

Kravitz, et al. v. United States Department of Commerce, et al. (8:18-cv-01041-GJH)
La Unión Del Pueblo Entero, et al. v. Ross, et al. (8:18-cv-01570-GJH)

Joint Stipulations of Fact

I. Preliminaries

1. Defendant Census Bureau is an agency within, and under the jurisdiction of, the Department of Commerce. 13 U.S.C. § 2. The Census Bureau is the agency responsible for planning and administering the Decennial Census.

2. Defendant United States Department of Commerce (the “Commerce Department”) is a cabinet agency within the executive branch of the United States Government, and is an agency within the meaning of 5 U.S.C. § 552(f). The Commerce Department is responsible for planning, designing, and implementing the 2020 Decennial Census. 13 U.S.C. § 4.

3. Defendant Wilbur Ross is the Secretary of the Commerce Department.

4. Defendant Steven Dillingham is the Director of the U.S. Census Bureau.

5. Dr. Ron Jarmin is the former Associate Director for Economic Programs of the United States Census Bureau and performed the nonexclusive functions and duties of Director or Acting Director of the Census Bureau until January 2, 2019.

6. Dr. John Abowd is and at all relevant times has been the Chief Scientist and Associate Director for Research and Methodology at the United States Census Bureau.

7. Earl Comstock is the Deputy Chief of Staff and Director of Policy, running the Office of Policy and Strategic Planning within the Office of the Secretary of Commerce, reporting directly to Secretary Ross.

8. Karen Dunn Kelley is the Presidentially-appointed Under Secretary for Economic Affairs at the U.S. Department of Commerce responsible for the operations of the Census Bureau.

9. Wendy Teramoto was a Senior Advisor and Chief of Staff to Secretary Ross.

10. Sahra Park-Su was a Senior Policy Advisor at the Department of Commerce who

reported to both Undersecretary Kelley and Earl Comstock.

11. David Langdon is a Policy Advisor within the Office of Policy and Strategic Planning, reporting to Mr. Comstock.

12. Michael Berning, J. David Brown, Misty Heggeness, Shawn Klimek, Lawrence Warren, and Moises Yi were members of the “SWAT Team” that prepared analyses of the inclusion of a citizenship question on the 2020 Decennial Census between December 2017 and March 2018.

13. Michael Walsh was the Deputy General Counsel for the Department of Commerce from at least January 2018 through August 2018 and is currently the Chief of Staff to Secretary Ross.

II. Past Census Bureau Practices With Regard to Citizenship Information

a. Decennial Census Overview

14. The U.S. Constitution requires the federal government to conduct a decennial census counting the total number of “persons”—with no reference to citizenship status—residing in each state (“Decennial Census”).

15. The Constitution provides that Representatives “shall be apportioned among the several States . . . according to their respective Numbers”; which requires “counting the whole number of persons in each State.”

16. The Constitution requires that this count be an “actual Enumeration” conducted every ten years.

17. Through the Census Act, Congress assigned the responsibility of making this enumeration to the Secretary of Commerce.

18. The Secretary of Commerce is charged with the responsibility to take a Decennial Census to create an actual enumeration of the United States population.

19. The central constitutional purpose of the Census Bureau in taking the Decennial Census is to conduct an enumeration of the total population.

20. To enable a person-by-person count, the Census Bureau sends a questionnaire to virtually every housing unit in the United States.

21. Any person over the age of eighteen living in the United States who refuses or willfully neglects to answer any part of the Census questionnaire sent to him or her is subject to a fine.

22. For the 2020 Decennial Census, households will also be given the option to complete the questionnaire via the internet, in addition to other enumeration options such as printed questionnaires and telephone responses.

23. If the Census Bureau does not receive a response to the questionnaire and subsequent mailings it then sends a Census Bureau staffer known as an enumerator to the housing unit to attempt to conduct an in-person interview in order to collect the data. This process is the first step in the Census Bureau's Non Response Follow Up ("NRFU") operation.

