13 269. On the same day, Michael Strain of the AEI responded that "None of my  
14 colleagues at AEI would speak favorably about the proposal." *Id.*

15 270. Dr. Jarmin then wrote to Under Secretary Kelley, "Please see the thread below.  
16 Appears no one at AEI is willing to speak in favor of putting question on the 2020." PTX-71 at 1.

17 271. Director Jarmin later reported that Census Bureau personnel were unable to find  
18 any supporting organizations other than individuals associated with the Center for Immigration  
19 Studies and the Heritage Foundation. PTX-1 at AR 1206, 1261; PTX-3 at AR 4849; PTX-4 at  
20 AR 8325.

21 **H. The Citizenship Question Was Not Tested or Publicly Noticed Prior to**  
22 **Ross's Decision to Add It to the Census**

23 272. The Administrative Record contains no evidence that there was any cognitive or  
24 field testing of the citizenship question as required by the Census Bureau's "well-established"  
25 process described with the Census Bureau's answer to Question 31, and in other documents in the  
26 Administrative Record. *See also* PTX-4 at AR 3890, 3560, 9867; PTX-135, 141.  
27  
28

1           273. The Administrative Record contains no evidence Defendants discussed pretesting  
2 of the citizenship question with the Census Bureau advisory committees, the Office of  
3 Management and Budget, or any outside researchers.

4           274. The Administrative Record contains no evidence that Defendants considered any  
5 testing requirements from the Office of Management and Budget.

6           275. The Administrative Record contains no evidence related to what testing was  
7 performed, and how the citizenship question performed, before it was added to the ACS.

8           276. The Administrative Record contains no evidence that Defendants considered  
9 obtaining any kind of waiver of any applicable agency guidelines regarding testing.

10           277. The Administrative Record contains no evidence that the Census Bureau publicly  
11 noticed and provided a period for public comment about the citizenship question before Secretary  
12 Ross made the decision to add it to the Census, as required by the Census Bureau's "well-  
13 established" process described with the Census Bureau's answer to Question 31, and in other  
14 documents in the Administrative Record. *See also* PTX-4 at AR 3890, 3560, 9867; PTX-135,  
15 141.

16           278. The Administrative Record contains no evidence that Defendants took any steps to  
17 address the concerns raised in the CSM Memo on Respondent Confidentiality Concerns or to  
18 conduct of its recommended pretesting related to those concerns.

19           **I. Defendants Did Not Evaluate DOJ's Voting Rights Act Rationale for the**  
20           **Citizenship Question**

21           279. The Administrative Record contains no evidence that, following the December 12  
22 Letter, any of the Defendants analyzed DOJ's section 2 rationale for adding the citizenship  
23 question.

24           280. The Administrative Record contains no evidence that, following the December 12  
25 Letter, any of the Defendants ever had any substantive communications with DOJ about the  
26 whether the use of administrative records would better assist with section 2 enforcement than a  
27 citizenship question on the census.  
28

1           281. The Administrative Record contains no evidence that, following the December 12  
2 Letter, DOJ was informed that noncitizens misreport their citizenship status approximately 30  
3 percent of the time, as reported in the Census Bureau’s January 19 memo to Secretary Ross. *See*  
4 PTX-22 at 7.

5           **J. Ross’s March 26 Decision Memorandum**

6           282. On March 26, 2018, Secretary Ross issued his formal decision memorandum  
7 (Decision Memo) announcing and explaining his decision to adopt “Option D” (known in the  
8 Census Bureau memoranda as “Alternative D”) and add a citizenship question to the decennial  
9 census. PTX-26.

10          283. The Decision Memo states that Secretary Ross “set out to take a hard look” at the  
11 citizenship question “[f]ollowing receipt of the DOJ request” for it. PTX-26 at 1. However, the  
12 evidence in the Administrative Record is clear that, well before DOJ’s request, Secretary Ross  
13 was considering and then directing his staff to take the necessary steps to add a citizenship  
14 question to the census.

15          284. The Decision Memo states that DOJ seeks to obtain CVAP data for census blocks  
16 “where potential Section 2 violations are alleged or suspected, and DOJ states that the current  
17 data collected under the ACS are insufficient in scope, detail, and certainty to meet its purpose  
18 under the VRA.” PTX-26 at 1. However, nothing in either the December 12 Letter or anything  
19 else in the Administrative Record provides evidence that DOJ had lost any case or been unable to  
20 bring any case because of a lack of block-level CVAP data. *See* PTX-32; *see also* AR.

21          285. The Decision Memo makes repeated statements inconsistent with the Census  
22 Bureau’s estimate that the citizenship question would cause a drop in self-response rates of 5.1  
23 percent of all households with at least one noncitizen. PTX-26 at 3; *see also* PTX-101. These  
24 include:

- 25           • The statement that, with respect to “Option B” (the option of adding a citizenship  
26 question and referred to in the Census Bureau memoranda as “Alternative B”) neither  
27 the Census Bureau nor the concerned stakeholders could document that the response  
28 rates would in fact decline materially. PTX-26 at 3.

- 1 • The statement that a former Chief Operating Officer of the Census Bureau confirmed  
2 that to the best of his knowledge, “no empirical data existed on the impact of a  
3 citizenship question on responses.” *Id.*
- 4 • A description of numerous statistics not representing the Census Bureau’s actual  
5 estimate of the drop-off from the citizenship question. *Id.* at 3-4.
- 6 • Ross’s conclusion that “[s]o while there is widespread belief among many parties that  
7 adding a citizenship question could reduce response rates, the Census Bureau’s analysis  
8 did not provide definitive, empirical support for that belief.” *Id.* at 4.
- 9 • The statement that “the Department’s review found that limited empirical evidence  
10 exists about whether adding a citizenship question would decrease response rates  
11 materially.” *Id.* at 5.
- 12 • The statement that “there is no information available to determine the number of people  
13 who would in fact not respond due to a citizenship question being added, and no one has  
14 identified any mechanism for making such a determination.” *Id.*

15 286. The Decision Memo attempts to justify the selection of Option D by citing  
16 purported “[a]dditional empirical evidence about the impact of sensitive questions on survey  
17 response rates... from the SVP of Data Science at Nielsen.” However, the only evidence in the  
18 Administrative Record from this Nielsen representative are notes from a telephone call three days  
19 earlier between her (Christine Pierce) and Secretary Ross. Those notes actually indicate, “Ms.  
20 Pierce stated that her biggest concerns [sic] was that the reinstatement of a citizenship question  
21 could lead to a lower response rate....” PTX-1 at 1276. During that call, Ms. Pierce also “noted  
22 the importance of testing questions.” *Id.* There is no “empirical evidence” in the Administrative  
23 Record at all from Ms. Pierce.

24 287. The Decision Memo states that the citizenship question is “well tested” because it  
25 has been on the ACS since 2005. *Id.* at 2. However, it does not acknowledge the “well-  
26 established” process requiring any new question to the census to first be tested, nor the fact that  
27 the Census Bureau’s examination of the citizenship question on the ACS showed that it causes a  
28

1 marked drop in self-response and that noncitizens misreport their status approximately 30 percent  
2 of the time. PTX-22 at 7; PTX-133 at 21-22.

3 288. The Decision Memo does not what testing standards apply to adding the  
4 citizenship question to the census or whether those standards have been met.

5 289. The Decision Memo states that asking the citizenship question of all people, “may  
6 eliminate the need for the Census Bureau to have to impute an answer for millions of people.” *Id.*  
7 at 5. However, the Census Bureau had estimated that with a citizenship question on the census, it  
8 will have to impute the citizenship data of 13.8 million people. PTX-24 at 2; *see also* PTX-133 at  
9 7-10. Nothing in the Administrative Record supports a contrary conclusion.

10 290. The Decision Memo states that Option D “would maximize the Census Bureau’s  
11 ability to match the decennial census responses with administrative records,” PTX-26 at 4, so as  
12 to allow for “more complete” citizenship data. However, the Administrative Record reflects that  
13 because adding a citizenship question would drive down the self-response rate and put more  
14 households into NRFU operations, Option D actually reduces the Census Bureau’s ability to  
15 match survey responses with administrative records. PTX-25 at 4.

16 291. The Decision Memo states that stakeholders’ concerns were invalid when  
17 premised upon the adequacy of ACS data for section 2 VRA enforcement because approximately  
18 30 percent of noncitizens’ citizenship responses to the ACS were incorrect. *Id.* at 6. However,  
19 Secretary Ross does not represent, and no evidence in the Administrative Record supports, that  
20 those responses will be more accurate to the question on the decennial census.

21 292. The Decision Memo states that the Department of Commerce and Census Bureau’s  
22 review of the DOJ request prioritized the goal of “obtaining *complete and accurate data*,” and  
23 concludes that adding the citizenship question is the best way to obtain the most complete and  
24 accurate data. PTX-26 at 1, 7. In fact, the Census Bureau had consistently concluded and  
25 informed Ross that use of a citizenship question would result in *less* accurate data than  
26 administrative records alone (PTX-22, PTX-25) and nothing in the Administrative Record  
27 supports a contrary conclusion.

28 293. The Decision Memo also attempts to justify Option D, stating:

1 Finally, placing the question on the decennial census and directing the Census Bureau  
2 to determine the best means to compare the decennial census responses to  
3 administrative records will permit the Census Bureau to determine the inaccurate  
4 response rate for citizens and noncitizens alike using the entire population. This will  
5 enable the Census Bureau to establish, to the best of its ability, the accurate ratio of  
6 citizen to noncitizen responses to impute for that small percentage of cases where it is  
7 necessary to do so.

8 PTX-26 at 5. However, nowhere in the Administrative Record, including in the Abowd memos,  
9 does the Census Bureau state that adding a citizenship question would increase the accuracy of its  
10 estimate of inaccurate citizenship responses. *See* PTX-22, PTX-24, PTX-25, PTX-101, PTX-148.  
11 Nor is it apparent from the Administrative Record why the inaccuracy rate of responders would  
12 help impute the citizenship data of non-responders. If actual citizenship is benchmarked to  
13 administrative records, and the Bureau would use those records in any event, then adding a  
14 citizenship question to the decennial census would not assist in the imputation.

15 294. The Decision Memo does not address whether the Census Bureau's NRFU and  
16 imputation processes would fully mitigate any drop in self-response caused by the citizenship  
17 question. PTX-26.

18 295. The Decision Memo does not address Secretary Ross's legal obligation "to the  
19 maximum extent possible and consistent with the kind, timeliness, quality and scope of the  
20 statistics required" to acquire and use information available from other governmental entities  
21 instead of conducting direct inquiries, as required by 13 U.S.C. § 6(c). *Id.*

22 296. No other evidence in the Administrative Record indicates that Defendants  
23 considered Secretary Ross's legal obligation under section 6(c) during their decision-making  
24 process.

25 297. The Decision Memo does not address the fact that the DOJ was not advised of any  
26 details of the Census Bureau's analysis of the pros and cons of adding a citizenship question to  
27 the census or using administrative records alone. *Id.*

28 298. The Decision Memo does not address whether the citizenship question was among  
the census subjects he reported to Congress in March of 2017 or whether he had submitted a  
report to Congress addressing the modification to those subjects. *Id.*

1           299. The Decision Memo does not address whether he has found that new  
2 circumstances occurred since March of 2017 that necessitate adding the citizenship question to  
3 the census. *Id.*

4           **K. Secretary Ross’s Purpose in Adding the Citizenship Question to the Census**

5           300. The weight of the evidence demonstrates that the Secretary made the decision to  
6 add a citizenship question before knowing whether DOJ had any need or even desire to add the  
7 question. *See, e.g.*, PTX-44, PTX-49, PTX-73, PTX-89, PTX-96, PTX-98, PTX-362.

8           301. Secretary Ross did not decide to add the citizenship question to the decennial  
9 census to aid in enforcement of section 2 of the Voting Rights Act.

10           302. There is no writing of any kind either in the Administrative Record authored by  
11 the Secretary or anyone at the Commerce Department (or anyone else) that expressly and directly  
12 describes the reasons why the Secretary wanted to add a citizenship question as early as the first  
13 quarter of 2017.

14           303. Conversely, the Administrative Record also shows that Secretary Ross was  
15 motivated to add the citizenship question for the purpose of facilitating the exclusion of  
16 noncitizens from the population count for congressional apportionment. *See, e.g.* PTX 19, PTX-  
17 55, PTX-58, PTX-86, PTX-437, PTX-448, PTX-449.

18           304. This finding is particularly supported by the facts that: 1) Secretary Ross admits  
19 that he discussed a citizenship question with “senior administration officials” before he became  
20 Secretary of Commerce; 2) Steve Bannon, the Chief Strategist and Senior Counselor to the  
21 President, then asked him to speak with Kris Kobach, who wanted a citizenship question on the  
22 census to exclude noncitizens from the apportionment count; 3) on May 24, 2017, following  
23 Secretary Ross’s meeting with David Langdon regarding the citizenship question, Mr. Langdon  
24 exchanged emails with the Census Bureau and received from them a 1988 DOJ memo about  
25 excluding “illegal immigrants” from the census count, and; 4) by August of 2017, when Ross’s  
26 staff was preparing “a memo and full briefing...on a citizenship question” (which was not  
27 disclosed in the Administrative Record), Commerce Department legal counsel emailed that their  
28

1 “hook” was that the Department “do[es] not make decisions on how the [citizenship] data will be  
2 used for apportionment....”

3 305. On the other hand, prior to the December 12 Letter, the Administrative Record  
4 includes no communications at all of Ross or any other Commerce Department officials  
5 indicating that they wanted to add the citizenship question for the purpose of aiding VRA  
6 enforcement. The only implicit reference to the VRA in the Administrative Record prior to  
7 December 12 is the *LULAC v. Perry* court opinion that Mr. Neuman emailed to Secretary Ross  
8 shortly after Ross’s communication with Steve Bannon, and that Mr. Comstock emailed to Mr.  
9 Langdon in May 2017 as the Commerce Department was investigating whether it could request  
10 the citizenship question itself. There is no discussion in the record at all about the meaning of  
11 that case. In addition to the other evidence, this indicates that Defendants intended to use the  
12 VRA enforcement as a justification for adding the citizenship question, when VRA enforcement  
13 was not, in fact, their true purpose.

14 306. Secretary Ross did not publicly disclose in the Decision Memo or anywhere else  
15 that his purpose for adding the citizenship question was so that noncitizens could be excluded  
16 from the apportionment count. Nor did Secretary Ross publicly disclose in the Decision Memo or  
17 anywhere else any reason for adding the citizenship question other than section 2 enforcement.

18 307. The finding that Secretary Ross did not add the citizenship question for section 2  
19 enforcement is also supported by a dearth of evidence explaining why he would go to such  
20 lengths to persuade DOJ to add the question for that purpose.

21 308. There is no evidence in the Administrative Record, other than Mr. Gary’s  
22 unsupported statement in the December 12 Letter, that DOJ needs block-level citizenship data for  
23 section 2 enforcement. There is no evidence in the Administrative Record that any section 2 case  
24 had ever failed due to the lack of such data, or that DOJ had ever declined to bring such an action  
25 due to the lack of data.

26 309. Further, the fact that the Commerce Department considered, but opted not to  
27 request the citizenship question itself, indicates that it has no legitimate need for the data for  
28 section 2 enforcement purposes. PTX-370. Nor is section 2 enforcement a likely rationale to



1 explain why Mr. Comstock would have gone to the Department of Homeland Security after  
2 initially being turned away by DOJ. *Id.* Moreover, the Administrative Record evidences no  
3 effort by Ross to obtain DOJ's input after the Census Bureau had advised him of the potential  
4 pitfalls of the citizenship question.

5 310. The Defendants' decision-making process itself also supports the finding that Ross  
6 was not motivated by Voting Rights Act enforcement. The Administrative Record contains no  
7 disclosure by the Commerce Department to the Census Bureau about the intent to add a  
8 citizenship question until after the December 12 Letter was delivered.

9 311. This was despite the fact that Ross and his staff spent the better part of 2017  
10 communicating about the citizenship question and strategizing about how to elicit a request for it.

11 312. The Defendants also did not substantively confer with DOJ about its proffered  
12 alternative of using the Administrative Record, despite the fact that Dr. Jarmin communicated to  
13 DOJ that this would yield better citizenship data. PTX-76; PTX-102.

14 313. The Administrative Record does not indicate that Secretary Ross or anyone else at  
15 the Commerce Department made any effort to obtain DOJ's feedback on this alternative or advise  
16 DOJ on any details of the Census Bureau's analysis before making his decision.

17 314. Finally, it does not appear that Secretary Ross's true purpose was section 2  
18 enforcement because his Decision Memo includes statements plainly at odds with the evidence in  
19 the Administrative Record. PTX-26.

20 315. As a result, there is strong evidence that (1) Secretary Ross acted in bad faith in  
21 deciding to add a citizenship question to the census and in explaining his decision to do so, and  
22 (2) Defendants acted in bad faith in compiling the Administrative Record in this action, given that  
23 they originally disclosed only 1,320 pages and took the position that this constituted the entire  
24 Administrative Record. *See* PTX-1 (AR 1-1320).

25 316. Defendants now concede that the Administrative Record consists of over 13,000  
26 pages of documents, but only after being forced to produce them by a court order to supplement  
27 the record. *See* Joint Pretrial Statement and [Proposed] Order, ECF No. 119, at 11-13. It is also  
28 noteworthy that Defendants initially failed to produce the Census Bureau's answer to Question 31

1 (and produced only the Commerce Department’s more favorable version regarding question  
2 testing), and that the Administrative Record includes correspondence between Ross and  
3 Comstock expressing caution about what ends up in the Administrative Record. PTX-362.

4 **IV. THE DEFENDANTS’ DECISION-MAKING PROCESS FOR ADDING THE CITIZENSHIP**  
5 **QUESTION – ADDITIONAL FINDINGS BASED ON EXTRA-RECORD EVIDENCE**

6 **A. Additional Facts Regarding Defendants’ Decision-Making Process**

7 **1. Secretary Ross’s Early Desire to Add the Citizenship Question**

8 317. Defendants admit that Secretary Ross talked to Steve Bannon about the citizenship  
9 question in the spring of 2017. PTX-239 at 3; PTX-472.

10 318. Mr. Bannon asked Secretary Ross to speak with Kris Kobach about adding a  
11 citizenship question to the decennial census. ECF No. 146-6 at 3; ECF No. 146-3 at 31, RFA No.  
12 56.

13 319. Secretary Ross also admits that he did, in fact, speak with Kris Kobach about  
14 adding a citizenship question to the Census. PTX-472; ECF No. 146-6 at 2-3.

15 320. The Commerce Department admits that Secretary Ross’s conversation with Kris  
16 Kobach about adding a citizenship question to the 2020 Census came before any request from  
17 DOJ to add a citizenship question to the decennial census. ECF No. 146-3 at 39, RFA No. 80.

18 321. Defendants admit that Secretary Ross talked to Attorney General Sessions about  
19 the citizenship question in the spring of 2017 “and at subsequent times.” *Id.*

20 322. The Commerce Department admits that, on or about January 31, 2017, the press  
21 reported that the Trump administration had drafted an Executive Order proposing census  
22 questions to determine immigration and citizenship status. ECF No. 146-3 at 25-26, RFA No. 42.

23 323. Mr. Comstock set out in the spring of 2017 to come up with a “legal rationale” to  
24 support the Secretary’s request to add a citizenship question. ECF No. 175-3 [Comstock Dep.]  
25 266:4-12

26 324. Mr. Comstock believed that he needed another agency to request to add the  
27 question because OMB and the Paperwork Reduction Act required the Commerce Department to  
28 “justify” why a citizenship question was “need[ed],” and Mr. Comstock understood that simply

1 saying that “the Secretary wanted it” would not “clear [the] legal thresholds.” *Id.* at 153:6-  
2 154:11.

3 325. Mr. Comstock testified that it was his job to “help [the Secretary] find the best  
4 rationale” for adding the question, because “[t]hat’s what a policy person does.” *Id.* at 266:4-  
5 267:6.

6 326. Mr. Comstock testified that he did not “need to know what [the Secretary’s]  
7 rationale might be, because it may or may not be one that is ... legally-valid.” *Id.* at 267:10-14.

8 327. Mr. Comstock testified that the Secretary never told him why he wanted to add a  
9 citizenship question to the census. *Id.* at 112, 251-54.

10 328. Mr. Comstock also testified that he never asked the Secretary why he wanted to  
11 add a citizenship question. *Id.* at 171-72.

12 329. According to Mr. Comstock, the reasons why the Secretary wanted a citizenship  
13 question were irrelevant. *Id.* at 253-54, 260-62.

14 330. Ms. Teramoto similarly testified that she had no knowledge of why the Secretary  
15 wanted to add a citizenship question. ECF No. 175-9 [Teramoto Dep.] 32.

16 331. Undersecretary Kelley similarly testified that she had no knowledge of why the  
17 Secretary wanted to add a citizenship question. ECF No. 175-6 [Kelley Dep.] 39.

18 332. Undersecretary Kelley testified that it is “very plausible” that she knew as early as  
19 July 2017 that Secretary Ross was considering adding a citizenship question to the 2020 Census.  
20 *Id.* at 45:5-12.

21 333. During her testimony, Ms. Teramoto denied knowledge of her conversation with  
22 Mr. Kobach and denied knowing who he was. Teramoto Dep. 40–41.

23 334. On July 25, 2017, Defendant Ross had a further telephone conversation with Mr.  
24 Kobach concerning the addition of the citizenship question to the 2020 Census. ECF No. 146-3  
25 at 40, RFA No. 84.

26 335. Ms. Teramoto testified she had no recollection of this call and denied knowing  
27 who Mr. Kobach was. Teramoto Dep. 40–41.

28

1           336. Mr. Comstock, Ms. Teramoto, and Undersecretary Kelley have all denied having  
2 any recollection of their September 5 meeting with Secretary Ross to discuss adding the  
3 citizenship question. Comstock Dep. 221:1-16; Teramoto Dep. 60:6-61:11; Kelley Dep. 105-07.

4           337. Secretary Ross has publicly claimed that “what triggered the investigation, the real  
5 study, what triggered the process that led to the determination to [add the citizenship question]  
6 was the letter from the Department of Justice.” PTX-472.

7           338. Secretary Ross testified before the House Committee of Ways and Means on  
8 March 22, 2018. PTX-346. When asked whether the Department of Commerce planned to add a  
9 citizenship question to the 2020 Census, Secretary Ross began his response by stating,  
10 “Department of Justice, as you know, initiated the request for inclusion of the citizenship  
11 question.” *Id.*

12           339. When Mr. Comstock contacted DOJ on May 4, 2017, for the purpose of adding a  
13 citizenship question to the 2020 Census, Mr. Comstock was not seeking to promote more  
14 effective enforcement of the VRA. Comstock Dep. 167-172.

15           340. There is no writing of any kind produced in discovery authored by the Secretary or  
16 anyone at the Commerce Department (or anyone else) that describes the reasons why the  
17 Secretary wanted to add a citizenship question as early as the first quarter of 2017.

## 18           **2. The Role of the Department of Justice**

19           341. The Census Bureau informed federal agencies that they were to submit requests  
20 for 2020 Census content by July 1, 2016. ECF No. 172-1 [Trial Transcript in *State of N.Y. v. U.S.*  
21 *Dep’t of Com.*, hereinafter “New York Tr.”] at 995:18-996:3 (Abowd); *see also* PTX-214.

22           342. DOJ’s request to add a citizenship question was not received by July 1, 2016.  
23 New York Tr. 996:4-6 (Abowd).

24           343. DOJ did not contact the Census Bureau about adding a citizenship question prior  
25 to December 2017. *Id.* at 996:7-10 (Abowd).

26           344. Prior to the December 2017 request, DOJ had never communicated to the Census  
27 Bureau that ACS CVAP data was not ideal for DOJ’s VRA enforcement purposes. *Id.* at 996:19-  
28 23 (Abowd).

1           345. Mary Blanche Hankey, Mr. Comstock's first contact at DOJ, was an advisor to  
2 Attorney General Sessions. Comstock Dep. 167:19-22.

3           346. According to Mr. Comstock, when he met with Ms. Hankey, he did not explain to  
4 her why Secretary Ross wanted a citizenship question on the census and she did not ask why. *Id.*  
5 at 171:16-172:5.

6           347. James McHenry, the DOJ official whom Earl Comstock first solicited to request  
7 the citizenship question, has no responsibility for enforcement of the Voting Rights Act. ECF  
8 No. 146-3 at 36, RFA No. 71.

9           348. The Department of Homeland Security, to which Mr. McHenry referred Mr.  
10 Comstock regarding the citizenship question, has no responsibility for enforcement of the VRA.  
11 ECF No. 146-3 at 36, RFA No. 74.

12           349. John Gore was the Acting Assistant Attorney General (AAAG) for Civil Rights at  
13 DOJ. Gore Dep. 18.

14           350. Mr. Gore was and is a political appointee, not career Civil Rights Division staff.  
15 *Id.* at 14, 18-19.

16           351. In his role as AAAG, Mr. Gore was the head of DOJ's Civil Rights Division. *Id.*  
17 at 18-19.

18           352. One of the sections within the DOJ Civil Rights Division is the Voting Section.  
19 Among the duties of the Voting Section is to enforce section 2 of the VRA. *Id.* at 18-19.

20           353. Prior to becoming AAAG, Mr. Gore was previously an attorney in private practice.  
21 *Id.* at 14.

22           354. As an attorney in private practice, Mr. Gore litigated numerous cases under the  
23 VRA. *Id.* at 14-15.

24           355. In all of the cases he litigated under section 2 of the VRA prior to coming to DOJ,  
25 Mr. Gore represented defendants rather than plaintiffs. *Id.* at 16.

26           356. The issue of the adequacy of CVAP data never came up in any of the VRA cases  
27 litigated by Mr. Gore. *Id.* at 16-17.

28

1           357. In his experience representing jurisdictions defending VRA lawsuits, Mr. Gore  
2 never took the position that plaintiffs’ block-level CVAP data was insufficient because it was  
3 based on sample survey data rather than a “hard count” from the decennial Census. *Id.* at 16–17.

4           358. Mr. Gore has no experience drawing districts for the purposes of complying with  
5 the *Gingles* preconditions for VRA liability or using block-level data about the characteristics of  
6 populations. *Id.* at 17–18.

7           359. Mr. Gore became involved in the issue of the citizenship question through  
8 conversation with Ms. Hankey and A.G. Sessions. *Id.* at 73-75.

9           360. On or around Labor Day of 2017, Mr. Gore had a conversation with A.G. Sessions  
10 regarding a citizenship question. *Id.* at 83; ECF No. 146-6 at 2-3.

11           361. Secretary Ross initiated that conversation. Gore Dep. 83:16–84:6.

12           362. Mr. Gore learned from that conversation with A.G. Sessions that Secretary Ross  
13 had initiated an earlier discussion between Secretary Ross and A.G. Sessions regarding a  
14 citizenship question. *Id.* at 83-84.

15           363. Mr. Gore was also aware that someone from the Department of Commerce had  
16 spoken to Ms. Hankey and Mr. McHenry before September 8, 2017. *Id.* at 61-62, 63-64. The  
17 Commerce Department initiated all of the prior DOC-DOJ conversations (with Sessions, Hankey  
18 and McHenry); these conversations were not initiated by DOJ, either for the purpose of obtaining  
19 better data for VRA enforcement or for any other purpose. *Id.* at 67-68.

20           364. Beginning roughly in mid-September, the Commerce Department initiated direct  
21 conversation with Mr. Gore. *Id.* at 91–92, 94–95.

22           365. Between September and October 2017, Gore spoke with three individuals from the  
23 Commerce Department about a citizenship question: Peter Davidson, James Uthmeier, and  
24 Wendy Teramoto. *Id.* at 92-94, 118. Mr. Gore participated in various conversations with Mr.  
25 Davidson, Mr. Uthmeier, and Ms. Teramoto through the autumn of 2017. *Id.* at 92-94. None of  
26 these conversations were initiated by Gore or anyone in DOJ’s Civil Rights Division. *Id.* at 94-  
27 95.

