

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND

LA UNIÓN DEL PUEBLO ENTERO,  
*et al.*,

Plaintiffs,

v.

WILBUR L. ROSS, in his official capacity as  
U.S. Secretary of Commerce, *et al.*,

Defendants.

No. 8:18-cv-01570-GJH

DECLARATION OF CAROL FEDERIGHI IN SUPPORT OF DEFENDANTS'  
REPLY IN FURTHER SUPPORT OF DEFENDANTS'  
MOTION FOR SUMMARY JUDGMENT

I, Carol Federighi, declare as follows:

1. I am an attorney at the United States Department of Justice, counsel for Defendants in the above-captioned litigation. I submit this declaration in support of Defendants' reply in further support of their motion for summary judgment.
2. Attached as **Exhibit A** is a true and accurate copy of selections from the October 4, 2018, Deposition of Andrew D. Reamer, Ph.D.
3. Attached as **Exhibit B** is a true and accurate copy of selections from the August 30, 2018, Deposition of Earl Comstock.

I declare under penalty of perjury that the foregoing is true and correct.

December 4, 2018  
Washington, D.C.

/s/ Carol Federighi  
Carol Federighi

# EXHIBIT A

1                   IN THE UNITED STATES DISTRICT COURT  
2                   FOR THE SOUTHERN DISTRICT OF NEW YORK  
3  
4 -----  
5 IMMIGRATION COALITION, et al.,           :  
6                   Plaintiffs,                   :  
7                   v.                                   :  
8 UNITED STATES DEPARTMENT OF           :  
9 COMMERCE, et al.,                   :  
10                   Defendants.                   :  
11 -----

13                   Deposition of ANDREW D. REAMER, Ph.D., a  
14 witness herein, at the offices of the United States  
15 Department of Justice, 1100 L Street, N.W., 12th  
16 Floor, Washington, D.C., commencing at 9:13 a.m. on  
17 Thursday, October 4, 2018 and the proceedings  
18 being taken down by stenotype and transcribed by  
19 Catherine B. Crump, a Notary Public in and for the  
20 District of Columbia.

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25

1 Q. Is it correct to state that the domestic  
2 assistance programs other than those about 320 you  
3 identify on page 4 do not use census-derived data to  
4 distribute program?

5 A. I would say the large, large majority of  
6 them do not. I'm always discovering new ones, but I  
7 feel like I have -- 320 is a pretty complete count.

8 Q. But you would agree that a significant  
9 majority of 2,249 total domestic assistance programs  
10 do not use census-derived data to distribute funds.  
11 Correct?

12 MS. MORGAN: Objection as to form.

13 THE WITNESS: Well, I would say that 2249  
14 minus 320, that number is the number of ones that I  
15 am not calling census derived at the moment.

16 BY MR. TOMLINSON:

17 Q. So I want to talk just a little bit  
18 about some of these specific programs and I want to  
19 start with Medicaid.

20 A. Okay.

21 Q. Now, Medicaid provides funding to State  
22 Governments. Correct?

23 A. Yes.

24 Q. The Federal Government does not provide  
25 money directly to individuals through Medicaid.

1 Correct?

2 A. Correct. That's my understanding.

3 Q. And the Federal Government does not  
4 provide money directly to any nonprofit organizations  
5 through Medicaid. Correct?

6 A. That's my understanding.

7 Q. And individual eligibility for Medicaid  
8 is determined by the specific State. Correct?

9 A. That's my understanding.

10 Q. Now, the amount of Medicaid funding  
11 received by each State is determined by a formula  
12 called the Federal Medical Assistance Percentage, but  
13 we can use FMAP for short. Correct?

14 A. Yes.

15 Q. And your opinion is that some of the  
16 differential undercount scenarios provided to you by  
17 Professor Warshaw would change the FMAP calculation  
18 for certain States and negatively impact the amount  
19 of Medicaid funding those States received. Correct?

20 A. Correct. Medicaid reimbursement, which  
21 is funding, but it's a reimbursement.

22 Q. Now, on page 36 of this report, there is  
23 a table. Do you see that?

24 A. Um-hum.

25 Q. And does this table identify the States

1 MS. MORGAN: Objection to form.

2 BY MR. TOMLINSON:

3 Q. Or apply to the undercount scenarios  
4 provided by Warshaw and Fraga?

5 A. Yes. I think just for clarity, I'll  
6 repeat it, that this was an analysis based on if the  
7 2020 scenarios identified by Professor Fraga was  
8 experienced in 2010, how that would change the FMAP  
9 in 2015 for the 50 States plus D.C.

10 Maryland, because it was at 50 in 2015, would  
11 not have been changed, but that's no prediction that  
12 Maryland would not be affected at some point in the  
13 2020s. It all depends on its relative per capita --  
14 its per capita income relative to the nation, which  
15 is something that is not in its control.