24. In the 2020 Decennial Census, the Census Bureau has proposed using administrative records to enumerate a limited number of those households for which there is high quality administrative data about the household if the initial NRFU visit does not result in collecting complete data for that household.

25. In the 2020 Decennial Census, the Census Bureau plans to have enumerators attempt to recontact in person those households without high-quality administrative records.

26. If a third attempt to contact a household does not yield a response, the housing unit will become "proxy-eligible."

27. A proxy is someone who is not a member of the household—such as a neighbor, landlord, Postal worker, or other knowledgeable person who can provide information about the

unit and the people who live there.

28. For a proxy-eligible housing unit, an enumerator will attempt three proxies after each recontact attempt that does not result in an interview.

29. For the 2010 Decennial Census, after three proxy attempts, a household became eligible for what is known as “whole-person imputation” or “whole household imputation,” in which the Census Bureau imputed the characteristics of the household, including in some circumstances the household member count.

30. After the NRFU process is completed, the Census Bureau then counts the responses from every household, including those completed through the NRFU process, to determine the population count in each state.

31. Data from the Decennial Census are reported down to the census block level.

32. The population data collected through the Decennial Census determines the apportionment of seats in the U.S. House of Representatives among the states.

33. The population data collected through the Decennial Census also determines the number of electoral votes each state has in the Electoral College.

34. States, counties, cities, and local public entities also use Decennial Census data to draw congressional, state, and local legislative districts.

35. The federal government also uses Decennial Census data to allocate hundreds of billions of dollars in public funding each year, including to states and local governments.

36. Approximately 132 programs used Census Bureau data to distribute hundreds of billions of dollars in funds during fiscal year 2015.

37. Among the programs that use Census Bureau data is the Home Investment Partnerships Program (HOME), run by the Department of Housing and Urban Development (HUD), which uses Census Bureau data as part of its allocation formula under 42 U.S.C. §

12747(b).

38. Among the programs that use Census Bureau data is the Community Development Block Grant Program (CDBG), run by HUD, which uses Census Bureau data as part of its allocation formula under 42 U.S.C. § 5306(b).

39. Among the funding programs that use Census Bureau data are programs administered by the Department of Labor under the Workforce Innovation and Opportunity Act (WIOA), which use Census Bureau data as part of the allocation formulas set forth in 29 U.S.C. §§ 3162(C) and § 3172(C).

40. Among the programs that use Census Bureau data are Title I educational grant funds run by the U.S. Department of Education, which uses Census Bureau data as part of its allocation formula under 20 U.S.C. § 6301-6578.

41. Among the programs that use Census Bureau data is the Supplemental Nutritional Program for Women, Infants, and Children, which uses Census Bureau data as part of its allocation formula under 7 C.F.R. § 246.16.

42. Among the programs that use Census Bureau data is the Social Services Block Grant Program (SSBG), which uses Census Bureau data as part of its allocation formula under 42 U.S.C. § 1397b.

43. Among the programs that use Census Bureau data is the Children's Health Insurance Program (CHIP), which uses Census Bureau data as part of its allocation formula under 42 U.S.C. §§ 1397dd, 1397ee.

44. Among the programs that use Census Bureau data is the Surface Transportation Block Grant Program (STBG), which uses Census Bureau data as part of its allocation formula under 23 U.S.C. § 133.

45. Among the programs that use Census Bureau data is the Medical Assistance

Program (Medicaid), which uses Census Bureau data as part of its allocation formula under 42 U.S.C. §§ 1301, 1396b.

46. In 2010, there was a statistically insignificant net overcount of the total U.S. population by approximately 0.01%.

47. Some demographic groups have proven more difficult to count in the Decennial Census than others. The Census Bureau refers to these groups as “hard-to-count.”

48. Racial and ethnic minorities, immigrant populations, and non-English speakers have historically been some of the hardest groups to count accurately in the Decennial Census.