28

1           366. Mr. Gore recalls first being contacted by Mr. Davidson in mid-September. *Id.* at  
2 92-93, 97-98. Mr. Davidson called Mr. Gore to discuss adding a citizenship question to the  
3 census. *Id.* at 97-98. Mr. Davidson asked Mr. Gore to reach out to Ms. Teramoto. *Id.*

4           367. The “DOJ-DOC” issue referred to in Mr. Gore’s email to Ms. Teramoto was the  
5 addition of a citizenship question to the 2020 Census. *Id.* at 96-97; *see also* PTX-59.

6           368. Mr. Gore and Ms. Teramoto spoke about the citizenship question on September  
7 15, 2017. Gore Dep. 102-103. Ms. Teramoto testified that she had no recollection of this  
8 conversation. Teramoto Dep. 74-77.

9           369. Mr. Gore confirmed that in September 18, 2017, Secretary Ross again spoke to  
10 Attorney General Sessions specifically about adding the citizenship question. Gore Dep. 112.

11           370. On September 22, 2017, Mr. Uthmeier reached out to Mr. Gore. *Id.* at 117-18  
12 (objection).

13           371. Mr. Gore returned Mr. Uthmeier’s call, on or about September 22, 2017, and they  
14 discussed adding a citizenship question to the 2020 Census. *Id.* at 118, 119.

15           372. Mr. Uthmeier has no experience as counsel in VRA cases, litigating section 2  
16 redistricting cases involving the use of CVAP data, or otherwise assessing the reliability of CVAP  
17 data used in VRA litigation. *Id.* at 117-118.

18           373. After their call, Mr. Gore was also provided Mr. Uthmeier’s August 11  
19 memorandum discussing the addition of a citizenship question. *Id.* at 118.

20           374. With the August 11 memorandum, Mr. Gore also received a handwritten note from  
21 Mr. Uthmeier. *Id.* at 118–119. This handwritten note from Uthmeier to Gore contained  
22 information that DOJ considered in drafting the final letter requesting a citizenship question. *Id.*  
23 at 123-24. That note was not produced in the Administrative Record and Defendants withheld it  
24 on the basis of privilege.

25           375. Mr. Gore responded to that note in a discussion with Mr. Uthmeier and Mr.  
26 Davidson, purportedly to provide legal advice in anticipation of litigation. *Id.* at 120-124.

27           376. DOJ relied, in part, on Mr. Uthmeier’s input in reaching its decision to send the  
28 December 12 Letter to the Census Bureau. *Id.* at 123-124.

1           377. In October of 2017, AAAG Gore, John Zadrozny of the White House Domestic  
2 Policy Council, along with Rachael Tucker, and others from DOJ participated in a conference call  
3 to discuss adding a citizenship question to the 2020 Census without the participation of any  
4 Commerce Department or Census Bureau personnel. *Id.* at 409-12.

5           378. During the autumn of 2017, Mr. Gore also discussed a citizenship question with  
6 Mr. Neuman with the understanding that Mr. Neuman was advising the Department of Commerce  
7 and Census Bureau on the issue. *Id.* at 438.

8           379. On or about November 1, 2017, Mr. Gore wrote the initial draft of the December  
9 12 Letter. *Id.* at 126–127 (objection).

10           380. The only career (as opposed to political) staffer in the Civil Rights Division that  
11 provided input at any stage of drafting the December 12 Letter was Chris Herren, in early  
12 November 2017. *Id.* at 151–153.

13           381. On Wednesday, November 1, 2017, Mr. Gore emailed Chris Herren, Chief of  
14 DOJ’s Voting Section, and copied Ben Aguiñaga. *Id.* at 126 (objection).

15           382. The subject of the email was: “Confidential & Close Hold: Draft Letter.” Gore  
16 Dep. 126 (objection). Mr. Gore testified that he intended that Herren could not share the draft  
17 letter without Mr. Gore’s approval. *Id.* at 130.

18           383. Mr. Gore attached to the email a draft letter that he had written requesting a  
19 citizenship question be added to the 2020 Census questionnaire. Mr. Gore asked for input from  
20 Mr. Herren on the draft. *Id.* at 126-27 (objection).

21           384. Ben Aguiñaga and Bethany Pickett were political appointees in the front office of  
22 the Civil Rights Division who began working there in 2017, having graduated from law school  
23 around 2015. *Id.* at 133-34.

24           385. Mr. Gore received substantive input from Mr. Herren, Mr. Aguiñaga, and Ms.  
25 Pickett. *Id.* at 136–137.

26           386. Mr. Gore did not solicit or receive substantive input at this stage from anyone  
27 besides Mr. Gary, Ms. Pickett, Mr. Aguiñaga, and Mr. Herren. *Id.* at 136–137.

28



1           387. Mr. Gore does not recall either sharing subsequent drafts of the December 12  
2 Letter with Herren or Herren giving him comments on any subsequent drafts. *Id.* at 444-45.

3           388. Mr. Gore has no recollection of receiving any input or edits from career DOJ Civil  
4 Rights Division staff on the letter requesting a citizenship question aside from the first round of  
5 edits from Herren. *Id.* at 152-53.

6           389. The only other people in DOJ's Civil Rights Division from whom Gore can recall  
7 soliciting or receiving input on the draft December 12 Letter were Ms. Pickett and Mr. Aguiñaga.  
8 *Id.* at 136-37.

9           390. Sometime in mid-November ("a few weeks" before November 27) Mr. Gore  
10 discussed adding a citizenship question with Rachael Tucker, then counsel in the front office in  
11 the Office of the Attorney General, and Robert Troester, then Associate Deputy Attorney  
12 General. *Id.* at 141.

13           391. Neither Ms. Tucker nor Mr. Troester had experience as counsel in VRA cases,  
14 litigating section 2 redistricting cases involving the use of CVAP data, or otherwise assessing the  
15 reliability of CVAP data used in VRA litigation. *Id.* at 140.

16           392. On or about November 26, 2017 (Thanksgiving weekend), Secretary Ross  
17 conversed with President Trump. ECF No. 146-3 at 47-48, RFA No. 103. This was one day  
18 before Secretary Ross emailed Peter Davidson, stating that "Census is about to begin translating  
19 the questions into multiple languages and has let the printing contract. We are out of time. Please  
20 set up a call for me tomorrow with whoever is the responsible person at Justice. We must get this  
21 resolved." PTX-144.

22           393. In late November 2017, Gore solicited and received edits on the draft letter  
23 requesting a citizenship question from Rachael Tucker, Counsel in the front office of the Attorney  
24 General; and Robert Troester, then-Associate Deputy Attorney General. Gore Dep. 138-142  
25 (objection).

26           394. Mr. Gore did not receive substantive edits from anyone besides Ms. Tucker and  
27 Mr. Troester in the last few days before the December 12 Letter was sent. *Id.* at 146.  
28

1           395. Final authorization to send the letter came from either Ms. Tucker or Mr. Troester  
2 on behalf of Attorney General Sessions, probably on Tuesday, December 12, 2017. *Id.* at 158–  
3 160.

4           396. Attorney General Sessions made the decision for DOJ to request that the Census  
5 Bureau ask a citizenship question on the Census. *Id.* at 442.

6           397. Before the December 12 Letter was sent to the Census Bureau, Mr. Gore was  
7 aware that DOJ “staff did not want to raise the citizenship question” in the fall of 2017. *Id.* at 68–  
8 69.

9           398. Mr. Gore testified he does not personally believe that it is necessary for DOJ’s  
10 VRA enforcement efforts to collect CVAP data through the census questionnaire. *Id.* at 300.

11           399. A.G. Sessions personally directed DOJ’s refusal to meet with the Census Bureau  
12 to discuss DOJ’s request in the December 12 Letter. *Id.* at 271:21-272:13.

13           400. No meeting between the Census and DOJ technical experts took place before  
14 issuance of the Decision Memo on March 26, 2018. ECF No. 175-1 [Census Bureau 30(b)(6)  
15 Dep. Vol. I] 96:3-9; Gore Dep. 259:5-11; New York Tr. 962:22-963:3 (Abowd).

16           401. Dr. Hermann Habermann described meetings with a requesting agency, such as the  
17 meeting Director Jarmin requested with DOJ on December 22, 2017, as “normal Census Bureau  
18 procedure. [Such a meeting] allows the technical experts to better understand how the Census  
19 Bureau can meet the needs of the proposers.” Habermann Trial Aff. ¶¶ 28-29.

20           402. Dr. Jarmin testified that it was typical for the Census Bureau to meet with federal  
21 agencies requesting data in order to understand their needs and come up with the best way to meet  
22 those needs. ECF No. 175-5 [Jarmin Dep.] 33:1-15, 36:14-19.

23           403. Dr. Abowd testified that it is “very unusual” for an agency to make a request to the  
24 Census Bureau to collect data through the census but then refuse to meet to discuss the technical  
25 aspect of that data request. Tr. 1055:5-9 (Abowd).

26           404. Dr. Abowd testified that it is “very unusual” for the head of a cabinet agency to  
27 personally direct staff not to meet with the Census Bureau to discuss the Census Bureau’s ideas  
28 for producing better quality data for that agency at a lower cost. Tr. 1055:10-14 (Abowd).

1           405. Dr. Jarmin did not agree with DOJ's reasoning for refusing to meet because the  
2 Census Bureau would have liked additional information on how DOJ used CVAP data. Jarmin  
3 Dep. 101:9-20.

4           406. Prior to the Decision Memo, there were no conversations between the Census  
5 Bureau and DOJ regarding the issue of disclosure avoidance of block-level citizenship data. New  
6 York Tr. 1046:3-8 (Abowd).

7           407. It is unknown whether the block-level CVAP data collected with a citizenship  
8 question on the 2020 Census will have a margin of error any more precise than the CVAP data on  
9 which the Department of Justice currently relies. *Id.* at 1045:1046:2 (Abowd).

10           408. Mr. Gore is not aware of any communications between DOJ and the Census  
11 Bureau about whether or not adding a citizenship question to the census would in fact produce  
12 data that has smaller margins of error than the citizenship data currently used by DOJ, due to  
13 required disclosure avoidance techniques. Gore Dep. 228, 233-234.

### 14           **3. The Role of the Census Bureau**

15           409. The leadership of the Census Bureau, including Dr. Abowd, has consistently  
16 recommended has against including a citizenship question on the 2020 Census. New York  
17 Tr. 879:2-8 (Abowd).

18           410. The leadership of the Census Bureau does not think that adding a citizenship  
19 question to the 2020 Census is a good idea. *Id.* at 878:23-879:1 (Abowd).

20           411. Dr. Abowd is the Chief Scientist and Associate Director for Research and  
21 Methodology at the U.S. Census Bureau. *Id.* at 876:8-13 (Abowd).

22           412. Dr. Abowd leads a directorate of research centers across all statistical programs of  
23 the Census Bureau. *Id.* at 876:14-17 (Abowd).

24           413. Dr. Abowd is a senior executive at the Census Bureau. *Id.* at 876:18-20 (Abowd).

25           414. Dr. Abowd assumed his current role at the Census Bureau on June 1, 2016. *Id.* at  
26 876:24-877:1 (Abowd).

27           415. Dr. Abowd first learned about DOJ's request to add a citizenship question via  
28 email on December 15, 2017. *Id.* at 879:9-17 (Abowd).

1           416. Following receipt of the December 12 Letter, Dr. Jarmin asked Dr. Abowd to  
2 assemble a team of technical experts known as the “SWAT” team to discuss how to respond to  
3 the DOJ request. *Id.* at 878:23-880:5 (Abowd).

4           417. In response to the December 12 Letter, the Census Bureau had the SWAT team  
5 look into using administrative records in lieu of a citizenship question on the census because,  
6 under Title 13, the Bureau is supposed to use administrative records in lieu of direct collection  
7 when possible. Jarmin Dep. 59:9-60:7.

8           418. A group-of Census Bureau decision-makers in collaboration with Undersecretary  
9 Kelley decided not to conduct a randomized controlled trial of the content of the citizenship  
10 question. New York Tr. 925:19-22 (Abowd).

#### 11                   **4. The January 19 Memo from Dr. Abowd to Secretary Ross**

12           419. The January 19 Memo to Secretary Ross summarized the opinions of the Census  
13 Bureau senior executive staff that was based on the SWAT team’s work and other Census Bureau  
14 research. New York Tr. 880:10-18 (Abowd).

15           420. The January 19 Memo memorializes the Census Bureau’s credible, quantitative  
16 evidence, as well as its analysis, that adding a citizenship question to the 2020 Census could be  
17 expected to lower the self-response rate in households that may contain noncitizens. *Id.* at 881:4-  
18 10 (Abowd).

19           421. The analysis in the January memo is a well-designed natural experiment. *Id.* at  
20 921:25-922:3 (Abowd).

21           422. The January 19 Memo was prepared under Dr. Abowd’s supervision. *Id.* at 882:22-  
22 883:1 (Abowd).

23           423. The views in the January 19 Memo are a summary of the technical work that that  
24 SWAT team did and the contributions made by other senior executives at the Census Bureau. *Id.*  
25 at 883:4-6 (Abowd).

26           424. Dr. Abowd agrees with the conclusions in the January 19 Memo. *Id.* at 883:7-9  
27 (Abowd).

28

1 425. Dr. Jarmin reviewed and approved the January 19 Memo. *Id.* at 883:10-12  
2 (Abowd).

3 426. The analyses in section B1, 2, and 3 of the memo all support the conclusion that  
4 the citizenship question would cause a lower self-response rate to the 2020 Census. *Id.* at  
5 890:891:3 (Abowd).

6 427. At the time of the memo, 5.1 percent was the Census Bureau's best estimate of the  
7 effect of adding a citizenship question in terms of the citizenship question's differential impact of  
8 self-responses of noncitizen households as compared to citizen households. *Id.* at 893:15-22  
9 (Abowd).

10 428. A reduction in self response of 5.1 of noncitizen households would send more than  
11 a million additional people into NRFU. *Id.* at 894:1-16 (Abowd).

12 429. The lower self-response rates resulting from adding a citizenship question will  
13 increase the cost of conducting the 2020 Census. *Id.* at 950:10-13 (Abowd).

14 430. This is because more people will have to be enumerated through NRFU, which  
15 costs money. *Id.* at 950: 15-20 (Abowd).

16 431. One of the reasons that the \$27.5 million increased NRFU cost estimate is  
17 conservative is because the differences in self-response rates to the 2020 Census between citizen  
18 and noncitizen households may be even greater than estimated in the memo. *Id.* at 951:11-19  
19 (Abowd).

20 432. The \$27.5 million is a lower-bound estimate. *Id.* at 951:20-22 (Abowd).

21 433. One reason it is a lower-bound cost estimate is that it may take more NRFU visits  
22 to enumerate households that do not respond due to the citizenship question than assumed. *Id.*  
23 at 952:2-6 (Abowd).

24 434. Another reason it is a lower-bound cost estimate is that it does not incorporate any  
25 estimate about the effect of a citizenship question on reducing self-response rates from all-citizen  
26 households. *Id.* at 951:7-11 (Abowd).

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1           435. Another reason it is a lower-bound cost estimate is that it does not capture  
2 increased communication campaign costs that may be needed as a result of the citizenship  
3 question. *Id.* at 952:12-16 (Abowd).

4           436. NRFU obtains census answers that are less reliable than self-responses. *Id.*  
5 at 953:6-10 (Abowd).

6           437. The conclusion in the memo that adding a citizenship question to the census would  
7 harm the quality of the census count applies both to Alternative B and Option D, which the  
8 Secretary chose. *Id.* at 953:11-17 (Abowd).

9           438. When someone's ACS response says that they are a citizen but the administrative  
10 records says that they're not a citizen, then the most likely conclusion is that the person is, in fact,  
11 a noncitizen. *Id.* at 955:6-20(Abowd).

12           439. Citizenship status is a characteristic where administrative records tend to be more  
13 accurate than survey responses. *Id.* at 955:21-24 (Abowd).

14           440. For more than 30 percent of noncitizens who provide a response to the ACS  
15 citizenship question, the response is probably incorrect. *Id.* at 956:16-21 (Abowd).

16           441. The Bureau has no empirical basis to believe that noncitizens for whom a response  
17 is provided to citizenship question on the census will have more accurate responses than they do  
18 to the citizenship question on the ACS. *Id.* at 956:22-957:2 (Abowd).

19           442. The Census Bureau found that there are definitely indications that responses by  
20 noncitizen to a citizenship question on the 2020 Census will be even less accurate than they have  
21 historically been on the ACS. *Id.* at 957:3-7 (Abowd).

22           443. The Census Bureau still hasn't made any determination about how it will address  
23 disagreement between survey responses and the administrative records when producing block-  
24 level CVAP data used by the Department of Justice after the 2020 Census. *Id.* at 957:8-13  
25 (Abowd).

26           444. The Census Bureau concluded that using administrative records would deliver  
27 higher quality block-level CVAP data by race and ethnicity than including a citizenship question  
28 on the census. *Id.* at 958:19-22 (Abowd).

1           445. The Census Bureau's proposal to generate such block-level CVAP data using  
2 administrative records rather than a citizenship question had the backing of the Census Bureau's  
3 redistricting office. *Id.* at 958:24-959:3 (Abowd).

4           446. In the January 19 Memo, the Census Bureau concluded that a citizenship question  
5 on the 2020 Census would be a sensitive question for Hispanics. *Id.* at 917:4-7 (Abowd).

6           447. The analysis in the January 19 Memo of Alternative B also applies to Option D.  
7 *Id.* at 888:22-889:6 (Abowd).

8           448. In the January 19 Memo, the Census Bureau did provide empirical support for its  
9 conclusion that adding a citizenship question will reduce self-response rates to the 2020 Census.  
10 *Id.* at 922:4-10 (Abowd).

11           449. Dr. Jarmin agrees with the findings in the January 19 Memo, including that using  
12 administrative records would provide higher quality CVAP data at a lower cost than a citizenship  
13 question on the 2020 Census. Jarmin Dep. 65-67, 115:20-117:15.

14                   **5. The Set of 35 Questions from the Commerce Department to the**  
15                   **Census Bureau**

16           450. After the Census Bureau communicated its views to Secretary Ross, the  
17 Commerce Department sent a list of 35 follow-up questions to the Census Bureau. New York  
18 Tr. 1004:21-15 (Abowd).

19           451. Dr. Abowd was charged with making sure that the responses to the 35 questions  
20 were accurate. *Id.* at 1005:23-1006:1 (Abowd).

21           452. As of March 1, 2018, it was Dr. Abowd's understanding that adding a new  
22 question to the decennial census involves extensive testing, review, and evaluation. *Id.* at 1007:7-  
23 9 (Abowd).

24           453. The answer to Question 31 in AR 10900 accurately summarizes the Census Bureau  
25 and OMB's formal process for making content changes to the census. *Id.* at 1007:19-1008:8  
26 (Abowd); Jarmin Dep. 137-138; *see also* PTX-4-D at AR 10900.

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1 454. Dr. Abowd did not write the answer to Question 31 that appeared in the initial  
2 administrative record, he does not know who wrote it, and it does not appear in the last version of  
3 the document in the possession of the Census Bureau. New York Tr. 1010:12-1011:3 (Abowd).

4 455. The text in that document is not the text that the Census Bureau transmitted to the  
5 Commerce Department. *Id.* at 1014:18-23 (Abowd).

6 456. That document is also not the final Census Bureau version according to Dr.  
7 Jarmin. Jarmin Dep. 137:6-139:6. He also does not know who wrote it. *Id.* at 211:19-21.

#### 8 **6. February 12 Meeting Between Census Bureau and Secretary Ross**

9 457. Dr. Abowd met with Ross to discuss the January 19 Memo on February 12, 2018.  
10 New York Tr. 883:17-19 (Abowd).

11 458. In addition to Dr. Abowd, the Census Bureau staff attending the meeting were Dr.  
12 Jarmin, Dr. Llamas, Associate Director for the 2020 Census Al Fontenot, Assistant Director for  
13 the 2020 Census Jim Treat, and Special Assistant to the Director Krista Jones. Tr. 824:10-18  
14 (Abowd).

15 459. The February 12 meeting also included several members of Secretary Ross's staff.  
16 *Id.* at 824:10-18 (Abowd).

17 460. Prior to the meeting with Secretary Ross, Dr. Abowd had a pre-meeting with  
18 Undersecretary Kelley to discuss the memo. New York Tr. 883:20-884:1 (Abowd).

19 461. During that meeting, she did not express any disagreements with the analysis in  
20 the memo. *Id.* at 884:2-5 (Abowd).

21 462. At the time of the February 12 meeting, Dr. Abowd was not aware that the  
22 citizenship question had been "in the air" in the early days of the Trump Administration. Tr.  
23 1045:6-12 (Abowd).

24 463. Secretary Ross did not disclose at the February 12 meeting that Ross had begun  
25 considering a citizenship question in early 2017. New York Tr. 1017:12-21 (Abowd).

26 464. The February 12 meeting was the only meeting Dr. Abowd had with Ross to  
27 discuss the citizenship question before Ross issued the Decision Memo. *Id.* at 884:11-14  
28 (Abowd).



1           465. At the February 12 meeting, Ross immediately dismissed Alternative A (not  
2 collecting block-level CVAP data) as a possibility. Tr. 827:18-25 (Abowd).

3           466. Dr. Abowd informed Ross during the February 12 meeting that the Census Bureau  
4 thought that the difference in self-response rates on the ACS and the census, when comparing  
5 citizen and noncitizen households, was probably related to the citizenship question on the ACS.  
6 New York Tr. 922:11-17 (Abowd).

7           467. The Census Bureau concluded in the January 19 Memo that using administrative  
8 records and not including a citizenship question on the census would best meet DOJ's stated uses.  
9 *Id.* at 959:12-15 (Abowd).

10           468. The Census Bureau communicated that conclusion to Secretary Ross during the  
11 February 12 meeting. *Id.* at 959:17-19 (Abowd).

12           469. After February 12 meeting, Dr. Jarmin told Dr. Abowd that Secretary Ross and  
13 Undersecretary Kelley wanted Abowd to evaluate an Alternative D. *Id.* at 965:25-966:5  
14 (Abowd).

#### 15           **7. March 1 Memo from the Census Bureau to Secretary Ross**

16           470. The views in the memo are those of the senior executive staff at the Census  
17 Bureau. New York Tr. 966:23-25 (Abowd).

18           471. The Census Bureau did not recommend Alternative D and still does not  
19 recommend Alternative D. *Id.* at 967:16-21 (Abowd).

20           472. Alternative C is superior to Alternative D for achieving an accurate census. *Id.* at  
21 968:24-969:1 (Abowd).

22           473. Under Alternative D, due to the lower quality personal data on census responses  
23 from increased number of households going through NRFU, there will also be a reduction in the  
24 number of individuals whom the Census Bureau can link to administrative records. *Id.* at 969:2-  
25 23 (Abowd).

26           474. This memo, concludes that survey-collected citizenship data may not be reliable  
27 for many of the people falling in the gaps in the administrative record. *Id.* at 973:23-974:3  
28 (Abowd).

1           475. The memo states that citizenship survey data gathered under Alternative D would  
2 be of “suspect quality” and that administrative data on citizenship is “high quality.” *Id.* at  
3 974:12-20 (Abowd).

4           476. For the portion of the population that cannot be linked to administrative records, it  
5 would be more accurate to impute/model their citizenship status (Alternative C) than to obtain the  
6 information through their survey responses (Alternative D). *Id.* at 974:22-975:9 (Abowd). This  
7 is the view of both Dr. Abowd and the Census Bureau. *Id.* at 974:22-975:15.

8           477. To obtain accurate citizenship information about people who fall in the gaps of the  
9 administrative records, Dr. Abowd’s recommendation would be to model their citizenship status  
10 rather than to try to collect it through a survey self-response. *Id.* at 976:5-10 (Abowd).

11           478. To provide DOJ with accurate block-level CVAP data, for the group of people  
12 who fall in the gaps of the administrative records, the best course of action is to model their  
13 citizenship status rather than use a survey question. *Id.* at 976:11-17 (Abowd).

14           479. The number of individuals that cannot be matched to administrative records will  
15 be higher under Alternative D than under Alternative C. *Id.* at 975:17-21 (Abowd).

16           480. The Census Bureau concluded in this memo that Alternative C is cheaper than  
17 Alternative D. *Id.* at 988:9-11 (Abowd).

18           481. The Census Bureau concluded in the memo that using administrative records alone  
19 would be more accurate than attempting to combine administrative records and survey responses  
20 under Alternative D. *Id.* at 988:12-16 (Abowd).

21           482. All of this was communicated to Secretary Ross in the memo before his Decision  
22 Memo was issued. *Id.* at 988: 17-19 (Abowd).

### 23           **8. Memo on Key Differences Between Alternatives C & D**

24           483. Under Alternative C, the Bureau would model citizenship status for about 10  
25 percent of the population. New York Tr. 979:13 (Abowd).

26           484. More people would not be linked to administrative record data under Alternative D  
27 than Alternative C. *Id.* at 979:16-20, 981:17-19 (Abowd).

28

1           485. The Census Bureau has no plan on what do with people whose census responses  
2 on citizenship disagree with the administrative records. *Id.* at 982:1-9 (Abowd).

3           486. It is an unusual situation for there to be disagreement between survey response  
4 data and administrative record data. *Id.* at 982:982:10-19 (Abowd).

5           487. When there is disagreement between a survey response and administrative  
6 citizenship data, it would be less accurate to rely on the survey response. *Id.* at 983:8-16  
7 (Abowd).

8           488. If there is disagreement between a survey response and administrative citizenship  
9 data and the Census Bureau relies on the administrative record data, there would have been no  
10 reason to ask the citizenship question in the first place. *Id.* at 984:2-5 (Abowd).

11           489. For people whose response and administrative citizenship data disagree, the  
12 traditional Census Bureau practice would be to use their response, but that would be less accurate  
13 than modeling their citizenship status. *Id.* at 985:1-8 (Abowd).

14           490. Dr. Abowd and the Census Bureau disagree with the argument that Alternative D  
15 is justified because under Alternative C, you would have to model the citizenship status for a pool  
16 of people who cannot be linked to administrative records. *Id.* at 985:18-986:1 (Abowd).

17           491. The Census Bureau “consistently communicated” to the Commerce Department  
18 that for people who could not be matched to administrative records, it would be more accurate to  
19 impute their citizenship status than to use their survey responses. ECF No. 175-2 [Census  
20 30(b)(6) Dep. Vol. II] 421:6-16.

## 21           **9. Ross’s March 26 Decision Memorandum**

22           492. Although Secretary Ross repeatedly claims in the Decision Memo that there was a  
23 lack of evidence that the citizenship question would lower self-response rates, Dr. Abowd  
24 testified that the Census Bureau did provide to Secretary Ross credible, quantitative evidence that  
25 doing so would lower the self-response rate for households that may contain a noncitizen. New  
26 York Tr. 1059:16-21 (Abowd).

27           493. The Decision Memo states that Option D will provide more “complete and  
28 accurate” citizenship data than using administrative records alone. PTX-26 at 5, 7. However, the

1 Census Bureau concluded that adding a citizenship question is not necessary to provide complete  
2 and accurate data in response to the Department of Justice’s request. Tr. 1063:18-22 (Abowd).  
3 The Census Bureau’s conclusion is the same today, and Dr. Abowd agrees with it. *Id.* at 1063:23-  
4 1064:1 (Abowd).

5 494. The Decision Memo stated that Option D “may eliminate the need for the Census  
6 Bureau to have to model citizenship status for millions of people. PTX-26 at 5. However, Dr.  
7 Abowd’s testimony confirmed that he and the Census Bureau had actually concluded that Option  
8 D would not solve that problem. New York Tr. 988:3-8 (Abowd).