16 Q. I'm going to ask you to look back at the  
17 New York report, Exhibit 1. I want to talk about  
18 CHIP.

19 A. Okay.

20 Q. CHIP is a federal funding program that  
21 provides funding to State Governments. Correct?

22 A. Correct.

23 Q. And CHIP does not provide federal funds  
24 directly to individuals?

25 A. That's my understanding.

1 Q. And CHIP does not provide federal  
2 funding directly to nonprofit organizations?

3 A. Give me a moment.

4 [Witness peruses exhibit.]

5 THE WITNESS: I'm not an expert in what  
6 States do with their CHIP money. So I cannot say  
7 that States do not somehow reprogram that money and  
8 it find its way elsewhere, but the States are the  
9 original recipient of the money.

10 BY MR. TOMLINSON:

11 Q. Right. So the Federal Government  
12 provides the money to the State Government. Correct?

13 A. Correct.

14 Q. And I think you just said this, but the  
15 individual eligibility for CHIP is determined by the  
16 State. Correct?

17 A. I believe so and I don't know the  
18 parameters by which States have latitude to determine  
19 whether it's eligible. Every program is so unique.  
20 Sometimes Congress or the Department is very  
21 specific, this is what eligibility means. In other  
22 instances, States have a lot of latitude.

23 I'm not sure where CHIP fits in all of that.

24 Q. Okay. Now, the amount of CHIP funding  
25 received by each State is based in part upon the FMAP



1 Professor Fraga?

2 A. Yes.

3 Q. Okay. I'd like to turn back to Exhibit

4 1 --

5 A. This is so much fun.

6 Q. -- and talk about the WIC program.

7 A. Okay. Page 24? I'm sorry. Page 39.

8 Q. Page 39, correct.

9 So WIC is a federal program that provides  
10 funding to State Governments. Correct?

11 A. That is my understanding. Yes, and,  
12 again, it's a pass-through. So the State then turns  
13 around and gives money to the local agency.

14 Q. Right, but the Federal Government only  
15 gives money to the State Government?

16 A. My understanding.

17 Q. So the Federal Government does not  
18 provide money directly to individuals. Correct?

19 A. That's my understanding.

20 Q. And the Federal Government does not  
21 provide money directly to any nonprofit organizations  
22 under the WIC program. Correct?

23 A. I believe that's correct, but the States  
24 do.

25 Q. States have the ability to limit WIC

1 beneficiary eligibility to United States citizens.

2 Correct?

3 A. That's my understanding.

4 Q. You --

5 MS. FERRARI: Objection to the extent it  
6 calls for a legal conclusion.

7 BY MR. TOMLINSON:

8 Q. I would like to direct your attention to  
9 page 24 of the New York report. Near the bottom, you  
10 state State agencies have the option to limit WIC  
11 eligibility to U.S. citizens. Correct?

12 A. Yes. That sentence is there.

13 Q. WIC beneficiary eligibility is based in  
14 part on whether the person meets a low income  
15 standard. Correct?

16 A. That's my understanding.

17 Q. And that low income standard is a  
18 national standard correct?

19 A. I don't know. I do know that the money  
20 given from the Federal Government to the States is  
21 based on the number of kids up to Age 5 that are --  
22 the State share of number of kids up to Age 5 that  
23 are at or below 185 percent of poverty, but in terms  
24 of who is eligible to receive the money once received  
25 -- receive the services once received by the State, I



1 that will be eligible to receive services.

2 Q. And by each eligible jurisdiction, you  
3 mean States and territories. Correct?

4 A. That's my understanding.

5 Q. Social services block grant funds --  
6 strike that.

7 Each State's allocation of social services  
8 block grant funds is determined in part based on the  
9 population estimates. Correct?

10 A. I believe it's based in full on  
11 population estimates.

12 Q. Okay.

13 A. On the State's share of national  
14 population as determined by the population estimates  
15 of the Census Bureau.

16 Q. So as far you know, there is no other  
17 data inputs other than population estimates?

18 A. That's my understanding.

19 Q. I would like to turn your attention to  
20 the table on page 40 of the New York report, which is  
21 Exhibit 1.

22 A. Yes.

23 Q. This table on page 40 shows the States  
24 that would lose funding under at least some of the  
25 undercount scenarios provided by Professor Warshaw.