49. The post-enumeration (coverage measurement) surveys in 1990 and 2000 did not compute or produce omission rates.

50. National omissions rates for the 2010 Census were as follows:

Total Population – 5.3%

White – 4.3%

Non-Hispanic White Alone – 3.8%

Black – 9.3%

Asian – 5.3%

American Indian and Alaska Native – 7.6%

Native Hawaiian or Pacific Islander – 7.9%

Some Other Race – 8.6%

Hispanic Origin – 7.7%

51. “Undercount” is also a Census Bureau coverage measurement term. An undercount occurs when the census enumerates a smaller number of persons or housing units in a population than indicated by an independent estimate of the size of that population.

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occurs when the census enumerates a larger number of persons or housing units in a population than indicated by an independent estimate of the size of that population.

53. Erroneous enumeration is also a Census Bureau coverage measurement term, and is defined by the Census Bureau as a census person or housing unit enumeration that should not have been counted for any of several reasons, such as, that the person or housing unit (1) is a duplicate of a correct enumeration; (2) is inappropriate (e.g., the person died before Census Day); or (3) is enumerated in the wrong location for the relevant tabulation.

54. As defined by the Census Bureau, the term “coverage error” is an error that results from (1) the failure to include in a census or survey all eligible persons or housing units, or (2) the inclusion of some persons or housing units erroneously. Examples of coverage errors include omissions, duplicates, and erroneous enumerations.

55. As defined by the Census Bureau, the term “differential undercount rate” means the difference between the net undercount rate for a particular demographic or geographic domain and the net undercount rate either for another domain or for the nation.

56. The Census Bureau describes the undercounting of a particular racial or ethnic group in comparison to the overall net undercount or overcount of the population as a whole as a “differential undercount,” as distinct from a “net undercount” of the entire population.

57. The 1990 Decennial Census undercounted the total population by approximately 1.6 percent. The 2000 Decennial Census overcounted the total population by approximately 0.5 percent.

58. The 1990 Census undercounted African Americans by 4.6 percent. The 2000 Census undercounted African Americans by 1.8 percent. The 2010 Census undercounted African Americans by 2.1 percent.

59. The Census Bureau has developed a range of strategies to address the differential

undercount of “hard-to-count” populations—including targeted marketing and outreach efforts, partnerships with community organizations, deployment of field staff to follow up with individuals who do not respond, and retention of staff with foreign language skills.

60. In the 2000 and 2010 Decennial Censuses, the Census Bureau designed and implemented public advertising campaigns to reach hard-to-count immigrant communities, including using paid media in over a dozen different languages to improve responsiveness.

61. For the 2000 and 2010 Decennial Censuses, the Census Bureau also partnered with local businesses, faith-based groups, community organizations, elected officials, and ethnic organizations and other stakeholders to reach these communities, provide education on responding to the Census, and improve the accuracy of the count.

62. Hundreds of thousands of Census partners join together during the Census to carry the message forward that participating in the Decennial Census is safe and important. They are the trusted voices that help people understand that being included in the final count is critical for their communities.

63. Organizations that the Census Bureau has partnered with in the past to serve as trusted voices carry the message forward that participating in the Decennial Census is safe and important include Plaintiffs Coalition for Humane Immigrant Rights (“CHIRLA”), Georgia Association of Latino Elected Officials (“GALEO”), La Union del Pueblo Entero (“LUPE”), and MinKwon Center for Community Action, Inc. (“MinKwon”); and other major organizations, like the National Congress of American Indians, the National Association of Latino Elected Officials, and the National Urban League.

b. The Long Form and the American Community Survey (ACS)

64. From 1790 to 1960, enumerators collected census information directly from households through in-person interviews.

65. From at least the 1970 Decennial Census through the 2000 Decennial Census, in lieu of the short form questionnaire, the Census Bureau sent a long form questionnaire to approximately one in six households.

66. For the 1970 Decennial Census, the long form questionnaire, which contained additional questions, was sent to approximately one in five households.

67. For the 2000 Decennial Census, the long form questionnaire, which contained additional questions, was sent to approximately one in six households.