9 495. The Decision Memo stated:

10 Finally, placing the question on the decennial census and directing the Census Bureau  
11 to determine the best means to compare the decennial census responses to  
12 administrative records will permit the Census Bureau to determine the inaccurate  
13 response rate for citizens and noncitizens alike using the entire population. This will  
14 enable the Census Bureau to establish, to the best of its ability, the accurate ratio of  
15 citizen to noncitizen responses to impute for that small percentage of cases where it is  
16 necessary to do so.

17 PTX-26 at 5. However, as of March 26, 2018, the Census Bureau had not analyzed these  
18 presumptions. New York Tr. 977:25-978:7 (Abowd). The presumptions were never discussed  
19 with Dr. Abowd and the Census Bureau does not agree with them. *Id.* at 976:18-977:24  
20 (Abowd). In fact, adding a citizenship question will make it more difficult for the Census Bureau  
21 to establish the accurate ratio of citizen to noncitizen responses to impute. Tr. 1061:8-11  
22 (Abowd).

23 496. The March 26 Decision Memo states that “no one has identified any mechanism”  
24 for determining whether the citizenship question would cause a drop in self-response. PTX-26 at  
25 5. There were, in fact, “mechanisms” to determine whether the citizenship question would cause  
26 people not to participate in the census. Tr. 1061:23-1062:11 (Abowd). One such mechanism was  
27 the statistical analysis performed by the Census Bureau. *Id.* at 1061:23-1062:3 (Abowd).

28 497. Another mechanism would have been an RCT, which the Census Bureau could  
have conducted, but did not. *Id.* at 1062:4-11 (Abowd). A group-of decision-makers in  
collaboration with Undersecretary Kelley decided not to conduct a randomized controlled trial of  
the content of the citizenship question. New York Tr. 925:19-22 (Abowd).

1           498. Although the Decision Memo refers to purported evidence from Nielsen regarding  
2 sensitive questions and response rates, Dr. Jarmin had never heard of any such evidence or any  
3 communications with Nielsen on the issue until he reviewed the Decision Memo. Jarmin Dep.  
4 174:9-11.

5                           **10. Additional Facts About the Decision-Making Process**

6           499. As of March 26, 2018, Dr. Abowd was not aware that Secretary Ross had had  
7 conversations with Steve Bannon and Kris Kobach about adding a citizenship question to the  
8 census. New York Tr. 1017:22-1018:7 (Abowd).

9           500. Dr. Abowd did not learn that it was Department of Commerce officials who had  
10 requested that a citizenship question be added to the census, rather than the other way around,  
11 until the Administrative Record was lodged in this and related cases in June of 2018. New York  
12 Tr. 1019:18-25 (Abowd).

13           501. He was surprised when he learned this. *Id.* at 1020:1-5 (Abowd).

14           502. Dr. Abowd and everyone he knows at the Census Bureau, including all the senior  
15 executives, were surprised by the portion of the Administrative Record that predates December  
16 12, 2017. *Id.* at 1020:17-24 (Abowd).

17           503. Dr. Abowd would have preferred to have begun evaluating the citizenship question  
18 as soon as possible, but instead was forced to do so in the four-month period between December  
19 2017 and March 2018, at which time the census questions were required by statute to be  
20 announced. Tr. 1041:21-1042:10 (Abowd).

21           504. The Census Bureau is guided by a policy of independence from political and other  
22 undue external influence. *Id.* at 1055:1-4 (Abowd).

23           505. Secretary Ross's spokesperson publicly stated that he decided to add the  
24 citizenship question "in part due to the Census Bureau's assurances that any drop in self-response  
25 rates [due to the citizenship question] can and will be remediated by non-response follow[up]  
26 operations." PTX-470.

27           506. This purported position and assurance by the Census Bureau appears nowhere in  
28 the Administrative Record or the Decision Memo.

1           507. According to Dr. Abowd, although the Census Bureau informed Secretary Ross  
2 that NRFU could remediate the drop in self-response, it never stated that it “will” do so. Tr.  
3 1057:3-8 (Abowd).

4           508. Secretary Ross has not submitted a report to Congress finding that new  
5 circumstances exist which necessitate that the citizenship question be added to the census despite  
6 its exclusion from the topics in the March 2017 report. *Id.* at 1045:24-1046:7 (Abowd).

7           **B. Extra-Record Evidence Confirms that Defendants Violated Testing**  
8           **Requirements for the Citizenship Question**

9           **1. The Census Bureau’s Standards, Guidelines, and Processes Require**  
10           **Extensive Pretesting Before Adding Questions to the Decennial**  
11           **Census**

12           **a. The Census Bureau’s Statistical Quality Standards**

13           509. The Census Bureau’s Statistical Quality Standards set forth the Bureau’s internal  
14 standards, guidelines, and requirements on pretesting questionnaires and data collection  
15 instruments. PTX-205; Tr. 82:6-19 (O’Muircheartaigh), 832:1-833:8 (Abowd); Habermann Trial  
16 Aff. ¶¶ 59-63.

17           510. The Census Bureau must follow these guidelines and standards. Tr. 113:14-18  
18 (O’Muircheartaigh).

19           511. The Statistical Quality Standards apply when new questions are added to a data  
20 collection instrument or existing questions are revised. PTX-205 at 8.

21           512. Sub-Requirement A2-3.3 of the Statistical Quality Standards requires that “[d]ata  
22 collection instruments and supporting materials must be pretested with respondents to identify  
23 problems (e.g., problems related to content, order/context effects, skip instructions, formatting,  
24 navigation, and edits) and then refined, prior to implementation, based on the pretesting results.”  
25 *Id.* at 8; Tr. 82:9-84:13 (O’Muircheartaigh), 833:11-18 (Abowd).

26           513. Sub-Requirement A2-3.3 allows the Census Bureau to gather testing data and  
27 determine the effectiveness on responses to data collection instruments. Tr. 82:25-84:13  
28 (O’Muircheartaigh).

1           514. In order to meet Sub-Requirement A2-3.3, testing must occur on all aspects of the  
2 data collection instrument or questionnaire to which the new question is being added. Tr. 82:25-  
3 84:13 (O’Muircheartaigh). Thus, pretesting must test not only the response to the question itself,  
4 but also the design of the entire questionnaire in light of the new question as well as the total  
5 effect of the combination of questions on responses to the entire questionnaire. *Id.*

6           515. Under Sub-Requirements A2-3.3-1c and A2-3.3-1d, pretesting must be performed  
7 when “c. Review by cognitive experts reveals that adding pretested questions to an existing  
8 instrument may cause potential context effects” and “d. An existing data collection instrument has  
9 substantive modifications (e.g., existing questions are revised or new questions added).” PTX-  
10 205 at 8.

11           516. One exception to the pretesting requirement of the Statistical Quality Standards is  
12 that, “On rare occasions, cost or schedule constraints may make it infeasible to perform complete  
13 pretesting. In such cases, subject matter and cognitive experts must discuss the need for and  
14 feasibility of pretesting. The program manager must document any decisions regarding such  
15 pretesting, including the reasons for the decision. If no acceptable options for pretesting can be  
16 identified, the program manager must apply for a waiver.” *Id.* at 8; Tr. 833:19-834:7, 1046:18-  
17 1047:19 (Abowd).

18           517. Another exception is that, “Pretesting is not required for questions that performed  
19 adequately in another survey.” PTX-205 at 8; Tr. 833:19-834:7, 1047:12-19 (Abowd).

20           518. Those and other similar pretesting standards are used in the survey methodology  
21 and data collection profession more generally. Tr. 84:19-21 (O’Muircheartaigh).

22                   **b. The OMB’s Standards and Guidelines for Statistical Surveys**

23           519. Under Congress’s direction, the Office of Management and Budget (OMB) has  
24 also issued standards that agencies must follow when designing, developing, and pretesting  
25 survey content. Habermann Trial Aff. ¶¶ 55-56; PTX-262; PTX-266; PTX-267; PTX-612.

26           520. The OMB-promulgated standards for pretesting content on data collection  
27 instruments can be found in the OMB Standards and Guidelines for Statistical Surveys. PTX-  
28 266.

1           521. The Census Bureau must follow the OMB Standards and Guidelines for Statistical  
2 Surveys when preparing for and implementing the decennial census. Census Bureau 30(b)(6)  
3 Dep. Vol. I 321:14-17; New York Tr. 989:15-17 (Abowd); Habermann Trial Aff. ¶¶ 55-56; Tr.  
4 88:22-89:12 (O’Muirheartaigh).

5           522. These guidelines require that agencies conduct a pretest of all components of a  
6 survey, including by conducting a field test and full “dress rehearsal” for “highly influential  
7 surveys.” PTX-266 at 14.

8           523. OMB Standard 1.4 requires that agencies “ensure that all components of a survey  
9 function as intended when implemented in the full-scale survey and that measurement error is  
10 controlled” prior to implementing the data collection instrument. *Id.* at 14; Habermann Trial Aff.  
11 ¶ 56. This is done either by “conducting a pretest of the survey components” or by “having  
12 successfully fielded the survey components on a previous occasion.” PTX-266 at 14.

13           524. OMB Standard 2.3 states that “[a]gencies must design and administer their data  
14 collection instruments and methods in a manner that achieves the best balance between  
15 maximizing data quality and controlling measurement error while minimizing respondent burden  
16 and cost.” *Id.* at 16. OMB Guideline 2.3.1 similarly demands that agencies “[d]esign the data  
17 collection instrument in a manner that minimizes respondent burden, while maximizing data  
18 quality.” *Id.* at 16.

19           525. OMB Standard 2.3 requires the actual testing of a question in its totality. Tr. 90:8-  
20 21 (O’Muirheartaigh); Habermann Trial Aff. ¶ 58. That means that testing must occur on the  
21 content, comprehensibility, and response rates to the question itself, but also on the question’s  
22 impact on the overall response to the instrument on which the question appears. Tr. 90:8-21  
23 (O’Muirheartaigh).

24           526. The Census Bureau has conceded that—within the meaning of OMB Standard  
25 2.3—Alternative D would result in lower data quality, higher cost, and higher respondent burden  
26 than the Census Bureau’s recommended Alternative C. Census Bureau 30(b)(6) Dep. Vol. I  
27 321:18-322:19; New York Tr. 989:6-990:6 (Abowd). While Alternative C would comport with  
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1 OMB Guideline 2.3.1, New York Tr. 990:7-991:1 (Abowd), Alternative D would not, given the  
2 degradation to data quality that would result. *See* Section V(A)(III), *infra*.

3 **c. The Census Bureau’s established process for adding or**  
4 **modifying content on the decennial census**

5 527. In addition to abiding by those standards, the Census Bureau follows a well-  
6 established practical process for adding or modifying questions to the Decennial Census.

7 528. That well-established process is a decade-long process involving multiple tests and  
8 various randomized control tests. New York Tr. 994:18-22 (Abowd).

9 529. The well-established process for evaluating and adopting proposed changes to  
10 questions on the 2020 Census involves extensive cognitive and field testing, ongoing research,  
11 and input from advisory committees. *Id.* at 996:24-997:14 (Abowd); PTX-214 at 4; Jarmin Dep.  
12 47:13-48:17, 52:5-11, 138:16-139:19.

13 530. The “Planned Development and Submission of Subjects Planned for the 2020  
14 Census Program and Questions Planned for the 2020 Census Program” Memorandum contains a  
15 description of the process by which the Census Bureau is to determine the content of the 2020  
16 Census. PTX-214; New York Tr. 994:23-995:15, 996:24-997:10 (Abowd). As part of that  
17 description, that Memorandum states, “Final proposed questions are based on the results of  
18 extensive cognitive testing, field testing, other ongoing research, and input from advisory  
19 committees.” PTX-214 at 4; New York Tr. 996:24-997:10 (Abowd).

20 531. As of March 1, 2018, it was Dr. Abowd’s understanding that the Census Bureau’s  
21 process for adding a new question to the decennial census involves extensive pretesting, review,  
22 and evaluation. New York Tr. 1007:7-9 (Abowd).

23 532. Cognitive and field testing will enable the Census Bureau to understand, *inter alia*,  
24 how the proposed question will be received by different respondents, what the response rates to  
25 the question will be, the quality and accuracy of responses, what wording of the question  
26 performs best, the question’s impact on other questions, and the best placement of the question on  
27 the survey or data collection instrument. Habermann Trial Aff. ¶ 58.  
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1           533. As a general matter, pretesting the citizenship question on the decennial census  
2 should test how different groups and segments of society will react to such a question, and the  
3 best way to prepare for the additional question. *Id.* at ¶ 68; New York Tr. 464:3-8 (Habermann).  
4 Testing to determine ways to improve methods for outreach to these groups would “seem to be  
5 mandatory.” Habermann Trial Aff. ¶ 68.

6           534. Cognitive testing involves interviewing potential respondents to ascertain the  
7 process they use in developing their answer to a question, what they understand the question to  
8 mean, and how they relate to the question. Tr. 110:18-111:11 (O’Muirheartaigh).

9           535. Cognitive testing and interviewing is a key pretesting method because it can  
10 indicate whether a survey question captures the intended construct, and can identify difficulties  
11 respondents experience in understanding and accurately responding to proposed question.  
12 Habermann Trial Aff. ¶ 57.

13           536. Cognitive testing includes testing the wording of the proposed question, and it is  
14 part of the Census Bureau’s “well established” process for adding content to the decennial census.  
15 *Id.* at ¶ 60; Jarmin Dep. 47:13-48:17, 52:5-11.

16           537. Field testing involves testing the question, survey, or questionnaire in the context  
17 in which it will be conducted. Tr. 91:4-16 (O’Muirheartaigh). Field testing requires testing with  
18 respondents who are the equivalent of or parallel to the intended respondents to whom the actual  
19 operation would be directed. *Id.*

20           538. The final field test for the 2020 Census is the 2018 End-to-End Test, which was  
21 conducted at one site, Providence, Rhode Island. *Id.* at 91:17-24, 93:18-94:1 (O’Muirheartaigh),  
22 816:18-817:21 (Abowd); PTX-760.

23           539. The 2018 End-to-End Test is intended to test all aspects of the planned decennial  
24 census, so as to “stitch together all the components of the system.” *Id.* at 816:18-820:15  
25 (Abowd), 91:17-24, 93:18-94:1 (O’Muirheartaigh).

26           540. Another standard pretesting method is the randomized control trial (RCT), which  
27 tests an operation with an added element and compares that to a test of the operation without the  
28

1 element. *Id.* at 102:7-23 (O’Muirheartaigh). The difference between the two tests would be  
2 ascribed to the addition of that element. *Id.*

3 541. According to Dr. Abowd, the RCT is the “gold standard” for testing a proposed  
4 question’s effect on the census count and data collection. *Id.* at 874:10-23, 1039:10-17 (Abowd);  
5 New York Tr. 923:16-924:9 (Abowd); Census Bureau 30(b)(6) Dep. Vol. II 426-430. Dr. Abowd  
6 testified that an RCT would be the best way to assess the effect of a citizenship question on  
7 response rates. New York Tr. 924:6-9 (Abowd).

8 542. An RCT would allow the Census Bureau to isolate the effect of the citizenship  
9 question on response rates not only to that question but to the overall census questionnaire. Tr.  
10 102:7-104:2, 106:21-107:23 (O’Muirheartaigh).

11 543. Another standard pretesting method is “natural experiment” pretesting, which  
12 analyzes data collected by others to identify the impact of individual factors on different parts of  
13 the population. Tr. 108:2-109:1 (O’Muirheartaigh).

14 544. In addition to pretesting, the Census Bureau must also make additional operational  
15 adjustments when adding a new question to a data collection instrument. Habermann Trial Aff.  
16 ¶ 61. That includes re-designing the paper questionnaires and adjusting the paper data capture  
17 system. *Id.* For automated data collection instruments (including Internet self-response, Census  
18 Questionnaire Assistance, and Non-Response Follow Up), the additional question requires system  
19 redevelopment. *Id.* The training for the enumerators and Census Questionnaire Assistance agents  
20 will also need redevelopment in light of new questions. *Id.*

21 545. Based on the result of pretesting, the Census Bureau must finalize the actual 2020  
22 Census questionnaires and then must submit them for OMB approval of the 2020 Census  
23 information collection. *Id.* at ¶ 62. This submission also requires notifying the public and  
24 inviting comments through a Federal Register Notice. *Id.*

25 546. The Census Bureau’s step-by-step process for adding or changing content on the  
26 decennial census is also described in the Administrative Record. *See* Section III(H), *supra*.

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**d. Past practices for testing decennial census questionnaires and proposed added questions**

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547. Past decennial census questionnaires—the complete 2010 Census questionnaire, for example—were subject to extensive cognitive testing and field testing. New York Tr. 997:11-23 (Abowd).

548. When considering adding a new question, the Census Bureau has historically conducted extensive testing to gauge the proposed question's impact. For example, after the 1990 Decennial Census, the Census Bureau investigated the possibility of adding a question concerning respondents' Social Security numbers on the decennial census short form questionnaire. *Id.* at 998:25-999:4 (Abowd).

549. To test that potential Social Security number question, the Census Bureau conducted an RCT comparing a version of the short form with the Social Security number question and one without. *Id.* at 999:5-8 (Abowd). That RCT allowed the Bureau to assess the impact on self-response rates of a Social Security number question. *Id.* at 999:9-11.

550. In that RCT, the self-response rate fell off in the group that had the Social Security number question by 3.4 percent. *Id.* at 999:12-15.

551. The conclusion drawn from that RCT was that asking for a Social Security number would be sensitive. *Id.* at 999:16-18 (Abowd).

552. As a result, the Census Bureau decided not to include a Social Security number question on the decennial census questionnaire. *Id.* at 999:19-24 (Abowd). The Census has never requested Social Security numbers on the census questionnaire, and one of the reasons is the effect of the question on self-response rates, as revealed by the RCT. *Id.*

553. The RCT to assess the impact of a Social Security number question was conducted before any decision was made about whether to include a Social Security number question on the decennial census. *Id.* at 1000:8-13 (Abowd).

1                   **2. The Addition of the Citizenship Question on the Decennial Census**  
2                   **Was Not Adequately Tested**

3                   **a. There was no testing of the citizenship question for the 2020**  
4                   **Census**

5                   554. The Census Bureau has never conducted any testing of a citizenship question  
6 within the context of the entire 2020 Census questionnaire. New York Tr. 997-98 (Abowd);  
7 Jarmin Dep. 262:6-13; ECF No. 175-7 [Langdon Dep.] 243:7-16.

8                   555. Testing of the citizenship question for the 2020 Census was “not a priority” for the  
9 Census Bureau. Jarmin Dep. 61:3-5.

10                  556. There has been no cognitive testing of the full 2020 Census questionnaire,  
11 including a citizenship question. New York Tr. 997:15-18, 997:24-998:1 (Abowd).

12                  557. It is the Census Bureau’s opinion that the complete 2020 Census questionnaire,  
13 including a citizenship question, has not undergone adequate cognitive testing. Tr. 1049:19-24  
14 (Abowd); Census Bureau 30(b)(6) Dep. Vol. I 143.

15                  558. The wording of the citizenship question has not been adequately tested for the  
16 2020 Census. Jarmin Dep. 55:1-10, 56:2-5.

17                  559. There had been no field testing of the full 2020 Census questionnaire that includes  
18 a citizenship question. New York Tr. 997:24-998:1 (Abowd); Tr. 113:24-114:1  
19 (O’Muircheartaigh).

20                  560. At the time that Secretary Ross made his decision to include a citizenship question  
21 on the census, there were no plans for field testing of the entire 2020 Census questionnaire,  
22 including a citizenship question. New York Tr. 998:20-24 (Abowd); Census 30(b)(6) Dep. Vol. I  
23 26.

24                  561. The questionnaire used for the 2018 End-to-End Test, which was the final “dress  
25 rehearsal” preparation for the 2020 Census, did not include a citizenship question. Tr. 820:14-15  
26 (Abowd); Census Bureau 30(b)(6) Dep. Vol. I 225; Jarmin Dep. 54:18-55:10; Tr. 94:2-4  
27 (O’Muircheartaigh).

28                  562. No RCT was performed on the citizenship question for the 2020 Census before the  
Secretary issued his Decision Memo. New York Tr. 925:13-22, 1000:14-17 (Abowd); Tr.

1 1016:8-13, 1039:18-1040:6, 1062:4-11 (Abowd); Census Bureau 30(b)(6) Dep. Vol. I 115;  
2 Census Bureau 30(b)(6) Dep. Vol. II 426-430.

3 563. If the Census Bureau had performed an RCT, it would have had quantitative data  
4 that would isolate the effect of the citizenship question on how it would perform in the context of  
5 a decennial census questionnaire. New York Tr. 924:10-925:12, 925:23-926:7 (Abowd). That  
6 would have allowed the Bureau to quantify, without qualification, the difference between the self-  
7 response rate with and without a citizenship question. *Id.* at 925:9-15.

8 564. The Census Bureau had the time, resources, and plan to conduct an RCT for the  
9 content of the citizenship question prior to printing the questionnaires for the 2020 Census. *Id.* at  
10 1001:6-1002:15 (Abowd); Tr. 1062:4-8 (Abowd), 104:4-106:20 (O’Muircheartaigh).

11 565. Employees at the Census Bureau developed a proposed RCT test for the content of  
12 a citizenship question on the 2020 Census. PTX-162; PTX-163. The proposal would have taken  
13 six weeks to collect the data, and would have cost between \$2 million and \$4.1 million, which is  
14 money that the Census Bureau has. PTX-163; PTX-212; Census Bureau 30(b)(6) Dep. Vol. II  
15 426-27; New York Tr. 1001:6-1002:15 (Abowd).

16 566. A group of decision makers including Under Secretary Kelley made the decision  
17 not to conduct this proposed RCT. Census Bureau 30(b)(6) Vol. II. at 427:8-11; New York Tr.  
18 925:16-22, 1002:11-15 (Abowd).

19 567. There has also been no testing on the impact of a citizenship question on the  
20 willingness of people to give proxy responses for the 2020 Census. Tr. 951:24-952:2 (Abowd).

21 **b. The presence of the citizenship question on the ACS does not**  
22 **obviate the need to test the question for the 2020 Census**

23 568. The citizenship question on the ACS was last tested in 2006. Tr. 1049:25-1050-6  
24 (Abowd).

25 569. The citizenship question’s presence on the ACS is an inadequate substitute for  
26 pretesting and does not obviate the need for pretesting the question for the decennial census. New  
27 York Tr. 468:17-469:24 (Habermann); Tr. 64:7-9, 113:20-22 (O’Muircheartaigh). There are  
28 several reasons why this is the case.

1           570. First, the citizenship question is not performing adequately on the ACS. New  
2 York Tr. 953:18-957:11 (Abowd); Tr. 1050:17-1052:17 (Abowd), 87:1-2, 87:15-88:13  
3 (O’Muirheartaigh).

4           571. In January of 2018, the Census Bureau reported to the Commerce Department the  
5 following statistics concerning the citizenship question’s performance on the ACS: 29.9 percent  
6 of all people identified as noncitizens by administrative records reported themselves as citizens on  
7 the 2000 long-form census questionnaire; 32.7 percent of all people identified as noncitizens by  
8 administrative records reported themselves as citizens on the 2010 ACS; and 34.7 percent of all  
9 people identified as noncitizens by administrative records reported themselves as citizens on the  
10 2016 ACS. PTX-22 at 7-8; New York Tr. 953:18-957:11 (Abowd); Tr. 1050:17-1052:17  
11 (Abowd).

12           572. In August of 2018, the Census Bureau reported that between 30 percent and 37  
13 percent of all people who identified as noncitizens by administrative records reported themselves  
14 as citizens on the ACS. PTX-160; Tr. 947:9-18, 1050:17-24 (Abowd).

15           573. Accordingly, for more than 30 percent of noncitizens who provide a response to  
16 the citizenship question on the ACS, the response is probably incorrect. New York Tr. 956:16-21  
17 (Abowd).

18           574. The Census Bureau views this “disagreement” between administrative records and  
19 ACS survey responses as a “problem” with the citizenship question on the ACS. Tr. 1051:5-8  
20 (Abowd).

21           575. There is no consensus view within the Census Bureau on how to deal with this  
22 problem. Tr. 1051:9-13 (Abowd).

23           576. Given this problem, the Census Bureau plans on conducting a content review  
24 process to determine how the citizenship question is performing on the ACS. *Id.* at 1051:11-20  
25 (Abowd). One possible result of that content review process is that the citizenship questions will  
26 be removed from the ACS. *Id.*

27           577. The Census Bureau has no empirical basis to believe that noncitizens for whom a  
28 response is provided to the citizenship question on the decennial census will have more accurate

1 responses than they do to the citizenship question on the ACS. New York Tr. 956:22-957:2  
2 (Abowd). In fact, the Census Bureau believes that if the citizenship question is placed on the  
3 2020 Census, noncitizens are going to respond to the question with an inaccurate answer even  
4 more frequently than they do on the ACS. *Id.* at 957:3-7, 1050:25-1051:4, 1062:22-1063:9  
5 (Abowd).

6 578. In light of these and other issues, Dr. Abowd testified that the citizenship question  
7 was not performing adequately on the ACS for the subpopulation of households that may contain  
8 at least one noncitizen. *Id.* at 837:24-839:3, 1052:13-17, 1058:14-23 (Abowd).

9 579. The Census Bureau believes that the problems with the performance of the  
10 citizenship question on the ACS will worsen when the question is placed on the decennial census  
11 questionnaire. *Id.* at 1050:25-1051:4, 1062:22-1063:9 (Abowd).

12 580. Second, any testing for the citizenship question on the ACS was done in a different  
13 context than the operation of the decennial census. Habermann Trial Aff. ¶ 68. The operating  
14 conditions of an annual survey like the ACS and the operating conditions of the decennial census  
15 are “vastly different,” in terms of, for example, publicity and the national effort in completing the  
16 survey. *Id.*

17 581. Furthermore, comparing the state of the country now with that of ten years ago  
18 “ignores the added complexities that are now involved in conducting a decennial census.”  
19 Habermann Trial Aff. ¶ 68.

20 582. In that regard, the Census Bureau expects the macro-environment to be different in  
21 2020 than in 2006. Tr. 1050:7-16 (Abowd). As Dr. Habermann explained, “[t]he country is more  
22 polarized now and the ability of individual groups to disseminate their views and possibly  
23 provoke dissent is much greater.” Habermann Trial Aff. ¶ 68.

24 583. According to the Census Bureau, the present macro-environment for a decennial  
25 census questionnaire with a citizenship question is particularly difficult. *Id.*; PTX-161; PTX-465.

26 584. The Census Bureau’s own nationwide 2020 Census Barriers, Attitudes, and  
27 Motivators Study concluded that the presence of the citizenship question could be a “major  
28



1 barrier” to participation in the 2020 Census due in part to the current macro-environment. PTX-  
2 465.

3 585. Similarly, qualitative research conducted by the Census Bureau reveals concerns in  
4 the population about the confidentiality of data collected by the census. Tr. 112:4-10  
5 (O’Muirheartaigh); PTX-157. Those concerns will only be magnified by the addition of the  
6 citizenship question, which will thus exacerbate the difficulty in obtaining accurate responses to  
7 the 2020 Census. Tr. 112:13-113:3 (O’Muirheartaigh).

8 586. Accordingly, the environment and context in which the ACS is deployed is  
9 different from the environment in which the decennial census is taken. *Id.* at 1047:20-23  
10 (Abowd).

11 587. Third, the way the citizenship question will appear on the 2020 Census  
12 questionnaire is markedly different from the way it appears on the ACS.

13 588. The ACS has many more questions than the decennial census questionnaire, the  
14 sequence of questions on each questionnaire differs, and the question or questions that precede  
15 the citizenship question on each questionnaire is different. *Id.* at 1048:4-1049:7 (Abowd).

16 589. Question sequencing can affect response rates, including in unanticipated ways  
17 that could be discovered through testing. *Id.* at 1048:7-9 (Abowd); Census Bureau 30(b)(6) Dep.  
18 Vol. I 14-15; Jarmin Dep. 194:14-19.

19 590. In contrast to the ACS, the 2020 Census will ask about citizenship status without a  
20 preceding nativity question regarding place of birth. Tr. 1049:2-7 (Abowd); Census Bureau  
21 30(b)(6) Dep. Vol. I 22-23. The citizenship question on the 2020 Census questionnaire will be  
22 asked of all individuals regardless of their method of response to the nativity question. *Id.*

23 591. The Census Bureau is not aware of any testing of the citizenship question without  
24 a preceding question about nativity. Census Bureau 30(b)(6) Dep. Vol. I 24-26.

25 592. Fourth, the Census Bureau conducted a natural experiment analysis based on ACS  
26 data to produce an estimate of the impact of the citizenship question on the self-response rate in  
27 the 2020 Census. Tr. 109:18-22 (O’Muirheartaigh); PTX-160. That test compared the impact of  
28

1 the citizenship question on self-response rates among households containing noncitizens with  
2 self-response rates among all-citizen households. *Id.*

3 593. As a result of that natural experiment, the Census Bureau concluded that the  
4 citizenship question would reduce self-response rates among noncitizen households by an  
5 estimated 5.8 percent, at the minimum. Tr. 109:25-110:9 (O’Muircheartaigh); PTX-160.

6 594. That natural experiment strongly suggests that the citizenship question has been  
7 performing poorly on the ACS and will continue to perform poorly on the decennial census.  
8 Tr. 114:1-3 (O’Muircheartaigh), 1050:25-1051:4, 1062:22-1063:9 (Abowd).

9 **3. The Inadequate Testing of the Citizenship Question for the 2020**  
10 **Census Violated the Census Bureau’s Pretesting Requirements,**  
11 **Standards, and Practices**

12 595. The lack of testing of the citizenship question for inclusion on the 2020 Census  
13 violated the pretesting requirements set forth in the Census Bureau’s Statistical Quality Standards,  
14 Sub-Requirement A2-3.3 in particular. PTX-205 at 8; Tr. 84:14-85:13 (O’Muircheartaigh),  
15 832:1-833:8 (Abowd). Dr. O’Muircheartaigh described the Census Bureau’s failure to follow its  
16 own standards and guidelines as “distressing.” Tr. 85:2-10 (O’Muircheartaigh).

17 596. The first exception to the pretesting requirement of the Census Bureau’s Statistical  
18 Quality Standards—concerning a pretesting waiver, PTX-205 at 8—was not met because the  
19 Census Bureau never applied for a waiver pursuant to that exception before the citizenship  
20 question was decided to be added to the 2020 Census. Tr. 1047:6-11 (Abowd). The  
21 Administrative Record contains no evidence that Defendants considered applying for a waiver.

22 597. The second exception to the pretesting requirement of the Census Bureau’s  
23 Statistical Quality Standards—concerning questions that performed adequately in another survey,  
24 PTX-205 at 8—was not met because the citizenship question has performed poorly on the ACS.  
25 New York Tr. 953:18-957:11 (Abowd); Tr. 837:24-839:3, 1050:17-1052:17, 1058:14-23  
26 (Abowd), 87:1-2, 87:15-88:13 (O’Muircheartaigh).

27 598. As noted above, for more than 30 percent of noncitizens who provide a response to  
28 the citizenship question on the ACS, the response is probably incorrect. New York Tr. 956:16-21  
(Abowd); Tr. 947:9-18, 1050:17-24 (Abowd); PTX-22 at 7-8; PTX-160. The Census Bureau

1 views those extensive inaccuracies of responses to the citizenship question on the ACS as a  
2 “problem” with the ACS citizenship question. Tr. 1051:5-20 (Abowd), 87:1-88:13  
3 (O’Muirheartaigh). In light of that problem, the Census Bureau is reevaluating the presence of  
4 the citizenship question on the ACS. *Id.* at 1051:5-20 (Abowd).

5 599. The Census Bureau also believes that the problems with the performance of the  
6 citizenship question on the ACS will be worse when the question is placed on the decennial  
7 census questionnaire. *Id.* at 1050:25-1051:4, 1062:22-1063:9 (Abowd).

8 600. The second exception to the pretesting requirement of the Census Bureau’s  
9 Statistical Quality Standards was also not met because the addition of the citizenship question to  
10 the 2020 Census represents a “fundamental change” to a survey instrument. *Id.* at 86:20-23  
11 (O’Muirheartaigh).

12 601. The testing of the addition of a citizenship question to the 2020 Census also  
13 violated the standards set out in the OMB Standards and Guidelines for Statistical Surveys, which  
14 require pretesting of all components of the decennial census to gauge how individual questions  
15 perform on their own and in the full context in which those questions appear. PTX-266 at 14, 16  
16 (Standards 1.4, 2.3); Habermann Trial Aff. ¶¶ 55-58; Tr. 88:22-89:12, 90:8-21  
17 (O’Muirheartaigh); *see* Section IV(B)(1)(b), *supra*. For example, OMB Standard 2.3 requires  
18 the actual testing of a question in its totality, but the Census Bureau did not conduct pretesting to  
19 determine whether the burden of the citizenship question on respondents would outweigh the  
20 usefulness of the question. Tr. 90:8-21 (O’Muirheartaigh); Habermann Trial Aff. ¶ 58. Indeed,  
21 there was no pretesting of the citizenship question in the context of the 2020 Census, which  
22 violated the OMB pretesting standards.

23 602. The lack of testing of the addition of a citizenship question to the 2020 Census  
24 violated the Census Bureau’s “well established” process for making changes to the decennial  
25 census questionnaire, which requires extensive cognitive and field testing. New York Tr. 994:18-  
26 22, 996:24-997:14 (Abowd); Jarmin Dep. 47:13-48:17, 52:5-11, 138:16-139:19; PTX-214.

1           603. The lack of testing violated the Census Bureau’s “well established” process for  
2 adding content to the decennial census questionnaire, which includes testing the wording of the  
3 new question. Habermann Trial Aff. ¶¶ 59-63; Jarmin Dep. 44:20-49:6, 47:13-48:17, 52:5-11.

4           604. The lack of testing violated the standards set forth in the “Planned Development  
5 and Submission of Subjects Planned for the 2020 Census Program and Questions Planned for the  
6 2020 Census Program” Memorandum (PTX-214), which include extensive cognitive testing, field  
7 testing, other ongoing research, and input from advisory committees for proposed changes to  
8 census instruments. New York Tr. 996:24-997:14 (Abowd); PTX-214 at 4.

9           605. The testing of the citizenship question did not comply with the Census Bureau’s  
10 step-by-step process for adding or changing content on the decennial census as described in the  
11 Administrative Record. *See* Section III(H), *supra*.

12           606. The failure to test the complete 2020 Census questionnaire that included the  
13 citizenship question broke with past testing practices, e.g., the extensive cognitive and field  
14 testing of the complete 2010 Census questionnaire. New York Tr. 997:11-23 (Abowd).

15           607. The failure to conduct an RCT for the citizenship question on the 2020 Census  
16 questionnaire violated best practices for testing and gathering quantitative data on a proposed  
17 added question’s effect on the census count and data collection, which would have been through  
18 an RCT. Tr. 874:10-23, 1039:10-17 (Abowd); New York Tr. 923:16-924:9 (Abowd); Census  
19 Bureau 30(b)(6) Dep. Vol. II 426-430.

20           608. The lack of an RCT also broke with past testing practices for proposed added  
21 questions, e.g., the RCT on the proposed Social Security number question after the 1990 Census.  
22 New York Tr. 998:25-1000:17 (Abowd). As noted, no similar RCT was ever conducted on the  
23 citizenship question for the 2020 Census as it was for the proposed Social Security number  
24 question. *Id.* at 1000:14-17 (Abowd). Dr. Abowd believes that for some subpopulations, asking  
25 about citizenship status could be more sensitive than asking a question about Social Security  
26 numbers. *Id.* at 1000:5-8 (Abowd).

27           609. The decision not to conduct an RCT for the citizenship question on the decennial  
28 census conflicted with Census Bureau employees’ RCT proposal, which demonstrated that the

1 Bureau had the time, resources, and plan to conduct an RCT. PTX-162; PTX-163; PTX-212;  
2 New York Tr. 1001:6-1002:15 (Abowd).

3 610. The lack of testing for the addition of the citizenship question to the 2020 Census  
4 violated collection data quality standards used more generally in the survey methodology and data  
5 collection profession. Tr. 84:19-21 (O’Muircheartaigh).

6 611. Without adequate testing, the Census Bureau will be forced into conducting the  
7 2020 Census with limited awareness of the impact that the citizenship question will have on the  
8 implementation of the census. Habermann Trial Aff. ¶ 68.

9 612. Six former Census Bureau directors wrote to the Commerce Department to state  
10 their view that the citizenship question had not been adequately tested, stating, “There is a well-  
11 proven multi-year process to suggest and test new questions. We strongly believe that adding an  
12 untested question on citizenship status at this late point in the decennial planning process would  
13 put the accuracy of the enumeration and success of the census in all communities at grave risk.”  
14 PTX-117; Tr. 80:24-82:5 (O’Muircheartaigh); Habermann Trial Aff. ¶ 66. According to Dr.  
15 O’Muircheartaigh, those former Census Bureau directors “are certainly among the most informed  
16 people about the execution and processes of censuses in the country.” Tr. 81:22-82:5  
17 (O’Muircheartaigh). Drs. O’Muircheartaigh and Habermann agree with the views of those  
18 former Bureau directors. *Id.* at 80:24-82:5 (O’Muircheartaigh); Habermann Trial Aff. ¶¶ 66, 68.

19 613. The National Academics of Sciences, Engineering, and Medicine’s Committee on  
20 National Statistics (CNSTAT) Task Force on the 2020 Census concluded that the citizenship  
21 question had not been properly tested for inclusion on the decennial census. PTX-371;  
22 Habermann Trial Aff. ¶ 15.

23 614. If Census Bureau had been given more advance notice about the decision to add  
24 the citizenship question on the 2020 Census, it probably would have convened a working group  
25 with the advisory committees to study and test the citizenship question. New York Tr. 1004:9-12  
26 (Abowd).

27  
28

1           615. If the Census Bureau had been given more advance notice about the decision to  
2 add the citizenship question on the 2020 Census, it could have consulted with the Census  
3 Scientific Advisory Committee before a decision was made. *Id.* at 1004:4-8 (Abowd).

4           616. Finally, Dr. Habermann testified that in determining whether a question should be  
5 added to a Census Bureau Survey, “[i]t is the responsibility of the government to ensure that the  
6 intrusion and burden are carefully considered and fully justified. When a question is proposed for  
7 any census or survey instrument, including the decennial census, federal statistical agencies  
8 proceed from the premise that there is a burden of proof on the requestors of the question to  
9 demonstrate the need for the question and to demonstrate that the proposed question will not harm  
10 the survey instrument nor damage the credibility of the statistical system with the public.”

11 Habermann Trial Aff. ¶ 18.

12           **C. Extra-Record Evidence Confirms that Existing ACS Data Is Sufficient for**  
13           **Section 2 VRA Enforcement**

14           **1. CVAP Data Produced by the Census Bureau that Is Used by DOJ for**  
15           **VRA Enforcement Purposes**

16           617. The Census Bureau produces two data files for redistricting purposes. New York  
17 Tr. 1024:4-7 (Abowd); Census Bureau 30(b)(6) Dep. Vol. 1 38:16-392, 40:22-41:20.

18           618. One file, known as the P.L. 94-171 after a law of the same name, provides data to  
19 be used in redistricting at various levels of census geography, including census blocks. *Id.*  
20 1024:8-10; Census Bureau 30(b)(6) Dep. Vol. 1 38:6-40:7.

21           619. The P.L. 94-171 data file is based on responses to the decennial enumeration.  
22 New York Tr. 1024:25-1025:2 (Abowd).

23           620. The P.L. 94-171 data file contains information on total population at various levels  
24 of census geography, as well as voting-age population broken down by race and ethnicity at the  
25 census block level. *Id.* at 1024:15-20.

26           621. The P.L. 94-171 data file has never included citizenship data at any level of  
27 geography. *Id.* at 1025:7-14; Census Bureau 30(b)(6) Dep. Vol. I 40:19-21; ECF No. 146-2, RFA  
28 No. 116.

1           622. P.L. 94-171 data has associated margins of error known as non-sampling error.  
2 New York Tr. 1026:23-1027:3 (Abowd); Census Bureau 30(b)(6) Vol. I 48:22-49:19.

3           623. The other file is a tabulation of citizen age voting age population (CVAP) data  
4 broken out by race and ethnicity. *Id.* 40:22-41:20. It is referred to by the Census Bureau as the  
5 “CVAP tabulation.” New York Tr. 1025:15-20 (Abowd).

6           624. The CVAP tabulation is based on statistical estimates from responses to the ACS  
7 sample survey. *Id.* at 1025:25-1026:2; 1026:13-16 (Abowd).

8           625. The ACS is a yearly survey of approximately two percent of households—about  
9 3.5 million—across the United States, and it contains a question about citizenship status.  
10 Undisputed Facts ¶¶ 85, 86.

11           626. The CVAP tabulation is reported by the Census Bureau at the block group level,  
12 not at the block level. Undisputed Facts ¶¶ 90, 91; New York Tr. 805:14-16 (Handley).

13           627. The Census Bureau’s tabulation of CVAP data is produced regularly and is  
14 publicly available. Census Bureau 30(b)(6) Dep. Vol. I 40:22-42:5.

15           628. The CVAP tabulation has an associated margin of error referred to as a sampling  
16 error. New York Tr. 1026:17-22; 1027:13-1028:1 (Abowd); New York Tr. 805:11-13 (Handley).

17           629. The Census Bureau produces different forms of CVAP data, including one-year  
18 statistical estimates based on a single year of ACS survey responses for CVAP (1-year ACS  
19 estimates) and five-year statistical estimates aggregated from a consecutive 5-year period for  
20 CVAP (5-year ACS estimates). Undisputed Facts ¶ 97; New York Tr. 1028:7-16 (Abowd).

21           630. The 5-year ACS estimates represent a sample of about one in eight households,  
22 roughly comparable to the long form’s sample of about one in six households. Undisputed Facts  
23 ¶¶ 78, 98 (ECF 119); New York Tr. 807:2-9 (Handley).

24           631. The 5-year ACS estimates have larger sample sizes, and thus smaller margins of  
25 error, than the one-year estimates across the same geographic area. The 5-year ACS estimates are  
26 more precise than the 1-year ACS estimates, except with respect to the age of the data. *Id.* at  
27 806:6-13 (Handley), 1028:17-1029:1 (Abowd).

28

1           632. The 1-year ACS estimates are deemed by the Census Bureau as reliable for only  
2 those areas having a population of more than 65,000 people, whereas the five-year estimates are  
3 reliable for areas with smaller populations. *Id.* at 807:15-21 (Handley), 1029:6-14 (Abowd);  
4 PTX-356.

5           633. From the 1970 Census through the 2000 Census, before the advent of the ACS, the  
6 Census Bureau included a citizenship question on the “long form” questionnaire; in 2000, the  
7 long form was sent to about one in every six households during each decennial census.  
8 Undisputed Facts ¶ 78; New York Tr. 802:14-803:3 (Handley).

9           634. Because the long form questionnaire was not sent to every household in the U.S.,  
10 citizenship data based on responses to the long form were estimates based on a statistical sample  
11 and which had an associated margin of error. Undisputed Facts ¶ 79; New York Tr. 802:4-803:8  
12 (Handley), 1026:3-12 (Abowd).

13           635. The citizenship data collected from the long form questionnaire was reported by  
14 the Census Bureau at the block group level, not at the block level. Undisputed Fact ¶ 82; ECF  
15 No. 146-2, RFA No. 156; New York Tr. 805:17-20 (Handley).

16           636. Between the 2000 Census and the 2010 Census, the long form was discontinued  
17 and its functions were replaced by the ACS. Undisputed Facts ¶¶ 83-84.

18           637. Since the enactment of the Voting Rights Act in 1965, CVAP data has never been  
19 available through the decennial enumeration, and the decennial questionnaire has never included  
20 a question about citizenship. New York Tr. 802:6-13 (Handley); Undisputed Facts ¶ 77.

21           638. Since the passage of the Voting Rights Act of 1965, DOJ has never had access to  
22 CVAP data based on “hard-count” total population data from the Decennial Census. Gore Dep.  
23 203:5-10.

24           639. When it has needed citizenship data for purposes of VRA enforcement, DOJ has  
25 always relied on CVAP data that are based on statistical estimates and subject to a margin of  
26 error. New York Tr. 1028:2-6 (Abowd); New York Tr. 802:6-13 (Handley); Gore Dep. 174:4-  
27 175:19 (objection), 203:5-10.

28



1           640. In the event a citizenship question is included in the 2020 Census, it is unknown  
2 whether the P.L. 94-171 data file would include block-level citizen voting-age population data,  
3 and it is therefore unknown whether CVAP data broken down by race and ethnicity will be  
4 available at the block level in a single data set. New York Tr. 1029:15-1030:6 (Abowd).

5           641. In the event a citizenship question is included in the 2020 Census, the Census  
6 Bureau has not yet determined whether the block-level CVAP data that it produces will be based  
7 primarily on responses to the citizenship question on the decennial questionnaire. New York Tr.  
8 1030:3-12 (Abowd).

9                           **2. The Census Bureau's Use of Disclosure Avoidance Techniques to**  
10                           **Protect the Confidentiality of Census Respondents**

11           642. Title 13, section 9, of the U.S. Code prohibits disclosure of identifiable data from  
12 individual household responses to the decennial census. New York Tr. 1030:17-21 (Abowd).

13           643. Title 13 prohibits the Census Bureau from releasing data at the block level that  
14 could be used to identify the person who supplied those data. *Id.* at 1031:22-1032:5 (Abowd);  
15 ECF No. 146-2, RFA No. 138.

16           644. This prohibition includes individual responses to a question about citizenship  
17 status on the decennial questionnaire. *Id.* at RFA No. 139.

18           645. This prohibition includes disclosures to DOJ. New York Tr. 1030:22-25 (Abowd);  
19 ECF No. 146-2, RFA No. 141.

20           646. Because of confidentiality concerns, citizenship data reported in the Decennial  
21 Census will be subject to disclosure avoidance process to prevent the personal identification of  
22 individuals or families in relation to their reported answers. *Id.* at 1032:6-10, 1032:24-1033:15  
23 (Abowd), 834:19-835:3 (Handley); Census Bureau 30(b)(6) Dep. Vol. I 50:6-51:3.

24           647. The size of census blocks is determined through negotiations with bipartisan  
25 redistricting offices in order to create blocks that are sufficiently small to accurately represent its  
26 population (because this information is used to create, for example, school and voting districts),  
27 but not small enough to reveal the addresses of all residents. New York Tr. 1033:22-1034:21  
28 (Abowd).

1           648. One disclosure avoidance technique used by the Census Bureau is “household-  
2 level swapping,” which involves matching certain variables in one household’s records with those  
3 of another household within a different geographic area, such as a different census block. *Id.* at  
4 1039:22-1040:12 (Abowd); Census Bureau 30(b)(6) Dep. Vol. I 51:4-53:17.

5           649. Another of the Census Bureau’s more modern techniques is “noise infusion,”  
6 which involves adding “random noise” to the tabulation, reconstructing the microdata, and  
7 publishing the count from the data to which the random noise has been added. The random noise  
8 introduces “substantial uncertainty” about the characteristics of the single person, which  
9 uncertainty decreases as the number of persons involved increases. New York Tr. 1032:17-23,  
10 1034:23-1036:5, 1040:13-1041:22 (Abowd).

11           650. A type of noise infusion called “synthetic noise infusion” involves replacing  
12 certain variables in one household’s records with synthetic data based on a predictive distribution.  
13 *Id.* at 1040:24-1041:5 (Abowd); Census Bureau 30(b)(6) Dep. Vol. I 53:19-54:10.

14           651. The Census Bureau applies these disclosure avoidance techniques to all census  
15 blocks, such that no reported data reflects the responses of the actual residents of that block,  
16 unless by random chance. New York Tr. 1033:16-21 (Abowd).

17           652. Where a census block has only one resident, the disclosure avoidance technique  
18 infuses noise, and thereby changes, every characteristic associated with that individual. *Id.* at  
19 1036:18-1037:4 (Abowd); *see also id.* at 835:17-836:20, 837:17-22 (Handley).

20           653. By its nature, the disclosure avoidance process introduces further errors into  
21 CVAP data produced at the block level. Census Bureau 30(b)(6) Dep. Vol. I 53:12-17, 69:6-  
22 71:12.

23           654. The use of disclosure avoidance techniques impacts the accuracy of the CVAP  
24 data produced by the Census Bureau to an extent that may not be within an acceptable dimension  
25 for the particular use case for the data. New York Tr. 1038:9-1039:12 (Abowd).

26           655. The smaller the population within the geographic area to which noise infusion is  
27 applied, the less accurate the resulting data will be for that area. *Id.* at 1041:6-1042:16 (Abowd).

28

1           656. The accuracy of CVAP data produced based on responses to a citizenship question  
2 on the decennial census, to which noise infusion has been applied, will be more uncertain at  
3 smaller levels of geography and with smaller populations. *Id.* at 1042:17-23 (Abowd).

4           657. The Census Bureau has not yet set parameters or procedures for disclosure  
5 avoidance for the CVAP data that will be collected from the 2020 Census if a citizenship question  
6 is included. *Id.* at 1042:24-1043:2 (Abowd); ECF No. 146-2, RFA Nos. 103, 152, 153. Dr.  
7 Abowd does not yet know what these procedures will be. ECF No. 146-2, RFA No. 154.

8           658. The block-level CVAP data that would be created after the 2020 Census if a  
9 citizenship question is included will be an estimate, rather than a precise tabulation, and will have  
10 error margins associated with it. *Id.* at 1043:24-1044:3, 1044:11-15 (Abowd).

11           659. The Census Bureau does not know whether the block-level CVAP data collected  
12 with a citizenship question on the 2020 Census will have a margin of error any more precise than  
13 the CVAP data on which DOJ currently relies. *Id.* at 1045:19-1046:2 (Abowd); Census Bureau  
14 30(b)(6) Dep. Vol. I 100:12-101:15.

15           660. Dr. Abowd advised Secretary Ross about the impact of the Census Bureau's  
16 disclosure avoidance protocols on the accuracy and quality of enumerated citizenship data during  
17 a February 12, 2018 meeting. New York Tr. 1046:15-1048:2; PTX-128.

18           661. Prior to the March 26 Decision Memo, there were no conversations between the  
19 Census Bureau and DOJ regarding the issue of disclosure avoidance of block-level citizenship  
20 data. New York Tr. 1046:3-8 (Abowd).

21           662. There are no documents in the Administrative Record reflecting the way in which  
22 disclosure avoidance might affect the precision of block-level CVAP data that DOJ was  
23 requesting from the Census Bureau. *Id.* at 1047:21-1048:2 (Abowd).

24           663. There are no documents in the Administrative Record indicating that Secretary  
25 Ross considered the effect of disclosure avoidance on the precision of block-level CVAP data  
26 based on responses to a citizenship question on the Census questionnaire.

27  
28

1           664. The position of both the Census Bureau and Dr. Abowd is that a citizenship  
2 question on the 2020 Census is not necessary to provide complete and accurate data in response  
3 to the DOJ request. New York Tr. 1048:10-19 (Abowd).

4                   **3. Dr. Handley’s Opinions on the Adequacy of Existing CVAP Data**  
5                   **Sources and the Impact of Disclosure Avoidance on CVAP Data**  
6                   **Quality**

7           665. Plaintiffs have offered the expert testimony of Dr. Lisa Handley regarding the  
8 effectiveness of current Census Bureau data resources in determining whether the citizenship rate  
9 of a minority group impacts its ability to participate in the electoral process and elect candidates  
10 of its choice in litigation under section 2 of the VRA. Dr. Handley is a consultant in redistricting  
11 and in electoral district design. She has over thirty years of experience as an expert in  
12 redistricting, minority voting rights, and the use of census data for voting rights enforcement  
13 purposes, advising governments, non-profits, and NGOs on minority voting rights and  
14 redistricting-related issues and serving as an expert in dozens of voting rights cases, including  
15 five section 2 redistricting cases on behalf of DOJ. New York Tr. 788:22-796:3 (Handley), PTX-

16           666. Based on her education, experience, and knowledge, Dr. Handley is well-qualified  
17 to offer reliable and credible opinions on section 2 of the VRA, and the use of census data in  
18 section 2 litigation and enforcement proceedings.

19           667. Dr. Handley testified to her professional opinion that “currently available census  
20 data has proven perfectly sufficient to ascertain whether an electoral system or redistricting plan  
21 dilutes minority votes.” New York Tr. 796:22-797:12, 819:19-23 (Handley); PTX-650.

22           668. In *Thornburg v. Gingles*, 478 U.S. 30 (1986), the U.S. Supreme Court determined  
23 that minority plaintiffs need to satisfy three threshold factors to establish a violation of section 2  
24 of the Voting Rights Act in cases alleging vote dilution: (1) the minority group must be  
25 sufficiently large and geographically compact to constitute a majority in a single-member district;  
26 (2) the minority group must be politically cohesive; and (3) the minority group must be able to  
27 demonstrate that the white majority votes sufficiently as a bloc to enable it to usually defeat the  
28

1 minority's preferred candidate. New York Tr. 797:16-799:19 (Handley); PTX-651; *see also* ECF  
2 No. 145 [Karlan Trial Dep.] 30:2-24.

3 669. Citizenship data is most relevant to the first *Gingles* precondition. New York Tr.  
4 798:15-799:19 (Handley); *see also* Karlan Trial Dep. 30:25-32:14.

5 670. Specifically, Dr. Handley testified that plaintiffs in section 2 vote dilution  
6 litigation typically use data collected and reported by the Census Bureau—currently, the ACS,  
7 and previously, the long-form census questionnaire—to determine whether there are a sufficient  
8 number of geographically concentrated minorities within a geographic area to satisfy the first  
9 *Gingles* precondition. New York Tr. 798:25-799:6 (Handley); *see also* Karlan Trial Dep. 33:18-  
10 34:7 (objection).

11 671. Dr. Handley testified that she occasionally uses Census Bureau data to conduct an  
12 analysis under the third *Gingles* precondition of voting patterns by race/ethnicity if registration or  
13 turnout data by race/ethnicity is not available. New York Tr. 799:9-800:10 (Handley).

14 672. Dr. Handley testified that if a court finds that a jurisdiction is violating section 2,  
15 Census Bureau data regarding the demographic composition of geographic area can be used in  
16 part to draw effective remedial districts, but the electoral behavior of those within the district—  
17 participation rates and cohesiveness by race—plays a far more important role. *Id.* at 800:11-  
18 801:6 (Handley).

19 673. When crafting remedial districts, Dr. Handley explained that she uses a district-  
20 specific, functional approach in which an analysis of voting patterns by race and ethnicity plays  
21 the essential role in the evaluation, and citizenship rates are taken into account only indirectly.  
22 This is the same approach DOJ has adopted. *Id.* at 800:11-801:6, 823:12-824:11 (Handley);  
23 PTX-247.

24 674. Dr. Handley testified that, in her experience, CVAP estimates at the census tract or  
25 block group level are generally sufficient to satisfy the first *Gingles* precondition in Voting Rights  
26 Act cases. New York Tr. 807:24-811:6 (Handley).

27 675. Dr. Handley testified that, where it would be helpful to present CVAP data at the  
28 block level, this information can be reliably and accurately estimated using block-level CVAP

1 data by applying the CVAP ratios from the census tract level to the block-level figures for total  
2 voting-age population. *Id.* at 808:10-815:5 (Handley). Dr. Handley described how block-level  
3 CVAP estimates derived from ACS data at the census tract or block group levels are reliable and  
4 accurate. *Id.* at 815:8-819:23, 855:23-856:10 (Handley).