68. Data collected from the sample households surveyed with the long form were used to generate statistical estimates.

69. The citizenship data collected from the long form questionnaire in 2000 were reported by the Census Bureau down to the census block group level.

70. After the 2000 Decennial Census, the long form questionnaire was replaced by the American Community Survey (“ACS”).

71. After the 2000 Decennial Census, the functions performed by the long form questionnaire have been replaced by the ACS.

72. The ACS is a yearly survey of approximately 3.5 million households—approximately 1 in every 38 households—across the United States.

73. A question concerning citizenship status is among the approximately 50 questions that appear on the 28-page ACS questionnaire.

74. The citizenship status question on the ACS is preceded by a question asking where the person was born.

75. The citizenship question that appears on the ACS is not a binary yes/no question.

76. The ACS citizenship question asks whether the person was born in the United States, a U.S. territory, or abroad.

77. The data collected by the ACS allows the Census Bureau to produce estimates of Citizen Voting Age Population (“CVAP”).

78. CVAP data based on responses to the ACS are reported by the Census Bureau down to the census block group level.

79. Margins of error are reported with the ACS estimates and provide a measure of the sampling error associated with each estimate.

80. The ACS is intended to provide information on characteristics of the population, and the social and economic needs of communities.

81. Unlike the Decennial Census, the ACS is not a complete enumeration, but rather a sample survey that is used to generate statistical estimates.

82. Because ACS estimates are statistical estimates based on a sample, the tabulations are weighted to reflect sampling probabilities and eligibility for NRFU, and are controlled to align with the official population totals as established by the Population Estimates program.

83. The Census Bureau reports ACS data in “census tract[s]” and “census-block groups.”

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

85. Multi-year ACS estimates have larger sample sizes than 1-year ACS estimates. Cumulating the five-year pooled estimates yields approximately a one-in-every-eight household sample.

86. Multi-year ACS estimates have greater levels of statistical precision for estimates concerning smaller geographical units.

87. 1-year ACS estimates produce “[d]ata for areas with populations of 65,000+”; 1-

year supplemental ACS estimates produce “[d]ata for areas with populations of 20,000+”, 3-year ACS estimates produced “[d]ata for areas with populations of 20,000+” until they were discontinued after the 2011-2013 3-year estimates, and 5-year ACS estimates produce “[d]ata for all areas.”

88. The 2000 Decennial Census short form questionnaire did not include a question on citizenship.

89. The 2010 Decennial Census questionnaire did not include a question on citizenship.

III. The 2020 Decennial Census

90. The text of the citizenship question to be included on the 2020 Decennial Census questionnaire as directed by Secretary Ross’s March 26, 2018 memorandum (the “Citizenship Question”) asks, “Is this person a citizen of the United States?,” with the answer options “Yes, born in the United States”; “Yes, born in Puerto Rico, Guam, the U.S. Virgin Islands, or Northern Marianas”; “Yes, born abroad of U.S. citizen parent or parents”; “Yes, U.S. citizen by naturalization – *Print year of naturalization*”; and “No, not a U.S. citizen[.]”

91. The 2020 Decennial Census questionnaire will pose questions regarding sex, Hispanic origin, race, and relationship status.

92. A planned question on the 2020 Decennial Census questionnaire asks “Is this person of Hispanic, Latino, or Spanish origin?”

93. A planned question on the 2020 Decennial Census questionnaire asks “What is this person’s race?”

94. A planned question on the 2020 Decennial Census questionnaire asks how each person in the household is related to the person filling out the questionnaire.

95. A planned question on the 2020 Decennial Census questionnaire asks, “What is

this person's sex?"

IV. Self-Response and Undercounts

125. After the 2010 Census, the Census Bureau conducted a post-enumeration survey to evaluate the census. The Census Bureau has published several memoranda describing its findings regarding the 2010 Census based on the post-enumeration survey results, including the G-10 and G-12 Memoranda.