5 676. Dr. Handley further explained that, in the district-specific functional analysis that  
6 she employs in VRA analysis, and used by DOJ, the outcome does not depend on a precise  
7 measurement of CVAP at the individual block level, but rather on an analysis of turnout rates and  
8 voting patterns within a district. The number of minority citizens of voting age at the block level  
9 is “essentially irrelevant” to the analysis. *Id.* at 820:2-823:11 (Handley); PTX-247.

10 677. Dr. Handley’s work as a VRA expert has never been impeded by her use of 5-year  
11 ACS CVAP data, and Dr. Handley is also not aware of any VRA claim that failed due to a  
12 plaintiff’s reliance upon 5-year ACS CVAP data. New York Tr. 832:14-21 (Handley).

13 678. The Census Bureau is also not aware of any case in which the U.S. or any other  
14 plaintiff was unable to succeed on a VRA claim due to reliance on CVAP data from the ACS,  
15 including 5-year ACS data. ECF No. 146-2, RFA Nos. 163-169.

16 679. The Census Bureau is also not aware of any case in which the U.S. or any other  
17 plaintiff was unable to succeed on a VRA claim because of the fact that ACS data has a margin of  
18 error that increases as the size of the geographic area in question decreases. *Id.*, RFA Nos. 116,  
19 117.

20 680. With respect to the December 12, 2017 letter from Arthur Gary requesting that a  
21 citizenship question be added to the decennial questionnaire, Dr. Handley noted that what cases  
22 were cited in the DOJ’s December 12 Letter all predated the availability of ACS data and  
23 therefore did not speak to its adequacy. New York Tr. 824:12-825:13 (Handley); PTX-32.

24 681. The December 12 Letter identifies as a purported limitation of using CVAP data  
25 from the ACS the fact that it comes from a separate data set than the total population data on  
26 which DOJ also relies. PTX-32 at 2. Dr. Handley testified that, in her decades of practice, she  
27 has never had access to a single data set combining total population data and block-level CVAP  
28 data. New York Tr. 827:13-19 (Handley).

1           682. Dr. Handley further explained how, in her experience, it has not been problematic  
2 to work with population data from two different sets. Both data sets are integrated harmoniously  
3 in the GIS mapping system she uses to draw districts, and her work as a voting rights expert has  
4 never been impeded by the fact of having to work with multiple data sets. *Id.* at 826:14-828:23  
5 (Handley).

6           683. Dr. Handley is not aware of any VRA claim that failed on account of a plaintiff's  
7 reliance upon total population data and CVAP data coming from different data sets. *Id.* at  
8 828:24-829:3 (Handley).

9           684. The December 12 Letter identifies as a purported limitation of using CVAP data  
10 from the ACS the fact that some ACS data, unlike data from the decennial questionnaire, is  
11 collected over a span of multiple years. PTX-32 at 3.

12           685. Dr. Handley testified that it is possible to align multi-year ACS estimates with  
13 single-year census data by using data from a multi-year span, the midpoint of which is the  
14 decennial year. New York Tr. 829:5-830:5 (Handley).

15           686. Dr. Handley is not aware of any VRA claim that failed due to reliance upon ACS  
16 and decennial census data spanning different years or time periods, and she testified that her work  
17 as voting rights expert has never been impeded by the use of data spanning different years or time  
18 periods. *Id.* at 830:6-15 (Handley).

19           687. The December 12 Letter identifies as a purported limitation of using CVAP data  
20 from the ACS the fact that ACS data is a statistical sample and has an associated error margin.  
21 PTX-32 at 3. Dr. Handley testified that, in her decades of practice, she has never had access to  
22 CVAP data broken out by race and ethnicity without an associated margin of error. New York  
23 Tr. 830:16-831:19 (Handley).

24           688. Dr. Handley is not aware of any VRA claim that failed due to reliance on CVAP  
25 data having an associated margin of error, and she testified that her work as voting rights expert  
26 has never been impeded the lack of CVAP data without error margins. *Id.* at 831:5-11 (Handley).

27           689. The December 12 Letter identifies as a purported limitation of relying on CVAP  
28 data from the ACS the fact that data can only be generated at the block levels using estimates.

1 PTX-32 at 3. As discussed above, Dr. Handley testified that such estimates can be prepared in an  
2 accurate and reliable manner. New York Tr. 808:10-819-23 (Handley).

3 690. Dr. Handley is not aware of any VRA claim that failed on account of a plaintiff's  
4 use of estimation procedures to generate block-level CVAP data, and the use of such procedures  
5 has never impeded her work as a voting rights expert. *Id.* at 831:21-832:18 (Handley).

6 691. Dr. Handley opined that the Census Bureau's disclosure avoidance practices will  
7 prevent the generation of accurate data regarding the actual number of citizens of voting age  
8 residing in a particular census block. *Id.* at 835:4-10 (Handley).

9 692. Dr. Handley testified to a reasonable degree of scientific certainty that CVAP data  
10 collected through a citizenship question on the decennial questionnaire would not be more  
11 accurate than the CVAP data on which she currently relies. *Id.* at 839:23-840:4 (Handley).

#### 12 4. Professor Karlan's Opinions Regarding the Adequacy of Existing 13 CVAP Data Sources

14 693. Plaintiffs have offered the expert testimony of Professor Pamela S. Karlan  
15 regarding whether the inclusion of a question about citizenship status in the Decennial Census  
16 would assist DOJ in enforcing section 2 of the VRA. Professor Karlan's area of academic  
17 specialty is constitutional law and litigation, with a special emphasis on legal regulation of the  
18 political process. Karlan Trial Dep. 9:13-16.

19 694. Professor Karlan has served as Deputy Assistant Attorney General in DOJ's Civil  
20 Rights Division from January 2014 through September 2015, overseeing the work of the Voting  
21 Section, which enforces the VRA, and as assistant counsel to the NAACP Legal Defense Fund,  
22 litigating voting rights cases on behalf of plaintiffs and *amici curiae*, including numerous cases  
23 brought under section 2 of the VRA before the U.S. Supreme Court, among other federal courts.  
24 *Id.* at 10:9-21, 12:18-14:7, 22:3-15. She has co-authored two casebooks which covers the VRA,  
25 among other topics, and she has written approximately one dozen academic articles about the  
26 VRA. *Id.* at 18:2-20:3; 24:22-25:21.



1           695. Based on her education, experience, and knowledge, Ms. Karlan is well-qualified  
2 to offer reliable and credible opinions on section 2 of the VRA, and the use of census data in  
3 section 2 litigation and enforcement proceedings.

4           696. Ms. Karlan testified to her professional opinion that existing data sources from the  
5 ACS are sufficient for plaintiffs to bring and prevail in cases brought under section 2 of the VRA.  
6 *Id.* at 29:14-23, 66:15-23.

7           697. Ms. Karlan explained that section 2 of the VRA protects the rights of minority  
8 voters to elect candidates of their choosing, and that section 2 cases can proceed under either of  
9 two theories—an actual denial of one’s right to vote, or the dilution of one’s vote by factors such  
10 as the drawing of legislative districts. *Id.* at 14:8-15:7.

11           698. Ms. Karlan testified that no reported section 2 case has ever failed on account of  
12 the purported inadequacy of ACS data (or, prior to the advent of the ACS, data from the long-  
13 form census questionnaire) as a measure of CVAP. *Id.* at 52:14-53:18.

14           699. Ms. Karlan testified that nothing in the December 12 Letter altered her  
15 professional opinion that existing data sources are sufficient for plaintiffs to bring and prevail in  
16 litigation under section 2 of the Voting Rights Act. *Id.* at 66:24-67:20.

17           700. Ms. Karlan noted that the December 12 Letter did not identify any cases in which  
18 the inaccuracy or inadequacy of ACS data caused a plaintiff to lose a section 2 case. *Id.* at 54:5-  
19 15.

20 **V. FINDINGS RELATED TO THE CENSUS COUNT AND STANDING – BASED ON THE**  
21 **ADMINISTRATIVE RECORD AND EXTRA-RECORD EVIDENCE**

22 **A. The Citizenship Question Will Cause a Differential Undercount and Harm**  
**Data Quality**

23 **1. The Citizenship Question Will Cause a Differential Decline in Self-**  
24 **Response Rates**

25           701. The evidence is undisputed that adding a citizenship question to the 2020 Census  
26 will cause additional people not to respond to the census than would otherwise have responded—  
27 and in particular, that the citizenship question will cause a net differential decline in self-response  
28 rates for noncitizen and Hispanic households.

1           702. Given this evidence, Dr. Abowd and the Census Bureau leadership have  
2 consistently recommended not to include a citizenship question on the 2020 Census. New York  
3 Tr. 879:2-8 (Abowd). Dr. Abowd’s expert opinion is that the research that was done under his  
4 supervision established that there was credible quantitative evidence that adding a citizenship  
5 question to the 2020 Census is expected to lower self-response rates. Tr. 797:20-25 (Abowd).  
6 More specifically, Dr. Abowd endorses Census Bureau research findings that the citizenship  
7 question will lead to a lower self-response rate in households that potentially contain a noncitizen,  
8 New York Tr. 881:19-882:1 (Abowd), and that lower self-response rates will harm the quality of  
9 census data, *id.* at 882:2-5 (Abowd).

10                           **a. The Census Bureau concluded, in three memoranda, that the**  
11                           **citizenship question will cause a differential decline in self-**  
12                           **response rates**

12           703. These opinions, which are shared by the experts for all parties, are stated in three  
13 memoranda issued by the Census Bureau: the December 22 Memo (PTX-148), the January 19  
14 Memo (PTX-22), and the Brown, et al. Memo (PTX-160). New York Tr. 896:7-15 (Abowd);  
15 Census Bureau 30(b)(6) Dep. Vol. II 353:2-6, 353:19-21.

16                           **(1) The December 22 Memo**

17           704. The December 22 Memo authored by Dr. Abowd’s SWAT team of technical  
18 experts found that, based on a comparison of self-response rates to the 2010 Census and the 2010  
19 ACS (which included a citizenship question), noncitizen households were 5.1 percent less likely  
20 than all-citizen households to respond to a survey with a citizenship question. PTX-103 and  
21 PTX-148 at 6-7. This finding is “consistent with citizenship questions being more sensitive for  
22 households with noncitizens,” *id.* at 7—a fact that is not in dispute. *See* PTX-146-2 at RFA 70.

23                           **(2) Dr. Abowd’s January 19 Memo to Secretary Ross**

24           705. Dr. Abowd’s January 19 Memo conveyed the 5.1 percent estimate to Secretary  
25 Ross. PTX-22 at 4. That a citizenship question would cause a 5.1 percent differential decline in  
26 the self-response rate of noncitizen households was the result of just one of the “[t]hree distinct  
27 analyses” in the January 19 Memo that “support the conclusion of an adverse impact on self-  
28 response and, as a result, on the accuracy and quality of the 2020 Census.” *Id.* The other two

1 analyses focused on indicators that suggest that Hispanic households are disproportionately less  
2 likely to respond to a survey with a citizenship question.

3 706. The first was an analysis of item nonresponse rates—the rate at which respondents  
4 do not answer a particular survey question. New York Tr. 905:22-24 (Abowd). Item  
5 nonresponse rates for the citizenship question on the ACS were more than twice as high for  
6 Hispanics as for non-Hispanic whites from 2013 through 2016, and increased for Hispanics by  
7 2.5 percent over that span. PTX-22 at 4; *see also* New York Tr. 906:12-908:6 (Abowd); Tr.  
8 156:4-157:19 (O’Muircheartaigh).

9 707. The second was an analysis of breakoff rates—the rate at which respondents stop  
10 completing a survey when presented with a particular question. New York Tr. 913:13-24  
11 (Abowd). The breakoff rate for the citizenship question on the 2016 ACS was more than eight  
12 times higher for Hispanics than for non-Hispanic whites. PTX-22 at 5; *see also* New York Tr.  
13 914:5-8 (Abowd); Tr. 158:4-21 (O’Muircheartaigh). Similarly, the breakoff rate for three related  
14 questions on immigration status (citizenship, place of birth, and year of entry) on the 2016 ACS  
15 was more than three times higher for Hispanics than for non-Hispanic whites. PTX-22 at 5; *see*  
16 *also* New York Tr. 915:9-13 (Abowd).

17 708. Based on its analysis of item nonresponse rates and breakoff rates, Dr. Abowd  
18 concluded that a citizenship question would be sensitive for Hispanics, and that the sensitivity of  
19 the question is increasing for Hispanics (but not for non-Hispanic whites). New York Tr. 917:4-  
20 918:2 (Abowd).

### 21 (3) The Brown, et al. Memo

22 709. The Brown, et al. Memo extends upon and updates the analysis in Dr. Abowd’s  
23 January 19 Memo. New York Tr. 896:7-12 (Abowd). The initial draft of this memorandum is in  
24 the Administrative Record. *See* PTX-4B at AR 5500; PTX-4D at AR 11364. The Census Bureau  
25 believes that the Brown, et al. Memo’s analysis is methodologically sound and represents the  
26 Census Bureau’s best analysis of the consequences of adding a citizenship question to the 2020  
27 Census. Census Bureau 30(b)(6) Dep. Vol. II 355:15-356:15; New York Tr. 897:4-15 (Abowd).

28 710. The Brown, et al. Memo summarized its findings as follows:

1 This paper’s examination of several Census Bureau surveys with and without  
2 citizenship questions suggests that households that may contain noncitizens are more  
3 sensitive to the inclusion of citizenship in the questionnaire than all-citizen  
4 households. The implication is that adding a citizenship question to the 2020 Census  
would lead to lower self-response rates in households potentially containing  
noncitizens, resulting in more nonresponse follow-up (NRFU) fieldwork, more proxy  
responses, and a lower-quality population count.

5 PTX-160 at 54. The Brown, et al. Memo also presented data showing that citizenship-related  
6 questions are more sensitive for Hispanics and that, because Hispanics have higher rates of  
7 nonresponse for citizenship than for sex or age, they “could be disproportionately impacted” by  
8 adding a citizenship question to the 2020 Census questionnaire. PTX-160 at 7-10.

9 711. The Brown, et al. Memo updated the estimated 5.1 percent differential decline in  
10 the self-response rate of noncitizen households to 5.8 percent. PTX-160 at 39; Census Bureau  
11 30(b)(6) Dep. Vol. II 372:2-12; New York Tr. 897:16-20 (Abowd); Tr. 161:13-21  
12 (O’Muirheartaigh). The 5.8 percent figure represents the Census Bureau’s best conservative  
13 estimate of the differential effect of the citizenship question on noncitizen household self-  
14 response. New York Tr. 894:17-895:2, 897:9-12 (Abowd). This estimate is the result of a natural  
15 experiment that compared response rates on the 2016 ACS, which included a citizenship question,  
16 to response rates on the 2010 Census, which did not incorporate a citizenship question, and then  
17 compared the change in response rates between all-citizen households and all other households  
18 (*i.e.*, households that contain or may contain one or more noncitizens). PTX-160 at 33-34;  
19 Census Bureau 30(b)(6) Dep. Vol. II 373:9-15, 374:10-16; New York Tr. 898:2-899:6 (Abowd);  
20 Tr. 161:22-164:17 (O’Muirheartaigh).

21 712. The Brown, et al. Memo emphasized that the 5.8 percent estimate was  
22 “conservative,” PTX-160 at 39; New York Tr. 900:21-25 (Abowd); Tr. 164:21-24  
23 (O’Muirheartaigh)—in other words, it may have underestimated the impact of the citizenship  
24 question on census self-response rates—for two reasons: (1) the question will be more prominent  
25 on the 2020 Census questionnaire, which has just ten other questions, than it was on the ACS  
26 questionnaire, which has 75 questions, PTX-160 at 39; New York Tr. 901:22-902:10 (Abowd);  
27 Tr. 164:25-165:14 (O’Muirheartaigh), and (2) given “the level of concern about using  
28 citizenship data for enforcement purposes,” the macro-environment at the time of the 2020

1 Census may be worse than it was when the ACS data were collected, PTX-160 at 39; New York  
2 Tr. 902:11-24 (Abowd); Tr. 165:15-21 (O’Muircheartaigh).

3 713. The 5.8 percent estimate may also be conservative because of limitations in the  
4 design of the natural experiment. For example, the natural experiment only accounts for the  
5 decline in the self-response rate for noncitizen households, and the assumption that there will not  
6 be any decline in the self-response rate for all-citizen households is “probably wrong.” New  
7 York Tr. 903:1-905:9 (Abowd); Tr. 484:17:25 (Barreto). In addition, the natural experiment  
8 assumed that individuals whose citizenship information was missing from administrative records  
9 were citizens, which had the effect of reducing the estimated difference between the response  
10 rates of all-citizen households and noncitizen households. Tr. 165:25-166:15 (O’Muircheartaigh).

11 714. The Brown, et al. Memo also confirmed the findings in Dr. Abowd’s January 19  
12 Memo that showed that (1) Hispanics were more than twice as likely as non-Hispanic whites to  
13 skip the citizenship question on the ACS and that the differential in such item nonresponse rates  
14 increased between 2013 and 2016, and (2) the breakoff rate for the citizenship question on the  
15 2016 ACS was more than eight times higher for Hispanics than for non-Hispanic whites. PTX-  
16 160 at 8-11. Based on these data, the Census Bureau has concluded that “Hispanics are more  
17 sensitive to survey questions about citizenship than they were a few years ago” but that non-  
18 Hispanic whites “are not.” Census Bureau 30(b)(6) Dep. Vol. II 369:1-19. These data suggest  
19 that nonresponse rates to the citizenship question on the 2020 Census will be higher for Hispanics  
20 than for non-Hispanic whites. New York Tr. 910:7-13, 914:9-11 (Abowd).

21 715. Recent Census Bureau data show that the differential breakoff is escalating. After  
22 the January 19 Memo and the Brown, et al. Memo were issued, the Census Bureau made the 2017  
23 ACS breakoff data publicly available. New York Tr. 915:19-916:3 (Abowd). Those data, which  
24 were reviewed by the SWAT team, showed that the breakoff rate for the citizenship question on  
25 the 2017 ACS is now twelve times higher for Hispanics than for non-Hispanic whites. PTX-9 at  
26 1; New York Tr. 916:4-917:3 (Abowd).

27  
28

1                   **b. Recent Census Bureau qualitative research suggests that the**  
2                   **citizenship question will cause an even greater differential**  
3                   **decline in self-response rates than estimated by Brown, et al.**

4           716. The macro-environment, particularly the political environment around  
5 immigration, may amplify the negative effect of the citizenship question on self-response rates.  
6 New York Tr. 926:21-927:10 (Abowd). Recent Census Bureau qualitative research supports  
7 Brown, et al.'s observation that the 5.8 percent estimate is conservative because the macro-  
8 environment for the citizenship question is changing. This research includes Center for Survey  
9 Measurement (CSM) focus group testing in 2017, which revealed concerns among immigrants  
10 about the confidentiality of their survey responses, PTX-157, and the Census Barriers, Attitudes,  
11 and Motivators Study (CBAMS) conducted in 2018, which revealed concerns among Spanish-  
12 language respondents about the citizenship question, PTX-153.

13                   **(1) CSM Memo**

14           717. CSM researchers summarized the respondent confidentiality concerns they  
15 observed in a September 20, 2017, memo for the Associate Directorate for Research and  
16 Methodology at the Census Bureau, PTX-157, and in presentations of their findings to the  
17 American Association of Public Opinion Research (AAPOR), PTX-158, and to the National  
18 Advisory Committee on Racial, Ethnic, and Other Populations, PTX-326.

19           718. During the pretesting studies they conducted in 2017, CSM researchers “noticed a  
20 recent increase in respondents spontaneously expressing concerns about confidentiality” and  
21 “reported that respondents’ fears, particularly among immigrant respondents, have increased  
22 markedly this year.” PTX-157 at 1.

23           719. For example, CSM researchers observed Spanish-speaking respondents that were  
24 “uncomfortable ‘registering’ other household members,” that “left three or four roomers off the  
25 roster” and “mentioned being worried because of their ‘[immigration] status,’” and that stated that  
26 “the Latino community will not sign up because they will think that Census will pass their  
27 information on and people can come looking for them.” PTX-157 at 2.

28           720. CSM researchers noted that “this level of deliberate falsification of the household  
roster, and spontaneous mention of concerns regarding negative attitudes toward immigrants, is

1 largely unprecedented in the usability interviews that CSM has been conducting since 2014 in  
2 preparation for the 2020 Census.” *Id.* at 3. One field representative observed that “[t]he politics  
3 have changed everything. Recently.” *Id.* at 4. CSM researchers worried that the concerns  
4 expressed by immigrant respondents might be “even more pronounced” during the 2020 Census,  
5 because respondents are generally more willing to participate in pretesting surveys “given that  
6 they are being paid a cash incentive for their participation and [are] being interviewed by a  
7 researcher with whom they have established rapport.” *Id.* at 3.

8 721. During focus group testing, respondents similarly expressed “fear of deportation,  
9 concerns about how the data are used, and which agencies can see it,” specifically asking whether  
10 the Department of Homeland Security (DHS) or Immigration and Customs Enforcement (ICE)  
11 would have access to their data. PTX-326 at 9.

## 12 (2) CBAMS results

13 722. The CBAMS is a survey of 50,000 households in a series of 42 focus groups  
14 designed to inform the integrated partnership and communications program for the 2020 Census  
15 about the macro-environment. Census Bureau 30(b)(6) Dep. Vol. II 437:17-438:6; New York Tr.  
16 927:22-928:6 (Abowd). The Census Bureau finds CBAMS research sufficiently reliable to  
17 provide actionable information for the integrated partnership and communications program.  
18 Census Bureau 30(b)(6) Dep. Vol. II 438:7-11.

19 723. After Secretary Ross announced that the 2020 Census would include a citizenship  
20 question, Census Bureau researchers began asking for feedback about the question from 30 of the  
21 42 focus groups, including all Spanish-language groups. PTX-161 at 6; New York Tr. 930:16-19  
22 (Abowd).

23 724. The CBAMS found that in the Spanish-language (U.S. Mainland) focus groups,  
24 the citizenship question was a “determining factor for participation.” PTX-153 at 22. Although  
25 most participants said that they were not afraid to answer the citizenship question because they  
26 are citizens or legal residents, they knew many others would not participate in the 2020 Census  
27 “out of fear.” *Id.* While all participants wanted to participate in the 2020 Census, “fear of  
28 deportation outweighs any benefit.” *Id.*

1           725. The Census Bureau’s interpretation of the results of the Spanish-language focus  
2 groups is that they indicate that the citizenship question is “extremely problematic in that  
3 population.” Census Bureau 30(b)(6) Dep. Vol. II 450:16-451:1; New York Tr. 934:8-12  
4 (Abowd). The CBAMS results for other immigrant and non-white groups were similar. New  
5 York Tr. 930:9-24, 938:22-939:17, 940:4-941:14 (Abowd) (citing PTX-465). Census Bureau  
6 researchers found that “[t]he citizenship question may be a major barrier” to participation in the  
7 2020 Census because respondents, including citizens and legal residents, believed that the  
8 census’s purpose “is to find undocumented immigrants” and because “[t]he political discourse is  
9 targeting their ethnic group.” PTX-465 at 43.

10           726. The CBAMS results suggest that the citizenship question is sensitive in the current  
11 macro-environment and is a “major concern” for the Census Bureau’s efforts to encourage  
12 participation in the 2020 Census. New York Tr. 944:7-24 (Abowd). The sensitivity to the  
13 citizenship question that was observed in the 2018 CBAMS results was not captured in Brown, et  
14 al.’s 5.8 percent estimate, which was based on 2016 data. *Id.* at 944:25-925:4 (Abowd).

15                           **c. Plaintiff experts’ testimony further supports the conclusion that**  
16                           **the citizenship question will cause a greater differential decline**  
17                           **in self-response rates than estimated by Brown, et al.**

18                           **(1) Dr. Colm O’Muirheartaigh**

19           727. Dr. O’Muirheartaigh testified that he agrees with the Census Bureau research  
20 cited above. Tr. 145:15-166:15 (O’Muirheartaigh). Dr. O’Muirheartaigh also cited three  
21 additional factors that will exacerbate the differential decline in self-response rates caused by the  
22 citizenship question. *Id.* at 166:16-174:20 (O’Muirheartaigh).

23           728. First, missing units in the Census Bureau’s Master Address File (MAF) contain a  
24 disproportionate number of immigrant and noncitizen households. Tr. 166:21-25  
25 (O’Muirheartaigh). The MAF is the “first building block” of census data collection. *Id.* at  
26 122:4-6. The MAF is constantly updated throughout the census-taking process. Tr. 803:23-805.7  
27 (Abowd). In general, the census is unlikely to count persons whose households do not appear on  
28 the MAF. *Id.* at 46:1-6 (O’Muirheartaigh). Dr. O’Muirheartaigh testified that social science  
research, including recent research on Mexican immigrants, has observed that the Census Bureau



1 has particular difficulty identifying household addresses for immigrants and noncitizens. *Id.* at  
2 122:7-123:13, 124:7-17 (O’Muircheartaigh). To the extent that immigrant and noncitizen  
3 households are not identified by the Census Bureau and included in the MAF, and the residents of  
4 these households choose not to make themselves available to be counted because of the  
5 citizenship question, such households and their residents will not be included in the 2020 Census.  
6 *Id.* at 166:21-167:14 (O’Muircheartaigh). The macro-environment—assuming that it stays the  
7 same or worsens—is likely to exacerbate this problem. *Id.* at 167:4-6.

8 729. Second, respondents, especially those that live in households containing  
9 noncitizens, may not list certain household members on the census questionnaire because of fears  
10 generated by the citizenship question. *Id.* at 167:15-20 (O’Muircheartaigh). In particular, the  
11 2017 CSM research observed that Spanish-speaking respondents were reluctant to provide a  
12 complete roster of household members. *Id.* at 147:18-148:16 (O’Muircheartaigh) (citing PTX-  
13 157). Dr. O’Muircheartaigh testified that such rostering omissions are problematic because “[t]he  
14 quality of the census is fundamentally dependent on complete rostering of individuals within  
15 households,” and “the census protocol has no mechanism for remediating such a response.” *Id.* at  
16 147:10-16, 148:8-149:9 (O’Muircheartaigh); Census Bureau 30(b)(6) Dep. Vol. II 397:19-399:2,  
17 459:21-460:7.

18 730. Third, Latino households, which are particularly likely not to respond to the 2020  
19 Census because of the citizenship question, contain disproportionately more children in the most  
20 hard-to-count age group, children under five years of age. Tr. 168:20-25 (O’Muircheartaigh).  
21 Census Bureau research shows that Hispanic children account for more than 36 percent of the  
22 total net undercount for all children under five. *Id.* at 170:3-14 (O’Muircheartaigh) (citing PTX-  
23 210); *see also* PTX-250 at 16, 19; Tr. 1029:4-12, 1030:7-1032:14 (Abowd). Latino children are  
24 disproportionately undercounted because they are more likely to live in housing units that are  
25 difficult to locate, they tend to come from larger, multigenerational families, and their parents  
26 may incorrectly assume that children are not meant to be counted in the census. *Id.* at 171:2-  
27 172:2 (O’Muircheartaigh) (citing PTX-210). The failure to count young Latino children will  
28 especially impact California, which has the largest Latino population in the country, and over

1 twice the percentage of Latinos (39 percent) as the national population (18 percent). *Id.* at  
2 170:15-20 (O’Muircheartaigh), 376:22-377:7 (Barreto).

3 731. Dr. O’Muircheartaigh testified that NRFU cannot remediate any of these three  
4 issues because Census Bureau protocols do not require further attempts after the self-response  
5 stage to locate units missing from the MAF or household members, including children, missing  
6 from the roster. Tr. 173:10-174:20 (O’Muircheartaigh).

7 732. Dr. O’Muircheartaigh reached the following overall conclusions related to the  
8 impact of the citizenship question on self-response: (1) current survey methodology research,  
9 primarily by the Census Bureau, has observed that Latinos and immigrants hold considerable  
10 fears about participating in the 2020 Census, (2) the citizenship question will increase the Census  
11 Bureau’s misidentification of households as unoccupied, particularly among Latinos and  
12 households with noncitizens, (3) the citizenship question will depress self-response rates,  
13 particularly for Latinos and households with noncitizens, and the Census Bureau’s conservative  
14 estimate is that the self-response rate for households containing a noncitizen will be 5.8 percent  
15 lower than for all-citizen households, and (4) factors such as rostering errors will exacerbate the  
16 difference in the effective self-response rates of noncitizens versus citizens through noncoverage.  
17 Tr. 175:1-19 (O’Muircheartaigh).

18 **(2) Dr. Matthew Barreto**

19 733. Dr. Matthew Barreto testified that adding a citizenship question to the 2020  
20 Census will reduce self-response rates, particularly among immigrants and Latinos. Tr. 374:7-15  
21 (Barreto). Dr. Barreto’s findings were based on a comprehensive literature review of research  
22 publications and reports, including those produced by the Census Bureau, related to response  
23 rates (as well as NRFU and imputation); an original survey he fielded in which he asked people  
24 about whether they intend to participate in the 2020 Census; and his expertise and years of  
25 experience implementing surveys in Latino and immigrant communities. *Id.* at 375:18-376:4,  
26 379:19-380:7 (Barreto) (citing PTX-499).

27 734. Dr. Barreto identified three interrelated factors that affect survey participation:  
28 (1) trust, (2) sensitive questions, and (3) the macro-environment in which the survey is

1 administered. Tr. 380:19-381:7, 383:13-16 (Barreto). Applying the literature on these factors to  
2 the citizenship question, Dr. Barreto concluded that the citizenship question will cause a  
3 significant decline in self-response rates on the 2020 Census because it is a sensitive question that  
4 will exacerbate trust issues in the current macro-environment, particularly for immigrants and  
5 immigrant-adjacent communities. *Id.* at 386:21-25, 411:5-14 (Barreto). Dr. Barreto defined  
6 “immigrant-adjacent communities” as communities with mixed-status households, where one  
7 family member is a U.S. citizen and another family member is not, and communities in which  
8 residents would interact with immigrants daily at work, school, or in other similar environments.  
9 *Id.* at 387:1-14 (Barreto).

10 735. Dr. Barreto testified that a consistent finding in the social science research is that  
11 “if a potential respondent does not trust the survey taker to keep their information confidential  
12 and not put them at risk, then the survey respondent won’t participate in the survey at all.” Tr.  
13 381:17-23 (Barreto). With regard to census participation specifically, Dr. Barreto observed that  
14 the Census Bureau, particularly in Manuel de la Puente’s ethnographic studies of the 1990 and  
15 2000 Censuses, found that “immigrant and undocumented populations in particular [] don’t trust  
16 the federal government to fully protect or keep in confidence their information.” *Id.* at 385:3-19,  
17 390:12-395:7 (Barreto) (citing PTX-308 and PTX-309), *see also id.* at 388:11-389:8 (Barreto)  
18 (citing PTX-339). To break down the barriers he observed in his studies, Dr. de la Puente  
19 recommended that the Census Bureau work with community groups to assure them that the  
20 Census Bureau isn’t seeking information about respondents’ citizenship status. *Id.* at 393:25-  
21 394:15 (Barreto).

22 736. Dr. Barreto testified that “a sensitive question is one that asks a respondent for  
23 some very personal information that they may be uncomfortable revealing.” Tr. 383:2-6  
24 (Barreto). Social science research suggests that survey takers should “reduce unnecessary  
25 sensitive questions because they do create considerable trust issues with respondents.” *Id.* at  
26 383:10-12 (Barreto). Whether a question is sensitive varies in different environments and  
27 contexts and across subpopulations. *Id.* at 383:13-20, 384:19-385:2 (Barreto). Dr. Barreto  
28 observed that the citizenship question is likely to be most sensitive to “those who are closer to the

1 immigrant experience or closer to [] immigrant communities,” particularly “in the Latino  
2 community where there have been concerns over immigration-related issues over the past few  
3 years.” *Id.* at 387:15-23 (Barreto).

4 737. Dr. Barreto testified that the macro-environment is “the context in which any  
5 survey is being implemented,” including “the social and political environment, the atmosphere  
6 that is present when the survey is being administered.” *Id.* at 395:11-19 (Barreto). Depending on  
7 the macro-environment, “a respondent may be more willing to participate if the context or the  
8 environment seems very agreeable and welcoming, and they may be far less likely to participate  
9 if the environment seems threatening or concerning.” *Id.* at 395:20-25 (Barreto). Dr. Barreto  
10 observed that social science research has found that “immigrants and mixed-status households are  
11 likely to avoid government contact when they suspect it is unsafe to participate.” *Id.* at 397:19-  
12 398:2 (Barreto). This observation holds true for a census with a citizenship question, because the  
13 question will be asked in a macro-environment that is perceived by many immigrants to be  
14 “threatening or negative.” *Id.* at 396:3-13 (Barreto). Dr. Barreto testified about numerous  
15 changes in the sociopolitical environment since 2016, such as the decision to end the Deferred  
16 Action for Childhood Arrivals (DACA) program and the Trump administration’s emphasis on  
17 more aggressive immigration enforcement policies, that have diminished the Latino community’s  
18 trust in the federal government. *Id.* at 401:13-410:15 (Barreto).

19 738. To evaluate participation in the 2020 Census, Dr. Barreto conducted an original  
20 survey, specifically a large national survey that inquired about people’s attitudes and behaviors.  
21 *Id.* at 411:15-23 (Barreto). He did so because “the best way to understand how people feel or will  
22 respond to a situation is to just ask them.” *Id.* at 411:18-19 (Barreto). Within the scientific  
23 community, survey research is considered reliable and has predictive value. *Id.* at 414:2-7  
24 (Barreto).

25 739. Dr. Barreto conducted his survey on a sample of 6,309 respondents from across the  
26 United States, including oversamples of Latinos nationwide and residents of the State of  
27 California, the City of San Jose, and two border counties in Texas. *Id.* at 424:8-19 (Barreto). The  
28 survey sample had all of the hallmarks of reliability—it was large enough to be representative of

1 the target population, respondents were randomly chosen, and weighting was applied to balance  
2 out the demographic characteristics of the sample. *Id.* at 415:19-418:12, 434:2-435:19 (Barreto).  
3 In addition, the survey response rate—28.1 percent—was well within the American Association  
4 of Public Opinion Research (AAPOR) response rate guidelines (at least 20 to 30 percent) for  
5 telephone surveys. *Id.* at 425:2-23 (Barreto).

6 740. Dr. Barreto set forth the results of his survey in a number of tables. PTX 499-A,  
7 PTX-863 through PTX-890. These tables show that, because of the citizenship question, census  
8 response rates are likely to decline between 7.1 and 9.7 percent nationally and between 12.3 and  
9 18 percent in the State of California, the biggest drop-off among all states. Tr. 457:17-458:3  
10 (explaining PTX-870), 461:9-20 (explaining PTX-872), 462:17-22 (explaining PTX-871)  
11 (Barreto).

12 741. California is the only state with a nonresponse rate (attributed to the citizenship  
13 question) that is statistically higher than the nationwide average. *Id.* at 463:8-465:9 (Barreto)  
14 (explaining PTX-873 and PTX-874).

15 742. Based on the Census Bureau's most current data, the average Latino household is  
16 larger than the average non-Latino household. *Id.* at 1036:12-1037:6 (Abowd). By factoring in  
17 the difference in average household size between Latino households and other households, Dr.  
18 Barreto determined that Latinos would constitute approximately 35 percent (over 10 million) of  
19 the total number of persons (approximately 28 million) that would not self-respond to the 2020  
20 Census because of the citizenship question, far surpassing the rate of Latinos in the national  
21 population (18 percent). *Id.* at 478:1-481:6 (Barreto) (explaining PTX-880 and PTX-881). The  
22 evidence supports the conclusion that Latinos will be disproportionately affected by the  
23 citizenship question. *Id.* at 480:9-14 (Barreto).

24 743. In addition to the factors that Brown, et al. noted, Dr. Barreto identified several  
25 reasons to believe that the nonresponse estimates from his survey more accurately predict the  
26 effect of the citizenship question on self-response rates than Brown, et al.'s 5.8 percent estimate,  
27 including that (1) the survey was conducted recently, so it more closely reflected the likely  
28 macro-environment during the 2020 Census, (2) instead of comparing old response rates, the

1 survey asked respondents directly about whether they are likely to participate in the 2020 Census,  
2 and (3) the survey asked all respondents, not just noncitizen households, whether they would  
3 participate in the 2020 Census. *Id.* at 483:16-488:8 (Barreto).

4 744. Dr. Fraga testified that Census Bureau data and Dr. Barreto’s survey results both  
5 led to the same conclusion—that the citizenship question would cause a disproportionate  
6 reduction in California’s population relative to other states. Fraga Trial Decl. ¶¶ 8, 91.

7 **2. The Census Bureau’s NRFU Processes, Including Imputation, Will**  
8 **Not Remediate the Differential Decline in Self-Response Rates**

9 745. The Census Bureau will implement a series of Non-Response Follow Up (NRFU)  
10 operations to attempt to count the significant number of persons that will not self-respond to the  
11 2020 Census, Undisputed Facts ¶¶ 39-47, including the millions that will not self-respond  
12 because of the citizenship question, PTX-22 at 6; PTX-160 at 42; New York Tr. 894:1-16  
13 (Abowd). All available evidence indicates that at every NRFU stage, including the use of  
14 undefined imputation methods, the Census Bureau will be differentially less effective at counting  
15 noncitizens and Latinos—the very subpopulations most likely not to respond to the 2020 Census  
16 because of the citizenship question. Tr. 175:20-218:6 (O’Muircheartaigh).

17 **a. The Census Bureau has always struggled to count hard-to-**  
18 **count subpopulations, including noncitizens and Latinos**

19 746. Although the Census Bureau aims to “count everyone once, only once, and in the  
20 right place,” doing so “is becoming an increasingly complex task, in part because the nation’s  
21 population is growing larger, more diverse, and more reluctant to participate.” PTX-272 at 2.

22 747. Historically, certain “hard-to-count” socioeconomic groups have been  
23 undercounted, *id.*, even when the census count for the national population has been fairly  
24 accurate, PTX-211 at 18; Tr. 57:17-60:8 (O’Muircheartaigh).

25 748. For example, as measured in the Census Bureau’s post-enumeration surveys,  
26 Hispanics have been differentially undercounted compared to non-Hispanic whites in each of the  
27 last three censuses. PTX-211 at 5; Tr. 55:2-15, 56:11-57:5 (O’Muircheartaigh); Undisputed Facts  
28 ¶¶ 61, 62. In the 2010 Census, Hispanics were undercounted by 1.54 percent and non-Hispanic  
whites were overcounted by .84 percent, resulting in a net differential undercount of Hispanics of

1 2.38 percent. PTX-211 at 18. In the 2000 Census, Hispanics were undercounted by .71 percent  
2 and non-Hispanic whites were overcounted by 1.13 percent, resulting in a net differential  
3 undercount of Hispanics of 1.84 percent. *Id.* In the 1990 Census, Hispanics were undercounted  
4 by 4.99 percent and non-Hispanic whites were undercounted by .68 percent, resulting in a net  
5 differential undercount of Hispanics of 4.31 percent. *Id.*

6 749. This trend of undercounting hard-to-count subpopulations “is particularly  
7 problematic given the many uses of census data.” PTX-272 at 2. For California and its localities,  
8 which have a disproportionate number of Latinos and immigrants, an accurate count of hard-to-  
9 count subpopulations is especially critical. Tr. 60:9-61:15 (O’Muirheartaigh).

10 750. The Census Bureau recognizes a range of socioeconomic and other groups as  
11 “hard-to-count.” PTX-272 at 8-9; Tr. 1021:19-1022:2 (Abowd); Undisputed Facts ¶ 59. These  
12 subgroups include low-income persons, persons who do not live in traditional housing, persons  
13 who do not speak English fluently or have limited English proficiency, persons who have distrust  
14 in the government, racial and ethnic minorities, renters, undocumented immigrants or recent  
15 immigrants, and young children. PTX-272 at 9; Tr. 1022:3-1023:2 (Abowd); Undisputed Facts  
16 ¶ 60. Census Bureau research shows that there is “substantial overlap” between these hard-to-  
17 count subgroups and those households most likely not to respond to the 2020 Census because of  
18 the citizenship question. Tr. 1023:3-7 (Abowd).

19 751. The Census Bureau has identified four primary obstacles to counting hard-to-count  
20 subpopulations: that they are hard to locate, hard to contact, hard to persuade, and hard to  
21 interview. PTX-272 at 9-10; Tr. 1023:8-24 (Abowd). For some hard-to-count subgroups, more  
22 than one of these obstacles applies. PTX-272 at 11; Tr. 1024:7-13 (Abowd). For example,  
23 parents with limited English proficiency (who are hard to interview) may leave their young  
24 children (who are hard to locate) off the roster when completing their census questionnaire. PTX-  
25 272 at 11; Tr. 1024:14-17 (Abowd). Census Bureau research acknowledges that these obstacles  
26 apply to those households most likely not to respond to the 2020 Census because of the  
27 citizenship question. Tr. 1023:25-1024:6 (Abowd).

28

1                   **b. 2020 Census NRFU and associated operations will be**  
2                   **differentially less effective at counting nonresponders deterred**  
3                   **by the citizenship question**

4                   **(1) The Census Bureau’s integrated partnership and**  
5                   **communications program**

6                   752. The Census Bureau has developed a range of strategies to address the net  
7                   differential undercount of “hard-to-count” populations—including targeted marketing and  
8                   outreach efforts, partnerships with community organizations, deployment of field staff to follow  
9                   up with individuals who do not respond, and retention of staff with foreign language skills.

10                  Undisputed Facts ¶ 64.

11                  753. In the 2000 and 2010 Censuses, the Census Bureau designed and implemented  
12                  public advertising campaigns to reach hard-to-count immigrant communities, including using  
13                  paid media in over a dozen different languages to improve responsiveness, and partnered with  
14                  local businesses, faith-based groups, community organizations, elected officials, and ethnic  
15                  organizations to reach these communities and improve the accuracy of the count. *Id.* ¶¶ 65-66.

16                  754. Defendants expect that a similar integrated partnership and communications  
17                  campaign, in tandem with the Census Bureau’s NRFU efforts, will mitigate the decline in self-  
18                  response rates in the 2020 Census. Tr. 798:6-12, 799:21-800:14 (Abowd).

19                  755. Yet there is no evidence in the Administrative Record that Defendants’ planned  
20                  integrated partnership and communications campaign for the 2020 Census will mitigate the  
21                  differential decline in self-response rates caused by the citizenship question. PTX-1 through  
22                  PTX-14 (AR). And Dr. Abowd admits that it is “highly unlikely” that the integrated partnership  
23                  and communications campaign can eliminate the negative effects of adding a citizenship question.  
24                  *Id.* at 980:3-11 (Abowd).

25                  756. The communications campaign was one of the operations that was removed from  
26                  the 2018 End-to-End Test for budgetary reasons. Tr. 821:3-5 (Abowd).

27                  757. A recent GAO report to Congress that reviewed the Census Bureau’s plans for  
28                  enumerating hard-to-count subpopulations in the 2020 Census concluded that (1) it is critical for  
29                  the Census Bureau to integrate its efforts to count hard-to-count subpopulations, but that such



1 integration will be challenging, and that (2) a tighter labor market in 2020, as compared to 2010,  
2 could make it difficult to hire the partnership staff needed to reach hard-to-count communities.  
3 PTX-272 at 2; Tr. 1025:10-1026:15 (Abowd).

4 758. Despite the many barriers to participation in the 2020 Census, including those  
5 related to the citizenship question, the Census Bureau “estimates total spending for its 2020  
6 partnership and communications outreach efforts to be similar to what it reported spending on  
7 those efforts for the 2010 Census after adjusting for inflation.” PTX-272 at 18; Tr. 1024:18-  
8 1025:9 (Abowd).

9 759. The Census Bureau acknowledges that the “trusted partners” that it relies on to  
10 convey the importance of participating in the census will have additional challenges  
11 communicating that message if the 2020 Census includes the citizenship question. Census  
12 Bureau 30(b)(6) Dep. Vol. II 451:21-452:4, 453:2-17; New York Tr. 937:16-23 (Abowd).

13 760. The Administrative Record includes correspondence from some of the most  
14 prominent trusted partners—the National Association of Latino Elected Officials (NALEO), the  
15 National Conference of American Indians (NACI), and the Leadership Conference on Civil and  
16 Human Rights—stating their opposition to the citizenship question. PTX-1 at AR 773-775, 778-  
17 779, 1239-1240; *see also* Tr. 503:5-504:9, 504:22-505:7 (Barreto).

18 761. The CBAMS focus groups of Spanish-speaking respondents found that “there does  
19 not seem to be a single trusted voice that could mitigate [respondents’] distrust of the government  
20 to uphold the promise of confidentiality.” PTX-153 at 22. Dr. O’Muircheartaigh testified that  
21 this observation shows that the citizenship question will “reduce[] the potential impact of the  
22 positive input of constituency, community, and association leaders” as these trusted voices  
23 attempt to convince their constituents to participate in the 2020 Census. Tr. 153:1-154:9  
24 (O’Muircheartaigh).

25 762. Census Bureau research has noted that one messaging strategy that is reassuring to  
26 Spanish-speaking respondents is to convey that “[n]one of the questions in this survey will ask  
27 about immigration status” and that “[b]y law, [the respondent’s] answers cannot be shared with  
28 Immigrations and Customs Enforcement.” PTX-158 at 16. Dr. Barreto similarly observed that,

1 consistent with the findings in Dr. de la Puente’s ethnographic studies, the most effective way—  
2 indeed, perhaps the “only way”—to address confidentiality concerns related to the citizenship  
3 question is “to assure respondents that no citizenship information is being gathered” in the 2020  
4 Census. Tr. 500:17-501:5 (Barreto). But neither the Census Bureau nor trusted partners can offer  
5 such assurances because the citizenship question will be on the 2020 Census, unless the Census  
6 Bureau is instructed to remove it. Tr. 1052:8-12 (Abowd).

7 **(2) The Census Bureau’s NRFU operations**

8 763. The Census Bureau’s NRFU workload includes all households that do not initially  
9 self-respond to the census. Tr. 851:16-852:2 (Abowd).

10 764. In the 2010 Census, over 27 percent of the persons enumerated were in the NRFU  
11 workload. PTX-211 at 32-33 (subtracting from the U.S. total population (300,703,000) those  
12 persons not in any NRFU universe (219,207,000) and dividing by the total population). The  
13 NRFU workload for the 2020 Census is expected to rise to 34.5 to 44.5 percent of the total  
14 population. PTX-1 at AR 172.

15 765. The Census Bureau’s best conservative estimate is that adding a citizenship  
16 question to the 2020 Census will increase the NRFU workload by 2.09 million households and  
17 6.5 million persons. PTX-160 at 42.

18 766. Based on his survey data, Dr. Barreto estimated that adding a citizenship question  
19 to the 2020 Census will increase the NRFU workload by 28 million to 35 million persons, and  
20 that Latinos will be disproportionately represented in that workload. PTX-880; PTX-881; Tr.  
21 480:5-481:3 (Barreto).

22 767. The Bureau’s NRFU operations are designed to obtain an accurate count—and  
23 thus, to prevent an undercount—at the national level. Tr. 918:11-16 (Abowd). In recent  
24 censuses, the Bureau’s NRFU operations have been less effective at counting some  
25 subpopulations than others. Tr. 178:7-23 (O’Muircheartaigh).

26 768. There is no evidence in the Administrative Record that the Census Bureau’s NRFU  
27 operations for the 2020 Census will mitigate the differential decline in self-response rates caused  
28 by the citizenship question. PTX-1 through PTX-14 (AR).

1           769. Dr. Abowd testified that, in his opinion, after accounting for NRFU operations,  
2 there is no credible quantitative evidence that adding a citizenship question will increase the net  
3 differential undercount of any subpopulation. Tr. 918:21-24 (Abowd). Yet Dr. Abowd admitted  
4 that it is “highly unlikely” that the Census Bureau’s NRFU operations will eliminate a differential  
5 undercount in the 2020 Census. *Id.* at 980:12-981:2.

6           770. Dr. Abowd also conceded that it is “highly unlikely” that the Census Bureau can  
7 adjust its NRFU operations to eliminate the negative effects of the citizenship question on self-  
8 response rates. *Id.* at 981:3-7 (Abowd).

9           771. The Census Bureau’s NRFU operations for the 2020 Census include in-person  
10 follow-up enumeration, proxy enumeration, administrative record enumeration, and imputation  
11 by other methods. Undisputed Facts ¶¶ 39-46; Tr. 176:13-177:20 (O’Muirheartaigh) (citing  
12 PTX-459). The Census Bureau’s NRFU operations for the 2010 Census included each of these  
13 processes, except administrative record enumeration, which was used on an experimental basis.  
14 Census Bureau 30(b)(6) Dep. Vol. II 400:19-401:21.

15           772. None of these operations will remediate the differential decline in self-response  
16 caused by the citizenship question: (1) in-person follow-up enumeration is relatively less  
17 effective at obtaining direct responses in neighborhoods with a higher proportion of noncitizens,  
18 (2) proxy responses provide lower-quality count and characteristic data than self-responses, and  
19 in particular, they are more susceptible to under-reporting of household members, (3)  
20 administrative records are more difficult to locate for hard-to-count subpopulations, including  
21 Latinos and noncitizens, and (4) imputation methods differentially disfavor subpopulations with  
22 lower response rates, including Latinos and noncitizens. Tr. 217:4-20 (O’Muirheartaigh).

23                                   **(a) In-person follow-up enumeration**

24           773. The Census Bureau has repeatedly acknowledged that “[t]hose refusing to self-  
25 respond due to the citizenship question are particularly likely to refuse to respond in NRFU as  
26 well. . . .” PTX-25 at 4; PTX-160 at 41 (“Households deciding not to self-respond because of the  
27 citizenship question are likely to refuse to cooperate with enumerators coming to their door”); *id.*  
28 at 42 n. 59 (same). Indeed, the Census Bureau does not have any empirical evidence that

1 someone who chooses not to self-respond to the citizenship question would respond in a face-to-  
2 face interaction with a census enumerator. Census Bureau 30(b)(6) Dep. Vol. I 251:15-21.

3 774. Although in-person follow-up enumeration typically might be more effective than  
4 mail solicitation, “in this case for this population, the level of threat embodied by a federal agent  
5 arriving at your residence to collect the information is far greater than the threat that might be  
6 implied by a piece of paper or that arrives at your residence which you may or may not read.”  
7 Tr. 190:2-10 (O’Muircheartaigh).

8 775. Given these conditions, the enumeration errors that will result “may not be  
9 avoidable simply by spending more money on fieldwork. Once a household decides not to  
10 cooperate, it may not be possible to obtain an accurate enumeration no matter how many times an  
11 enumerator knocks on their door.” PTX-160 at 43 n.60; Tr. 190:20-191:21 (O’Muircheartaigh).

12 776. Recent data from ACS in-person follow-up enumeration efforts, specifically the  
13 Computer-Assisted Personal Interviewing (CAPI) operation, underscore the challenges that  
14 enumerators will face in the 2020 Census, particularly if, like the ACS, the census includes a  
15 citizenship question. Census Bureau 30(b)(6) Dep. Vol. I 124:19-133:17; Tr. 178:24-185:19  
16 (O’Muircheartaigh) (describing PTX-138). The data, which are from 2010 through 2016, are  
17 consistent with the notion that questions on citizenship have become more sensitive on surveys  
18 since 2010. Census Bureau 30(b)(6) Dep. Vol. I 131:4-11.

19 777. The CAPI data exhibit the following trends: (1) in-person follow-up enumeration  
20 has been less effective over time in all census tracts, (2) in-person follow-up enumeration has  
21 been differentially less effective in census tracts with a higher proportion of households  
22 containing a noncitizen, and (3) the differential between census tracts with a higher proportion of  
23 households containing a noncitizen and census tracts with a lower proportion of households  
24 containing a noncitizen has grown over time. Census Bureau 30(b)(6) Dep. Vol. I 129:22-130:4,  
25 131:4-18, 133:8-17, Tr. 180:17-181:3 (O’Muircheartaigh).

26 778. The most recent CAPI data—from 2016—for the half of the population with a  
27 higher proportion of households containing a noncitizen indicate that in-person follow-up  
28 enumeration was 86.63 percent successful. Tr. 183:21-185:9 (O’Muircheartaigh). This rate “is

1 an approximate representation of how . . . such households might behave in the context of the  
2 census.” *Id.* at 185:10-19 (O’Muirheartaigh). Indeed, the success rate was lower (and  
3 conversely, the non-interview rate was higher) for in-person follow-up enumeration in the 2016  
4 End-to-End Test and the 2018 End-to-End Test. *Id.* at 186:19-187:14 (describing PTX-482 at  
5 26).

6 779. Dr. Barreto’s survey results similarly provided evidence that follow-up  
7 enumeration efforts will be disproportionately ineffective with Latinos and Californians. The  
8 survey results showed that after assurances of confidentiality were provided to those persons who  
9 stated that they would not participate in a 2020 Census with a citizenship question, Latinos were  
10 less likely than whites—by a margin of over 10 percent—to respond to a follow-up question by  
11 changing their mind and stating that they would participate in a 2020 Census with a citizenship  
12 question. Tr. 510:25-512:18 (Barreto) (describing PTX-882). And Californian nonresponders  
13 were also less likely than the national population—by a margin of approximately 20 percent—to  
14 change their mind and state that they would participate in a 2020 Census with a citizenship  
15 question. Tr. 512:19-514:14 (Barreto) (describing PTX-883). Although the survey’s follow-up  
16 question is not an exact replica of in-person follow-up enumeration, the results are statistically  
17 significant and do have predictive value. *Id.* at 513:22-515:5 (Barreto).

18 780. None of the testing that has been used to plan NRFU staffing levels, the number of  
19 field offices, enumerator training, NRFU protocols, or census questionnaire assistance has  
20 accounted for a citizenship question on the 2020 Census. Census Bureau 30(b)(6) Dep. Vol. I  
21 198:2-10, 200:9-201:10.

22 781. Although the Census Bureau’s NRFU operations were used in the 2018 End-to-  
23 End Test, Tr. 819:15-820:9 (Abowd), the End-to-End Test did not include a citizenship question,  
24 Census Bureau 30(b)(6) Dep. Vol. I 225:13-16; Tr. 820:14-15 (Abowd).

25 782. The Census Bureau considers the NRFU operations to have been a success in the  
26 2018 End-to-End Test. Tr. 820:19-23 (Abowd). But a GAO report on NRFU implementation in  
27 the 2018 End-to-End Test “raises some serious concerns.” Tr. 98:3-8 (O’Muirheartaigh)  
28 (describing PTX-482).

1           783. That the Census Bureau did not determine the procedures for late-NRFU data  
2 collection until after it started work, for example, “seriously undermines the potential of the  
3 activity to be successful.” Tr. 98:9-99:7. (O’Muircheartaigh) (describing PTX-482 at 11). This  
4 finding, in combination with similar findings that the field workforce was unprepared for certain  
5 enumeration challenges, *id.* at 99:8-100:15 (O’Muircheartaigh), and lacked adequate training, *id.*  
6 at 186:9-18 (O’Muircheartaigh) (describing PTX-482), led Dr. O’Muircheartaigh to conclude that  
7 the report was “a little disturbing.” *Id.* at 101:9-12 (O’Muircheartaigh). These findings “cast[]  
8 doubt on . . . any projections that the Census Bureau has about how successfully it will operate in  
9 2020, compared, for example, to 2010.” *Id.* at 101:16-102:4 (O’Muircheartaigh).

10   **(b) Proxy enumeration**

11           784. Locating a proxy respondent—a neighbor, landlord, postal worker, or other  
12 knowledgeable person will provide information about another household—is generally not easy.  
13 Tr. 195:2-10 (O’Muircheartaigh). The Census Bureau expects that, just as with in-person follow-  
14 up enumeration, in census tracts with a higher proportion of households containing a noncitizen,  
15 the proxy enumeration rate will be lower than in other tracts. Census Bureau 30(b)(6) Dep. Vol.  
16 II 386:2-15; Tr. 196:25-197:6 (O’Muircheartaigh).

17           785. In other words, the challenge of finding willing proxy respondents will be greater  
18 in neighborhoods with households that are “fearful of the Administration and fearful of Census.”  
19 Tr. 195:13-25 (O’Muircheartaigh). Potential proxy respondents will be “less likely to want to  
20 cooperate” if they are concerned about reporting undocumented immigrants. *Id.* at 521:15-522:2  
21 (Barreto). Given that “reference persons are much less likely to answer the citizenship question  
22 for nonrelatives in the household than for themselves . . . they may be even less likely to answer it  
23 for neighbors. PTX-160 at 43; Census Bureau 30(b)(6) Dep. Vol. II 386:16-387:10; Tr. 523:3-17  
24 (Barreto).

25           786. Even if located and willing to provide a response, proxy respondents generally  
26 provide lower quality enumeration data than self-responses. Census Bureau 30(b)(6) Vol. II  
27 382:17-21; PTX-22 at 6; Tr. 931:14-24, 951:11-14 (Abowd). For example, in the 2010 Census,  
28 97.3 percent of self-responses resulted in a correct enumeration, but the correct enumeration rate

1 for proxy responses was just 70.2 percent. PTX-22 at 42 (citing PTX-211 at 33); Tr. 197:14-  
2 198:5 (O’Muirheartaigh).

3 787. Proxy responses are particularly inaccurate for persons in tenuous residential  
4 arrangements—a subpopulation that is disproportionately made up of Latinos and immigrants.  
5 Tr. 198:6-200:4 (O’Muirheartaigh). Because of the nature of these living arrangements—which  
6 include, for example, converted garages—proxy respondents “may not actually know how many  
7 people live there.” *Id.* at 522:3-8 (Barreto).

8 788. Census Bureau research has also found that “proxies supply poor quality  
9 individual demographic and socioeconomic information about the person on behalf of whom they  
10 are responding.” PTX-160 at 41-42; Tr. 200:23-201:8 (O’Muirheartaigh); *id.* at 937:6-19  
11 (Abowd). Dr. Abowd conceded that the increased use of proxy responses “does impact data  
12 quality,” including the quality of characteristic data. *Id.* at 887:13-24 (Abowd).

13 **(c) Administrative record enumeration**

14 789. The Census Bureau’s proposal to use administrative records to enumerate a limited  
15 number of those households for which there is high quality administrative data has not yet been  
16 approved by the Office of Management and Budget (OMB). PTX-459 at 7.

17 790. The Census Bureau has not made a decision yet about how it will process  
18 responses to the citizenship question alongside administrative records. New York Tr. 1030:3-6  
19 (Abowd).

20 791. Census Bureau research has observed that the quality of administrative records  
21 varies depending on the subpopulation. Tr. 204:18-205:3 (O’Muirheartaigh) (describing PTX-  
22 288). The Census Bureau is less likely to be able to use administrative records to enumerate  
23 hard-to-count subpopulations, including noncitizens and Hispanics. Jarmin Dep. 285:1-286:20;  
24 Tr. 948:7-949:12 (Abowd), 205:4-12 (O’Muirheartaigh).

25 792. In particular, undocumented immigrants are less likely to be found in  
26 administrative records and will be harder to enumerate using such records. Census Bureau  
27 30(b)(6) Dep. Vol. II 391:4-19; Tr. 205:13-17 (O’Muirheartaigh). The Census Bureau does not  
28

1 expect administrative record enumeration to be as successful with noncitizens as with citizens.  
2 Census Bureau 30(b)(6) Dep. Vol. II 391:21-392:4.

3 793. Similarly, the Census Bureau will be unable to link Hispanics to administrative  
4 records at as high a rate as it can link non-Hispanic whites. Census Bureau 30(b)(6) Dep. Vol. II  
5 389:12-390:5.

6 794. Given the inability of the Census Bureau to use administrative records to count the  
7 very subpopulations most likely not respond to the 2020 Census because of the citizenship  
8 question, administrative record enumeration will not remediate the differential decline in self-  
9 response rates. Tr. 206:4-19 (O’Muircheartaigh).

10 **(d) Imputation by other methods**

11 795. If the Census Bureau is unable to enumerate a household through other NRFU  
12 operations, it will impute, or model, the number of persons in the household and their  
13 characteristics. Tr. 942:17-20 (Abowd). In the decennial census, the Census Bureau uses “count  
14 imputation” to impute the size of the household, and “whole-person imputation” to impute both  
15 the size of the household and the characteristics of the people in the household. *Id.* at 892:10-15  
16 (Abowd); PTX-22 at 5.

17 796. The Census Bureau concedes that whole-person imputations “are not very  
18 accurate.” Census Bureau 30(b)(6) Dep. Vol. I 253:7-15.

19 797. The Census Bureau anticipates that there will be 1.477 million more whole-person  
20 imputations in the 2020 Census because of the citizenship question. PTX-160 at 42.

21 798. The Census Bureau has not finalized the algorithms it will use for count  
22 imputation in the 2020 Census. Tr. 892:16-19 (Abowd). The accuracy of the Census Bureau’s  
23 imputation model “is unknown at this time.” PTX-160 at 44.

24 799. As in previous censuses, the Census Bureau expects to use a “hot-deck”  
25 imputation model that imputes missing households based on nearby households that the Census  
26 Bureau has counted and believes are similar in size, location, and other characteristics. Tr.  
27 892:10-893:11 (Abowd), 208:19-209:12 (O’Muircheartaigh).

28



1           800. Because hot-deck imputation fills in missing data based on data that the Census  
2 Bureau has already collected, it is not neutral; by definition, it over-represents the household  
3 characteristics of the known population, in which those most likely not to respond to the  
4 citizenship question—in particular, noncitizens and Latinos—are underrepresented. *Id.* at  
5 210:14-211:6, 211:24-212:6 (O’Muircheartaigh). Dr. Abowd confirmed that hard-to-count  
6 subpopulations will be imputed at a greater rate than the rest of the population. *Id.* at 981:8-13  
7 (Abowd).

8           801. The Census Bureau’s imputation model also fails to account for the larger  
9 household size, on average, of Hispanic households compared to other households. *Tr.* 528:1-24  
10 (Barreto), 1036:25-1037:6 (Abowd). The Census Bureau’s imputation model is built on the  
11 assumption that household size is “ignorable” missing data—that it is not correlated with  
12 nonresponse. *Id.* at 525:10-13 (Barreto). But given that those persons most likely not to respond  
13 to the 2020 Census because of the citizenship question tend to come from larger households,  
14 household size is, in fact, “non-ignorable” data. *Id.* at 528:1-11 (Barreto). The result is bias in  
15 the Census Bureau’s imputation model. *Id.* at 985:10-14 (Abowd), 525:20-25 (Barreto).

16           802. Based on his survey data, Dr. Barreto presented quantitative evidence that the  
17 Census Bureau’s imputation model will systematically undercount nonresponding households.  
18 *Id.* at 529:14-530:6 (Barreto).

19           803. First, Dr. Barreto’s survey data reveal that, on a national level, households that will  
20 not respond to a census with the citizenship question are larger, on average, than households that  
21 will respond, and that in California, the gap between these groups expands. *Id.* at 529:21-25,  
22 530:7-9 (Barreto) (describing PTX-888 and PTX-889).

23           804. Second, Dr. Barreto’s survey data show that households that will not respond to a  
24 census with the citizenship question tend to be geographically clustered in zip codes with high  
25 Latino and immigrant populations, including many communities across California. *Id.* at 530:16-  
26 532:4 (Barreto) (describing PTX-890). This finding presents another challenge that the Census  
27 Bureau’s imputation model must overcome, if it is to be accurate. *Id.* at 531:17-22 (Barreto).

28

1           805. Dr. Barreto also constructed an imputation model based on the Census Bureau’s  
2 2010 imputation model, as described in PTX-344, the Bureau’s J-12 memorandum.

3           806. Like the Census Bureau’s imputation model, Dr. Barreto’s model predicted the  
4 household size of non-responding households based on their 20 nearest neighbors, with controls  
5 for such factors as housing type, geographic proximity, and household demographics. Tr. 535:3-  
6 14 (Barreto). Because Dr. Barreto’s survey data contained the household size of each non-  
7 responding household, he was able to compare the imputation model’s predicted household size  
8 to the actual size of these households. *Id.* at 535:15-19 (Barreto).

9           807. Dr. Barreto’s imputation analysis suggests that the Census Bureau’s imputation  
10 model is likely to under-impute the household size of Latinos that do not respond to the 2020  
11 Census because of the citizenship question at a rate of three-quarters of a person per household on  
12 average, as compared to similarly-situated Latino households that will respond to the census. *Id.*  
13 at 538:22-539:6 (Barreto) (describing PTX-468).

14           808. This evidence, like all available evidence on imputation, suggests that imputation  
15 will not remediate the differential decline in self-response rates, and may, in fact, exacerbate the  
16 differential. *Id.* at 540:24-541:8 (Barreto), 212:9-17 (O’Muircheartaigh).

17                           **c. The Census Bureau’s NRFU Processes will not prevent a**  
18                           **differential undercount in the 2020 Census**

19           809. Dr. Abowd repeatedly testified that he was not aware of any “credible, quantitative  
20 evidence” that the citizenship question would cause a net undercount or net differential  
21 undercount of any subpopulation, or that it would reduce the accuracy of the count in the 2020  
22 Census. Tr. 841:5-12 (Abowd). Yet all available evidence, both qualitative and quantitative,  
23 suggests otherwise—and makes clear, in particular, that the citizenship question will cause a net  
24 differential undercount of noncitizens and Latinos.

25           810. The Census Bureau concedes, based on its own natural experiment, that the  
26 citizenship question will cause the self-response rate of noncitizen households to decline at least  
27 5.8 percent.  
28

1           811. The Census Bureau has produced considerable qualitative research that suggests  
2 that the citizenship question will cause a much larger differential decline in the self-response rate  
3 of noncitizen households, and that the negative effect of the citizenship question will extend to  
4 other subpopulations, such as Hispanics.

5           812. Dr. Barreto produced quantitative evidence that is consistent with the Census  
6 Bureau's qualitative research. Dr. Barreto's survey results further suggest that the citizenship  
7 question will cause a decline in the self-response rate in California that will be much greater than  
8 the decline in the rest of the nation.

9           813. In all recent censuses, the Census Bureau has differentially undercounted hard-to-  
10 count subpopulations, most notably Hispanics, even after implementing all NRFU operations,  
11 including imputation.

12           814. There is no evidence in the Administrative Record that the Census Bureau's  
13 NRFU operations, including imputation, will remediate the differential decline in the self-  
14 response rate caused by the citizenship question.

15           815. The Census Bureau's NRFU operations are not designed to count persons that are  
16 missing from the Master Address File or are left off the roster by a family member or proxy  
17 respondent. If such persons do not self-respond to the 2020 Census because of the citizenship  
18 question, they will not be counted.

19           816. The persons most likely not to self-respond to the citizenship question are also  
20 some of the most unlikely to be counted at every NRFU stage—in-person follow-up enumeration,  
21 proxy enumeration, administrative record enumeration, and imputation by other methods. The  
22 resulting failure of the Census Bureau's NRFU operations to remediate the differential decline in  
23 self-response rates caused by the citizenship question will produce a net differential undercount.

24           817. Expert testimony, particularly from Dr. O'Muircheartaigh and Dr. Barreto, further  
25 supports a finding that the citizenship question will cause a net differential undercount of  
26 noncitizens and Latinos, and that the negative consequences of the citizenship question will be  
27 more severe in California than in any other state. Tr. 40:1-4 (O'Muircheartaigh), 374:3-375:4  
28 (Barreto).

1           818. Given all of the evidence, it is more likely than not that the citizenship question  
2 will cause a material, and likely substantial, net differential undercount of noncitizens and  
3 Latinos.

4                   **3. The Citizenship Question Will Damage the Quality of Census Data**

5           819. Harm to the quality of census data is “[s]omething [the Census Bureau] tr[ies] to  
6 avoid.” New York Tr. 953:18-20 (Abowd). Yet, as the Census Bureau determined, the  
7 citizenship question will damage the quality of characteristic data collected through the 2020  
8 Census, separate and apart from the damage to the count.

9           820. These characteristics include gender, age, race, and ethnicity. Tr. 1001:17-24  
10 (Abowd).

11           821. The damage to data quality will also cause some people to be counted in the wrong  
12 place, including in the wrong area of a municipality, or even in the wrong state. *Id.* at 1003:5-16  
13 (Abowd).

14           822. In the January 19 Memo, the Census Bureau concluded that adding a citizenship  
15 question to the 2020 Census will have an adverse impact on the quality of the data collected by  
16 the census. PTX-22 at 4. Because the citizenship question will lower self-response rates, the  
17 NRFU workload will increase, which will “degrade data quality because data obtained from  
18 NRFU have greater erroneous enumeration and whole-person imputation rates.” *Id.* at 5. One  
19 reason that data quality will suffer is that data collected during NRFU are “much more likely to  
20 be collected from a proxy rather than a household member and, when they do come from a  
21 household member, that person has less accurate information than self-responders.” *Id.* at 6.

22           823. In the March 1 Memo, the Census Bureau similarly concluded that a citizenship  
23 question will reduce data quality. PTX-25 at 4.

24           824. The Brown, et al. Memo reached the same conclusion. PTX-160 at 54. The  
25 Brown, et al. Memo found that, “[a] drop in the self-response rate from adding a citizenship  
26 question in Alternatives B (obtaining citizenship from the 2020 Census only) and D (obtaining  
27 citizenship from the 2020 Census and administrative records) results in increased costs in the  
28

1 Nonresponse Follow-up (NRFU) operation and affects the quality of the population count.” *Id.* at  
2 41. That will result in a “lower-quality population count.” *Id.* at 54.

3 825. The Brown, et al. Memo found that households deciding not to self-respond  
4 because of the citizenship question are likely to refuse to cooperate with enumerators coming to  
5 their door in NRFU. *Id.* at 41. That will increase the use of proxy responses. *Id.* Census Bureau  
6 research has found “that proxies supply poor quality . . . socioeconomic characteristic information  
7 about the person on behalf of whom they are responding.” *Id.* at 41; *see also* Tr. 201:1-8  
8 (O’Muircheartaigh)

9 826. Dr. Abowd’s testimony confirms that adding the citizenship question will damage  
10 the quality of the data collected in the 2020 Census. New York Tr. 885:17-21 (Abowd).

11 827. Dr. Abowd observed that data produced by lower self-response rates is less  
12 accurate than data produced by higher self-response rates. *Id.* at 881:19-882:5 (Abowd).  
13 Likewise, data produced by self-response is much more “reliable” than data produced by NRFU  
14 efforts. *Id.* at 953 (Abowd); Tr. 942:21-943:2 (Abowd).

15 828. Dr. Abowd stated that, by decreasing self-response rates and thus increasing  
16 reliance on NRFU efforts, the citizenship question will reduce the quality and accuracy of data  
17 produced during the 2020 Census. New York Tr. 881:19-882:5, 952:23-953:14 (Abowd); Tr.  
18 934:16-935:1, 1001:17-24 (Abowd). The quality of data obtained for households that do not self-  
19 respond to the decennial census will be “degraded” as a result of the failure to self-respond. *Id.* at  
20 938:11-15 (Abowd).

21 829. The increased degradation of data quality that results from adding a citizenship  
22 question to the 2020 Census cannot be mitigated. *Id.* at 935:3-5, 950:6-13, 1001:25-1002:8  
23 (Abowd).

24 830. Dr. Abowd agreed that the increased use of proxies that will result from adding the  
25 citizenship question will harm data quality. Tr. 887:13-24, 931:14-24, 937:6-19 (Abowd); *see*  
26 *also id.* at 114:11-15, 200:5-17, 217:21-22 (O’Muircheartaigh). That is because it is “very hard to  
27 get the [demographic] characteristics in the proxy interview.” *Id.* at 887:20-21. The Census  
28 Bureau has concluded that proxy responses are likely to result in lower-quality enumeration data

1 than self-responses. Tr. 950:23-951:18 (Abowd); Census Bureau 30(b)(6) Dep. Vol. II 382:18-  
2 21; PTX-160 at 41.

3 831. Dr. Abowd also acknowledged that, under Alternative D, the Census Bureau will  
4 be able to link fewer persons to administrative records, New York Tr. 969:2-23, 979:16-20, 981-  
5 17-19 (Abowd), which will reduce data quality, *id.* at 981:20-25. In contrast, using administrative  
6 records to provide DOJ with block-level CVAP data under Alternative C would not harm the  
7 quality of the census data. *Id.* at 958:5-18 (Abowd). Because Alternative D will result in worse  
8 data quality and will be worse for the Census Bureau’s goal of conducting an accurate 2020  
9 Census, as compared to Alternative C (relying exclusively on administrative records to produce  
10 block-level CVAP data), Tr. 936:6-17 (Abowd); Census Bureau 30(b)(6) Dep. Vol. II 414:2-9;  
11 Jarmin Dep. 117:5-118:10, 127:4-128:8, 144:20-145:9, Alternative C is superior to Alternative D  
12 if the goal is to have an accurate census. New York Tr. 968:24-969:1 (Abowd).

13 832. Dr. Abowd conceded that imputation will not mitigate the effect of the citizenship  
14 question with respect to data quality. Tr. 981:8-982:2 (Abowd). Increased imputation—which  
15 will be necessary as a result of the citizenship question—will result in greater variance in the data.  
16 *Id.* at 986:14-987:12 (Abowd). “Variance” or “variability” in census data accuracy means that,  
17 although the enumeration may be correct, measurements of data characteristics may be  
18 incomplete or inaccurate. *Id.* at 798:13-799:16. Increased imputation will thus result in lower  
19 quality and less accurate census data. *Id.* at 986:14-987:12, 1002:3-8 (Abowd); Jarmin Dep.  
20 398:22-399:4.

21 833. Dr. O’Muirheartaigh, Dr. Barreto, and Dr. Habermann confirmed that adding a  
22 citizenship question to the 2020 Census will harm the quality of the census data. Tr. 114:11-15,  
23 217:21-22 (O’Muirheartaigh); *id.* at 491:16-21 (Barreto); Habermann Trial Aff. ¶ 68. This is the  
24 consensus among scientists within and outside the Census Bureau. Tr. 114:11-15  
25 (O’Muirheartaigh).

1           **B. The Citizenship Question Will Inflict Harm on Plaintiffs**

2                   **1. Plaintiffs Have Increased Census Outreach Spending Because of the**  
3                   **Citizenship Question**

4           834. The State of California has appropriated and will imminently spend increased  
5 funds on census-related community outreach due to the citizenship question.

6           835. Former California Governor Jerry Brown initially proposed to the California  
7 Legislature for the FY 2018-19 state budget an appropriation of \$40.3 million “to be spent over a  
8 three-year period for statewide outreach and other activities related to the 2020 Census count.”  
9 Undisputed Facts ¶ 111.

10           836. This budget proposal was made prior to Secretary Ross’ issuance of the Decision  
11 Memo announcing the addition of the citizenship question. *See* PTX-502 at 3 [March 8, 2018,  
12 Legislative Analyst’s Office publication describing the proposed \$40.3 million appropriation].

13           837. The final FY 2018-19 state budget that was enacted in the summer of 2018  
14 included an appropriation of \$90.3 million “to support the California Complete Count effort,  
15 which was established within the Government Operations Agency to perform outreach focusing  
16 on hard-to-count populations for the decennial census.” Undisputed Facts ¶ 112.

17           838. Early on in the budget process, before Secretary Ross issued the Decision Memo,  
18 the Legislative Analyst’s Office published an analysis of the census outreach budget item. PTX-  
19 502. The analysis observed that the potential introduction of a citizenship question to the 2020  
20 Census could cause an undercount. *Id.* at 2-5 [noting that changes to the census, including “the  
21 potential for a question about citizenship[,] raise the possibility of an undercount in California in  
22 2020”].

23           839. This concern was echoed in legislative committee materials and at least one  
24 committee hearing. The legislative history of the FY 2018-19 state budget shows that one of the  
25 driving forces behind the increased appropriation was the citizenship question. PTX-504 at 140  
26 (summary of FY 2018-19 state budget includes section devoted to census outreach to hard-to-  
27 count residents, and states that “[t]he Budget includes \$90.3 million for statewide outreach and  
28 other efforts related to increasing the participation rate of Californians in the decennial census”);

1 PTX-505 at 1 (description of FY 2018-19 state budget line items references as a “major change”  
2 the \$90.3 million allocated to “support the California Complete Count effort . . . to perform  
3 outreach focusing on hard-to-count populations for the decennial census”); PTX-506 at 8, 76  
4 (Legislative Analyst’s overview of FY 2018-19 state budget includes section describing \$90.3  
5 million allocated for outreach activities); PTX-509 at 23 (March 15, 2018 Senate Budget and  
6 Fiscal Review Subcommittee meeting staff report on the California Complete Count – Census  
7 2020 agenda item notes that concerns about emphasis on Internet self-response, “in combination  
8 with the potential for a question about citizenship[,] raise the possibility of an undercount in  
9 California in 2020”); PTX-510 at 41-44 (April 24, 2018 Assembly Budget Subcommittee meeting  
10 staff report on 2020 Census Outreach agenda item states that one change to the 2020 Census is  
11 that “[t]he federal government has decided to include a citizenship question in the census, which  
12 is projected to reduce the rate of response,” and identifies the citizenship question as one of the  
13 challenges that would justify “additional resources” for outreach); PTX-517 at 45:19-46:12  
14 (statement by Assemblymember David Chiu at the April 24, 2018 Assembly Budget  
15 Subcommittee meeting that the citizenship question presents “a different world” that may justify  
16 doubling census outreach expenditures); PTX-518 at 1:18:05-1:18:55 (video of same; PTX-512 at  
17 24 (May 22, 2018 Senate Committee on Budget and Fiscal Review meeting staff report on  
18 California Complete Count – Census 2020 agenda item notes that “[d]ue to the significant  
19 changes to the census, providing state funding to target hard-to-count populations is reasonable,”  
20 and “[d]ue to both the extreme importance of an accurate census to the state and the high cost of  
21 the necessary outreach, additional funding is warranted”); PTX-513 at 30-31 (May 24, 2018  
22 Assembly Budget Subcommittee meeting staff report on the 2020 Census Outreach Funding  
23 agenda item proposed \$113 million increase in census outreach funding, including \$12 million for  
24 Los Angeles County’s complete count efforts); PTX-514 at 79 (June 6, 2018 2018-19 Legislative  
25 Budget Conference Committee meeting staff report on 2020 Census Outreach cites \$153.3  
26 million request from Assembly and \$135.3 million request from the Senate for outreach efforts);  
27 PTX-515 at 173 (June 8, 2018-19 Legislative Budget Conference Committee meeting staff report  
28



1 on 2020 Census Outreach recommends adopting compromise of \$90.3 million allocation for  
2 census outreach).

3 840. Since the appropriation, the California Complete Count Committee, the body in  
4 charge of the outreach efforts, has submitted reports to the Governor and Legislature that  
5 underscore the challenge presented by the citizenship question to those outreach efforts. PTX-  
6 508 at 4-5, 13, 19, 27-28 (October 2, 2018 report to Governor acknowledges that citizenship  
7 question presents challenge to outreach efforts, describes formation of working group on  
8 citizenship matters, observes that the question will generate fear, and identifies possible  
9 difficulties of hiring trusted messengers); PTX-507 at 9-10 (October 1, 2018 report to Legislature  
10 states that in convenings with local partners, “[p]articipants identified the most significant barrier  
11 to achieving a complete count to be the Census citizenship question and the current political  
12 environment regarding immigrants”).

13 841. The State’s allocation of outreach funding to the County of Los Angeles also  
14 confirms increased expenditures due to the citizenship question. Baron Trial Decl. ¶¶ 7-16.

15 842. The State initially allocated to the County \$8.7 million in census outreach funding.  
16 *Id.* ¶¶ 7, 12.

17 843. On May 18, 2018, the County requested an additional \$3.3 million in funding  
18 specifically due to the addition of the citizenship question on the Census. *Id.* ¶¶ 11-12 & Ex. A.

19 844. The State met the County’s request, in part. In November 2018, the State  
20 announced its County outreach allocations, allocating \$9,393,090 to the County of Los Angeles  
21 for 2020 Census outreach to hard-to-count populations. Undisputed Facts ¶ 113; Baron Trial  
22 Decl. ¶¶ 13-15.

## 23 **2. Plaintiffs Will Lose Federal Funding**

### 24 **a. Plaintiff State of California will lose federal funding**

25 845. The citizenship question will cause Plaintiff State of California to lose federal  
26 funding.

27 846. This is because if a citizenship question on the 2020 Census results in any  
28 measurable differential undercount of households containing noncitizens, California would lose

1 funding for state-share programs. Reamer Trial Decl. ¶¶ 20, 74; Tr. at 676:1-2, 677:6-14  
2 (Reamer).

3 847. Dr. Reamer, who is an expert in the relationship between census data and federal  
4 financial assistance, Reamer Trial Decl. ¶¶ 1-8, testified that a significant portion of federal  
5 domestic financial assistance is distributed on the basis of statistics derived from the decennial  
6 census, *id.* ¶ 10. Dr. Reamer’s testimony focused on the impact of the citizenship question on  
7 geographical allocations of funding.

8 848. At least 320 federal domestic assistance programs used census-derived data to  
9 distribute about \$900 billion in FY2016. *Id.* ¶ 10. Of these, there are 24 large federal financial  
10 assistance programs with geographic allocation formulas that rely in whole or part on census-  
11 derived data. *Id.* ¶¶ 10-11, Ex. D (PTX-245); Trial Tr. 668:12-669:9 (Reamer); *see also*  
12 Undisputed Facts ¶¶ 52-56.

13 849. Eighteen of these 24 programs are “state-share” programs, in that they rely in  
14 whole or part on state share of a U.S. population total. Reamer Trial Decl. ¶¶ 11, 17, Ex. D  
15 [PTX-245]. The 18 state-share programs include: Federal Transit Formula Grants, Community  
16 Block Development Grants/Entitlement Grants, Crime Victim Assistance, Title I Grants to Local  
17 Educational Authorities (LEAs), Special Education Grants, Head Start, Supplemental Nutrition  
18 Program for Women, Infants, and Children (WIC), Child Care and Development Block Grant,  
19 Supporting Effective Instruction State Grants, Workforce Innovation and Opportunity Act  
20 (WIOA) Youth Activities, Rehabilitation Services: Vocational Rehabilitation Grants to the States,  
21 Unemployment Insurance administrative costs, Block Grants for Prevention and Treatment of  
22 Substance Abuse, Social Services Block Grants, Career and Technical Education—Basic Grants  
23 to States, WIOA Disclosed Worker Formula Grants, Special Programs for the Aging, Title III,  
24 Part C, Nutrition Services. *Id.*

25 850. There is a strong, direct relationship between the accuracy of the decennial census  
26 and the reliability of both the Population Estimates and the ACS data produced by the Census  
27 Bureau because decennial census data is an essential determinant of the accuracy and reliability  
28 of both. *Id.* ¶¶ 12-13.

1           851. Geographic allocation formulas are particularly sensitive to inaccuracies in census-  
2 derived data. *Id.* ¶¶ 12, 31-32.

3           852. Because the Decennial Census is carried out once a decade and collects data on a  
4 small number of demographic characteristics, Congress has authorized a series of more current  
5 and descriptive census-derived datasets for use in funding formulas. *Id.* ¶¶ 24-25, Ex. E (PTX-  
6 246).

7           853. Of particular note, the Census Bureau constructs annual Population Estimates and  
8 Housing Estimates by augmenting decennial population and housing numbers with more recent  
9 data, primarily from vital statistics and tax records. *Id.* ¶ 27.

10           854. While a number of these programs use the Population Estimates datasets directly,  
11 many also use other datasets derived from Population Estimates, including Per Capita Income  
12 (PCI). *Id.* ¶ 28; Tr. 674:12-675:6 (Reamer).

13           855. Additionally, the Census Bureau relies on the decennial census in several different  
14 ways to design and implement the American Community Survey (ACS), the Current Population  
15 Survey, and the Consumer Expenditure Survey. Reamer Trial Decl. ¶ 29.

16           856. Therefore, programs other than state-share programs that use funding formulas  
17 reliant on these surveys are also sensitive to undercounts in the Decennial Census. *Id.* ¶¶ 27-30.

18           857. As explained above (*see* Section V.A.2), the citizenship question will cause  
19 California to experience a differential undercount of persons living in households containing  
20 noncitizens and Hispanics among the states due to California's large immigrant and Latino  
21 populations. This differential undercount will harm a number of states and their residents due to  
22 that undercount's impact upon a number of federal domestic financial assistance programs with  
23 census-tied geographic allocation formulas. *Id.* ¶¶ 16-18, 74.

24           858. Specifically, a differential undercount in the Decennial Census among persons  
25 who live in households containing noncitizens will lead to measurable fiscal losses across  
26 numerous federal programs for states with population percentages of households containing  
27 noncitizens that are above the national average, including California. *Id.* ¶¶ 17-18.  
28

1           859. Dr. Reamer performed calculations using two alternative projections of the  
2 potential undercount of households containing at least one noncitizen resulting from the addition  
3 of a citizenship question, which undercount scenarios were applied to projections of the 2020  
4 population by state. *Id.* ¶ 14.

5           860. These projections were prepared by Plaintiffs' expert witness Dr. Bernard Fraga.  
6 *Id.* ¶¶ 15, 35.

7           861. The two scenarios involve: (1) an undercount of 5.8 percent of households  
8 containing at least one noncitizen, and (2) an initial undercount of 5.8 percent of households with  
9 at least one noncitizen, where 86.63 percent of these households are ultimately counted  
10 successfully through nonresponse follow-up efforts. *Id.* ¶ 36.

11           862. Dr. Reamer calculated the specific financial impact of these projections on three of  
12 the 18 state-share programs—Title I grants to local education agencies, the Supplemental  
13 Nutrition Program for Women, Infants, and Children grants, and Social Services Block Grants—  
14 to illustrate certain losses that would occur in the event of a differential undercount. *Id.* ¶¶ 17, 20,  
15 33, 37-40, 43-48, 52-53, 57-63; Tr. 667:8-19 (Reamer).

16           863. Dr. Reamer concluded that, under either undercount scenario, California, among  
17 other states, would lose funding annually under all three programs. Reamer Trial Decl. ¶¶ 49-50,  
18 54-55, 64-65, and charts accompanying text.

19           864. Dr. Reamer's conclusion that a differential undercount will result in a lost funding  
20 extends to the other 15 state-share programs he identified, meaning that California, among other  
21 states, will lose population share and thus funding under these programs if the citizenship  
22 question causes an undercount of individuals living in households containing noncitizens. *Id.*  
23 ¶ 34.

24           865. Dr. Reamer's analysis demonstrates that the magnitude of the impact varies  
25 depending on the extent of the undercount. *Id.* ¶¶ 15-18.

26           866. Dr. Reamer's conclusion applies across the 18 state-share programs, even if the  
27 program funding formula contains variables that are not based on census data. Tr. 678:18-679:2  
28 (Reamer).

1           867. A change in the amount of the differential undercount would impact only the  
2 magnitude of the loss to a state-share program, not the existence of a loss. Reamer Trial Decl. ¶  
3 20.

4           868. Similarly, a change in funding level or allocation formula would impact only the  
5 magnitude of the loss, not the existence of a loss, so long as the allocation formula retains a  
6 degree of state-share-based calculation. *Id.* ¶ 19; Tr. at 669:24-670:11, 675:19-22 (Reamer).

7           869. Therefore, if a citizenship question on the 2020 Census results in any measurable  
8 differential undercount of households containing noncitizens, no matter the size of the  
9 undercount, California would lose funding for state-share programs. Reamer Trial Decl. ¶¶ 20,  
10 74; Tr. at 676:1-2, 677:6-14 (Reamer).

11                           **b. LAUSD and the County and City Plaintiffs will lose federal**  
12                           **funding**

13           870. The citizenship question will also cause LAUSD and the County and City  
14 Plaintiffs to lose federal funding.

15           871. The funding for some federal assistance programs is distributed among localities  
16 within the state according to formulas prescribed by law. Tr. at 677:23-678:10 (Reamer). For  
17 example, Title I grants are ultimately distributed to local educational agencies, and grants  
18 authorized by the Workforce Innovation and Opportunity Act (WIOA) are distributed to local  
19 workforce development areas. Reamer Trial Decl. ¶¶ 66, 67; *see also id.* ¶¶ 45 (WIC), 71  
20 (Community Development Block Grants); Tr. 677:15-22, 678:11-13 (Reamer) (Community  
21 Development Block Grants and Workforce Investment Opportunity Act grants).

22           872. Where there is a differential undercount of noncitizens within the locality that is a  
23 funding recipient of a state-share program, relative to the national population, those localities will  
24 experience a loss of federal funding. Tr. 677:23-678:10 (Reamer).

25           873. For example, the Los Angeles Unified School District, which has a higher-than-  
26 average share of households containing noncitizens than the state and national population, would  
27 incur a further decrease in Title I funding when the funding received by California is distributed  
28

1 among the local educational agencies within the state. Reamer Trial Decl. ¶ 66 n.2; Escudero  
2 Trial Decl. ¶¶ 16, 27; Ryback Trial Decl. ¶ 33.

3 **3. Plaintiffs Will Have Less Accurate Data to Make Decisions Related to**  
4 **Redistricting and Services**

5 **a. Poor-quality census data will impair County and City**  
6 **Plaintiffs' decisions related to redistricting and the distribution**  
7 **of resources**

8 874. Local governments depend on accurate census data when allocating resources. Tr.  
9 1040:7-19 (Abowd).

10 875. Lower quality demographic characteristic data will cause a misallocation of  
11 resources at the local level. *Id.* at 1040:20-1041:10 (Abowd). That misallocation of resources  
12 will result in one community's benefit at the expense of another community. *Id.* (Abowd).

13 876. The degradation of census data quality that will result from adding a citizenship  
14 question to the decennial census will affect any analysis that is based on and relies upon that data.  
15 *Id.* at 1005:3-24 (Abowd).

16 877. Inaccurate census data will affect uses of the census data in such areas as  
17 redistricting or allocation of funds due to variances or inaccuracies in the data. *Id.* at 799:1-16  
18 (Abowd).

19 878. Dr. Abowd testified that the degradation of data quality will harm demographers'  
20 ability to accurately determine the population size and demographic characteristics for both local  
21 jurisdictions, municipalities, and other smaller geographic areas. *Id.* at 1005:4-24 (Abowd). The  
22 degradation of data quality will also harm demographers' ability to make accurate population and  
23 demographic projections into the future. *Id.* (Abowd).

24 **(1) City of Los Angeles**

25 879. Plaintiff City of Los Angeles relies on decennial census data, including data on  
26 population count, race, age, and household status, to perform redistricting of City Council district  
27 lines and to allocate resources by neighborhood. Westall Trial Decl. ¶¶ 24-37.

28 880. Under section 204(a) of the Los Angeles City Charter, City Council districts "shall  
each contain, as nearly as practicable, equal portions of the total population of the City as shown

1 by the Federal Census immediately preceding the formation of districts.” Westall Trial Decl.  
2 ¶ 20. And section 204(d) of the Charter mandates that Council districts be drawn “in  
3 conformance with requirements of state and federal law and, to the extent feasible, shall keep  
4 neighborhoods and communities intact, utilize natural boundaries or street lines, and be  
5 geographically compact.” *Id.* ¶ 19.

6 881. Redistricting must also comply with several legal and practical considerations and  
7 principles, including (a) ensuring districts contain equal population in compliance with the Equal  
8 Protection Clause of the Fourteenth Amendment to the United States Constitution; (b) respecting  
9 traditional redistricting criteria such as contiguity (all parts of a district should connect),  
10 compactness (a district should be geographically compact with regard to appearance, shape, and  
11 borders), due consideration of existing boundaries (such as geographic, street, school, and  
12 political subdivisions), and preserving communities of interest (people sharing common interest);  
13 and (c) compliance with section 2 of the federal Voting Rights Act by ensuring that minority  
14 voters are not denied equal access to voting opportunities (minority voting blocks are neither  
15 fractured nor packed into a district so as to dilute their votes). *Id.* ¶ 18.

16 882. In order to comply with those provisions, laws, and principles, the Los Angeles  
17 City Council relies on data from the decennial census when redistricting to create City Council  
18 districts that are of equal size in terms of resident population. *Id.* ¶ 27.

19 883. The redistricting process requires decennial census data at multiple levels of  
20 granularity, including a “Census block”; a “Census Block Group” or “Census Tract” level;  
21 “Census Place” (unincorporated County); and at an overall city, county and state level. *Id.* ¶ 26-  
22 27.

23 884. Accuracy of census data at all levels of granularity, including the most granular  
24 block-level, is necessary to ensure properly populated and lawfully formed City Council districts.  
25 *Id.* ¶ 28. The accuracy of the most granular census data is particularly important in the City of Los  
26 Angeles because neighborhood characteristics and population density can change dramatically  
27 from neighborhood-to-neighborhood, or even block-to-block. *Id.* ¶ 28.  
28

1           885. Inaccurate decennial census population count data will result in an unevenly  
2 reported population distribution, which will in turn deny equal representation to the City of Los  
3 Angeles’s residents. *Id.* ¶ 29.

4           886. The City of Los Angeles also uses granular race and ethnicity data gathered from  
5 the decennial census when redistricting to ensure compliance with the Voting Rights Act and  
6 other state and federal voting and civil rights laws. *Id.* ¶ 31.

7           887. Accurate data on race and ethnicity at all levels of granularity including the block-  
8 level is necessary given that population density and demographic diversity can vary sharply  
9 among adjacent neighborhoods and abutting city blocks in the City of Los Angeles. *Id.* ¶ 31.

10           888. Without accurate block-level race and ethnicity data, the City of Los Angeles  
11 cannot ensure that district lines are drawn in compliance with the Voting Rights Act and state and  
12 federal other voting and civil rights laws. *Id.* ¶ 31.

13           889. Block-level decennial census demographic data on age, race, and household status  
14 is necessary for identifying communities of interest and locating their precise geographic bounds.  
15 *Id.* ¶ 31. Without accurate block-level decennial census demographic data on age, race, and  
16 household status, the City of Los Angeles would not be able to comply with the redistricting  
17 principle that requires containment of a community of interest within one City Council district  
18 and seeks to avoid bifurcating of communities of interest with district lines. *Id.* ¶¶ 18, 31.

19           890. The City of Los Angeles also relies on accurate decennial census population count  
20 and demographic characteristic data when managing the allocation of its services and resources to  
21 its residents. *Id.* ¶ 33. These services include, for example, emergency services provided by the  
22 Los Angeles Fire and Police Departments and trash pickup services provided by the Bureau of  
23 Sanitation. *Id.* ¶ 36.

24           891. Los Angeles city services and resources that are allocated to particular  
25 neighborhoods are based on the Decennial Census count of people in those neighborhoods. *Id.*  
26 ¶ 34. Due to the highly varying nature of the population density from neighborhood-to-  
27 neighborhood and block-to-block in the City of Los Angeles, the granular block-level population  
28



1 count data derived from the Decennial Census is crucial for properly identifying the needs of each  
2 neighborhood and efficiently allocating city services and resources to meet those needs. *Id.*

3 892. Without reliable, precise, and accurate population count data, the City of Los  
4 Angeles would not be able to identify the needs of each community, neighborhood, or high-  
5 density city block. *Id.* ¶ 35. The combination of undercounts in some neighborhoods and  
6 overcounts in others will lead to errors in measuring neighborhood populations, which will in turn  
7 lead to misallocation of City resources. *Id.*

8 893. Having an accurate neighborhood-by-neighborhood and block-by-block  
9 population count is also important in such areas as the City's Department of City Planning (for  
10 urban planning and zoning updates), the City's Department of Transportation (for infrastructure  
11 project assessments), the City's Economic Workforce and Development Department (for  
12 redevelopment purposes), and by the Housing and Community Investment Department (for smart  
13 growth analyses). *Id.* ¶ 37.

## 14 (2) County of Los Angeles

15 894. Plaintiff County of Los Angeles relies on decennial census data on the population  
16 count and demographic characteristics for county planning and development purposes. Bodek  
17 Trial Decl. ¶¶ 9-15, 20-21.

18 895. The County relies heavily upon decennial census demographic information in  
19 carrying out its responsibilities under the Planning and Zoning Law. Bodek Trial Decl. ¶ 20. The  
20 granular block-level census data is essential for the County's planning purposes. *Id.* ¶ 20.

21 896. The Los Angeles County 2035 General Plan serves as a "blueprint" for how and  
22 where the unincorporated County will grow and develop through the year 2035. *Id.* ¶ 6. The  
23 General Plan is the guide for long-term physical development and conservation, by establishing  
24 goals, policies and programs to foster health, livable and sustainable communities. *Id.*

25 897. One element of the General Plan is the Housing Element, which is one of eight  
26 elements required by the State. *Id.* ¶ 7. The Housing Element serves as a policy guide to address  
27 the housing needs of the unincorporated communities, and its main focus is to ensure safe,  
28 sanitary, and affordable housing for Los Angeles County residents, including those with special

1 needs. *Id.*; “Los Angeles County Housing Element, 2014-2021,” available at  
2 [http://planning.lacounty.gov/assets/upl/project/housing element.pdf](http://planning.lacounty.gov/assets/upl/project/housing%20element.pdf).

3 898. As part of the Housing Element, the County conducts a Housing Needs  
4 Assessment to identify both available housing inventory and market trends that the County will  
5 use to shape housing policy for the unincorporated areas. *Id.* ¶ 8. The assessment includes a  
6 review, not only of population, but also of demographic characteristics including age, race,  
7 employment, housing characteristics, and special needs. *Id.*

8 899. Data from the decennial census is the “main source” of information for conducting  
9 the County’s Housing Needs Assessment. *Id.* ¶ 9. The decennial census provides the requisite  
10 granular data at the block-level necessary for the Housing Needs Assessment. *Id.*

11 900. The County relies entirely on the decennial census’s population characteristic data  
12 on age to identify the current and future need for types of housing. *Id.* ¶ 10. Granular decennial  
13 census data on age is necessary to inform its planning with respect to each kind of housing  
14 because younger residents typically seek smaller, affordable housing, middle-aged residents  
15 demand a variety of housing options, and senior residents are projected to need intermediate care  
16 and assisted living options. *Id.*

17 901. The County relies on granular decennial census data on race and ethnicity, which  
18 can potentially indicate housing demand given that certain cultures may prefer or be accustomed  
19 to living with extended family, and need larger housing units. *Id.* ¶ 11.

20 902. The County relies on granular decennial census data that informs “special needs”  
21 characteristics of County residents (including seniors, farmworkers, single parent households,  
22 large households, the homeless, and persons with disabilities) who face greater challenges when  
23 seeking available housing in light of the need for certain accommodations and/or retrofitting. *Id.*  
24 ¶ 12.

25 903. The County relies on granular decennial census data on “household population,”  
26 which informs substandard housing, overcrowding, and overpayment (i.e., percentage of income  
27 spent on rent), to assess the availability of appropriate, affordable housing in the County’s  
28 unincorporated areas. *Id.* ¶ 13. Accurate data on household populations is critical because higher

1 density areas have special planning needs as they are more likely to need higher access to transit,  
2 have higher social service needs, and be sensitive to changes in rent or employment. *Id.*

3 904. The County can act to avoid and remedy housing issues if and only if it has  
4 accurate Census data. *Id.* ¶ 13. For example, if the County knows overcrowding is occurring, it  
5 can plan for (i.e., rezone) those areas in order to accommodate more people. *Id.* If these same  
6 areas also lack transit, accurate information gives the County an opportunity to plan for new  
7 transit service or new employment areas. *Id.*

8 905. The County and its agencies rely on granular decennial census data to develop  
9 programs and policies aimed at addressing the problems highlighted by the data. *Id.* ¶ 14.

10 906. Analysis of decennial census demographic data has resulted in the amendment of  
11 governmental constraints like the County Zoning Code, increased availability of public  
12 funds/project-based vouchers, development of affordable housing units, and the increased  
13 provision of rental assistance. *Id.* ¶ 15. Based on such analysis, public housing has been  
14 modernized and preservation options discussed with inhabitants of at-risk housing as well. *Id.*

15 907. Decennial census information forms the basis for measuring trends based on  
16 comparison with the previous census. *Id.* ¶ 20. The County's future projections for General Plan  
17 purposes will need to include comparisons between 2010 and 2020 demographic census figures.  
18 *Id.*

19 908. If the County were to use ACS data for these purposes, it would have to make  
20 large assumptions regarding local trends. *Id.* ¶ 9. Those assumptions would later cause  
21 significant financial and planning problems if they turned out to be false. *Id.*

22 909. The General Plan is also the foundation for all community-based plans, such as  
23 area plans, community plans, and coastal land use plans. *Id.* ¶ 16. Area plans focus on land use  
24 and policy issues that are specific to a particular planning area. *Id.*

25 910. An area plan will be prepared or updated for each of the County's eleven planning  
26 areas; for example, the East San Gabriel Valley Area Plan is a long-range planning and policy  
27 document that will help guide growth and development for the unincorporated areas of the  
28

1 planning area. *Id.* ¶ 17; “East San Gabriel Valley Area Plan,” available at  
2 <http://planning.lacounty.gov/site/esgvap>.

3 911. For those area plans, the County relies on decennial census demographic  
4 characteristic data including the age, race, employment, and housing characteristics of the  
5 community to assess the need and plan for growth. Bodek Trial Decl. ¶ 17.

6 912. The County has been developing an Equity Indicators Tool, the purpose of which  
7 is to facilitate the use of equity as a factor in the County’s decision making. *Id.* ¶ 19. The Tool  
8 itself is a web-based mapping program that displays decennial census demographic information to  
9 identify areas that are experiencing a greater degree of challenges. *Id.*; “Report on Board Motion  
10 Regarding the Equitable Development Work Program,” available at  
11 [http://planning.lacounty.gov/assets/upl/official/official\\_20181129-equity.pdf](http://planning.lacounty.gov/assets/upl/official/official_20181129-equity.pdf).

12 913. Without the reliable and precise demographic census data, the County would not  
13 be able to readily identify the unique needs of each community in formulating and implementing  
14 the County’s General Plan and its many elements. Bodek Trial Decl. ¶ 21. This lack of accurate  
15 data, in turn, could result in long-term misallocations of County resources, impairing the  
16 County’s ability to balance the economic, social, environmental, and other goals set out in the  
17 Planning and Zoning Law and the County’s General Plan. *Id.*

18 914. Without reliable and accurate demographic census data, the County would not be  
19 able to properly allocate resources to County agencies charged with the responsibility of making  
20 policy or financial decisions in accordance with California law and the County’s Equitable  
21 Development programs and policies. *Id.* ¶ 21.

### 22 (3) Los Angeles Unified School District

23 915. Plaintiff-in-Intervention Los Angeles Unified School District (LAUSD) relies on  
24 population count and demographic characteristic data from the decennial census for redistricting  
25 purposes.

26 916. LAUSD’s School Board redistricting occurs every ten years, as compelled by the  
27 Los Angeles Charter and Administrative Code, art. VIII, section 802. Crain Trial Decl. ¶ 7-8, 25;  
28

1 ECF No. 176 [LAUSD Request for Judicial Notice] at 2; ECF No. 185 [Order Re Plfs.' Requests  
2 for Judicial Notice] at 4.

3 917. Redistricting involves drawing seven LAUSD Board Districts containing, as  
4 nearly as practicable, equal portions of the total population of LAUSD. Crain Trial Decl. ¶ 10.

5 918. Each proposed Board District must be drawn in conformance with the  
6 requirements of state and federal law and to the extent feasible shall keep neighborhoods and  
7 communities intact, utilize natural boundaries or street lines, be geographically compact, and  
8 conform to high school attendance zones. Crain Decl. ¶ 10.

9 919. Members of the public are invited to review decennial census data on population  
10 count and demographic characteristics as they relate to LAUSD redistricting plans. *Id.* ¶¶ 18, 24.

11 920. To achieve those redistricting goals, LAUSD redistricting commission relies on  
12 population count and demographic characteristic data from the decennial census. *Id.* ¶ 10.

13 **b. Poor-quality census data will impair the allocation of federal**  
14 **domestic financial assistance**

15 921. Inaccurate characteristic data will also distort the allocation of federal domestic  
16 financial assistance to Plaintiffs. Reamer Trial Decl. ¶¶ 10-13, 30-31; Tr. 664:23-25 (Reamer).

17 922. The distribution of federal assistance program funds to states and localities relies  
18 on census-derived data to geographically allocate funding through statistics-driven formulas.  
19 Reamer Trial Decl. ¶¶ 10, 31; Tr. 664:23-25, 666:11-16 (Reamer). The census-derived datasets  
20 that are particularly important for determining the geographic allocation of funds are the Census  
21 Bureau's Population Estimates Program and the ACS. Reamer Trial Decl. ¶ 12.

22 923. There is a strong, direct relationship between the accuracy of decennial census data  
23 and the reliability of both the Population Estimates Program and the ACS. *Id.* ¶ 12. Decennial  
24 census data is an essential determinant of the accuracy and reliability of both. *Id.*

25 924. The accuracy of ACS estimates of the percentage distribution of various  
26 population characteristics at every level of geography is a function of the reliability of the  
27 decennial census. *Id.* ¶ 13. Accordingly, inaccuracies in the decennial census data—including  
28

1 data on population count and demographic characteristics—would lead to inaccurate estimates of  
2 population distribution by characteristics and geography from the ACS. *Id.*

3 925. Geographic allocation formulas are “particularly sensitive” to inaccuracies in  
4 census-derived data. *Id.* ¶ 12; Tr. 667:25-668:2 (Reamer).

5 926. Geographic differences in the accuracy of decennial census data will lead to  
6 distortions in the distribution of financial assistance across the breadth of census-guided  
7 programs. Reamer Trial Decl. ¶ 32.

8 927. Even modest geographic differences in census data accuracy and quality can lead  
9 to changes in funds distribution. *Id.* ¶ 32. That is because allocation formulas are determined by  
10 specific statistics and are sometimes calculated to the one-hundredth or one-thousandth of a  
11 percentage point. *Id.*

12 928. Given that Plaintiffs have a disproportionate number of persons most likely not to  
13 respond to the 2020 Census because of the citizenship question, the characteristics of these  
14 persons will be underrepresented when allocations of federal assistance program funds are made,  
15 and as a result, Plaintiffs will not receive the funding that they deserve.

#### 16 **4. Plaintiffs Will Lose Political Representation**

17 929. Adding a citizenship question to the 2020 Census creates a substantial risk of  
18 California losing a congressional seat.

19 930. Dr. Bernard Fraga testified that (1) based on Census Bureau data and Dr. Barreto’s  
20 survey results, California has a disproportionately high share of the population that would not be  
21 enumerated if the 2020 Census includes a citizenship question, (2) California is expected to  
22 maintain its current level of congressional representation (53 seats) if the 2020 Census does not  
23 ask a citizenship question, but is likely to lose one or more seats if the 2020 Census does include  
24 a citizenship question, and (3) under a broad range of population estimates for each of the states,  
25 adding a citizenship question to the 2020 Census always increases the probability that California  
26 will lose a congressional seat. Fraga Trial Decl. ¶ 8. These findings persist even with the  
27 uncertainty of population projections and the demographic composition in each state, survey  
28 sampling error, and reasonable NRFU efforts. *Id.* ¶ 9.

1           931. To estimate the quantitative effect of adding a citizenship question to the 2020  
2 Census, Dr. Fraga looked at four scenarios of nonresponse and NRFU—two based on Dr.  
3 Barreto’s survey data, and two based on Census Bureau data. *Id.* ¶ 26. For each scenario, Dr.  
4 Fraga determined how much of each state’s population would not be counted in the 2020 Census  
5 because of the citizenship question. *Id.* ¶¶ 57, 58.

6           932. Dr. Fraga estimated that, based on Dr. Barreto’s survey data, the citizenship  
7 question would cause 12.51 percent of Californians not to be reported in the census self-response  
8 (Scenario A). *Id.* ¶¶ 57-58. This was the largest proportional nonresponse of any state. *Id.*

9           933. Dr. Fraga performed the same calculation based on the Census Bureau’s estimate  
10 of a decline in nonresponse by 5.8 percent for noncitizen households. *Id.* ¶¶ 57, 60. Based on  
11 this estimate, the citizenship question would cause 1.68 percent of Californians not to be reported  
12 in the census self-response (Scenario C). Because California has a higher proportion of  
13 noncitizens than any other state, this was also the highest proportional undercount of all the states.  
14 *Id.* ¶¶ 57, 65.

15           934. Dr. Fraga testified that using either the survey results or the Census Bureau’s  
16 estimate, California will always have the highest proportional undercount, as long as the Census  
17 Bureau’s follow-up efforts are anything less than 100 percent effective. *Id.* ¶ 65.

18           935. Dr. Fraga used these undercount estimates to quantify the impact of adding a  
19 citizenship question on congressional apportionment, including the probability that apportionment  
20 would be affected by the question. *Id.* ¶ 66.

21           936. In the baseline scenario with no citizenship question, California is projected to  
22 keep its current 53 seats in the House of Representatives. *Id.* ¶ 75.

23           937. However, Dr. Fraga’s calculations illustrate that, using Dr. Barreto’s nonresponse  
24 estimates, even accounting for limited NRFU success, California would be virtually certain to  
25 lose three seats (Scenarios A and B). *Id.* ¶¶ 73-74, 76.

26           938. Dr. Fraga’s calculations further illustrate that, using the Census Bureau’s 5.8  
27 percent estimate of nonresponse by noncitizen households, the likelihood of California losing at  
28 least one seat nearly doubles to fifty percent probability (Scenario C). *Id.* ¶ 82. After accounting

1 for NRFU, the likelihood of California losing at least one seat still increases by 15 percent  
2 (Scenario D). *Id.*

3 939. California is the only state that would be predicted to lose more than one seat in  
4 any of the scenarios Dr. Fraga examined. *Id.* ¶¶ 83-85.

5 940. In short, the citizenship question would cause a differential undercount of  
6 California's population relative to other states and would substantially increase the probability  
7 that California will lose a congressional seat. *Id.* ¶¶ 76, 82, 85, 91.

8  
9 Dated: February 1, 2019

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**FILER'S ATTESTATION**

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

Dated: February 1, 2019

/s/ R. Matthew Wise  
R. MATTHEW WISE

## CERTIFICATE OF SERVICE

Case Name: **State of California, et al. v.** No. **3:18-cv-01865**  
**Wilbur L. Ross, et al.**

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I hereby certify that on February 1, 2019, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

### **PLAINTIFF'S POST-TRIAL PROPOSED FINDINGS OF FACT**

I certify that **all** participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on February 1, 2019, at Sacramento, California.

Tracie L. Campbell

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Declarant

*/s/ Tracie Campbell*

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Signature