**FREE STATE REPORTING, INC.**

1378 Cape St. Claire Road  
Annapolis, Maryland 21409  
Attention: Debbie O'Konek

**ERRATA SHEET**

In Re: Immigration Coalition, et al. v. U.S. Department of Commerce, et al.  
Deposition of Andrew Reamer, Ph.D.  
Taken on October 4, 2018

At the time, the above-named deponent desired to make the following changes:

<u>PAGE</u>	<u>LINE</u>	<u>AS TRANSCRIBED</u>	<u>CHANGE TO</u>	<u>REASON</u>
27	4	"sudden that somebody"	"sudden somebody"	extra word added
27	5	"would affect"	"would not affect"	word omitted
27	6	"populations, but"	"populations differently, but"	word omitted
45	24	"zero change"	"zero chance"	typo
47	4	"citizen"	"citizenship"	typo
48	9	"2016 and 2019"	"2016 through 2019"	wrong word
48	10	"changed again"	"will change again"	typo / omission
51	5	"2020"	"2010"	typo
67	12	"not chosen."	."	extra words added
67	22	<del>1</del> "Title 1"	"Title I"	incorrect numeral
69	8	"larger."	"larger number."	word omitted
71	4	"level might"	"level, it might"	word omitted
77	7	"ingoing"	"incoming"	typo
89	15	"state's share"	"state's population share"	word omitted
91	6	"Capital"	"Capita"	typo
→ 74	25	"I don't know I"	"I don't know, I"	typo

<u>PAGE</u>	<u>LINE</u>	<u>AS TRANSCRIBED</u>	<u>CHANGE TO</u>	<u>REASON</u>
94	7	"was"	"were"	wrong word
95	19	"whether it's"	"who is"	wrong words
96	11	"exactly."	"exactly why."	omitted word
98	24	"dependant"	"dependent"	typo
102	16	"dependant"	"dependent"	typo
<del>120</del>	13-14	"it owns on"	"its own or"	typos
122	21-23	"where there are Hispanics are. were included were considered to be part of the part of possible undercount."	"where Hispanics are considered <del>to</del> part of a possible undercount."	typos
126	12	"SSPG"	"SSBG"	typo
127	13-14	"but they don't lose money"	" "	added repeated words not spoken
127	20	"Title 1"	"Title I"	incorrect numeral
128	3-4	"Title 1"	"Title I"	incorrect numeral
129	3	"Title 1"	"Title I"	incorrect numeral
130	13	"Title 1"	"Title I"	incorrect numeral
130	24	"believe"	"belief"	typo
131	17, 23	"Title 1"	"Title I"	incorrect numeral

DATED: \_\_\_\_\_ SIGNED: \_\_\_\_\_

FREE STATE REPORTING, INC.  
1378 Cape St. Claire Road  
Annapolis, Maryland 21409

**ACKNOWLEDGMENT OF DEPONENT**

I, Andrew Reamer do hereby acknowledge that I have read and examined pages 1 through 136 inclusive, of the transcript of my deposition, and that:  
(check appropriate line.)

\_\_\_\_\_ The same is a true, correct and complete transcription of the answers given by me to the questions therein recorded.

Except for the changes noted on the attached errata sheet, the same is a true, correct and complete transcription of my deposition.

Dated: 10/22/18 Signed: Andrew Reamer

NOTARY PUBLIC

State of District of Columbia  
County of N/A

On this 22<sup>nd</sup> day of October, 2018, before me, the undersigned personally appeared Andrew Reamer, known to me (or satisfactorily proven) to be the person whose name is subscribed to within the instrument and acknowledged that he/she executed the same for the purposes therein contained.

In witness hereof I hereunto set my hand and official seal.

Robert Kotchenreuther II  
Notary Public

My Commission Expires: 11-30-2021

Robert Kotchenreuther II  
Notary Public, District of Columbia  
My Commission Expires 11-30-21



# EXHIBIT B



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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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NEW YORK IMMIGRATION COALITION, ET AL.,

Plaintiffs,

vs. Case No. 1:18-CF-05025-JMF

UNITED STATES DEPARTMENT OF COMMERCE, ET AL.,

Defendants.  
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Washington, D.C.

Thursday, August 30, 2018

Deposition of:

EARL COMSTOCK

called for oral examination by counsel for  
Plaintiffs, pursuant to notice, at the office of  
Arnold & Porter, 601 Massachusetts Avenue NW,  
Washington, D.C., before KAREN LYNN JORGENSON,  
RPR, CSR, CCR of Capital Reporting Company,  
beginning at 9:08 a.m., when were present on  
behalf of the respective parties:

1 Q But you're not a voting rights lawyer,  
2 right?

3 A Irrelevant to the question.

4 Q That's not my question. You're not a  
5 voting rights lawyer, right?

6 A I've already said that.

7 Q So you decided on your own in the spring  
8 of 2017 that it would be a good idea for the  
9 government to have more information than was  
10 available from the ACS about citizenship to  
11 enforce the Voting Rights Act, even though you're  
12 not a voting rights lawyer?

13 A I don't agree with that characterization,  
14 at all. I decided that there was sufficient  
15 information for me to pursue the Secretary's  
16 request to consider placing a citizenship question  
17 on the decennial census and that there was  
18 sufficient potential reason to collect that  
19 information to warrant moving forward. If I'd  
20 come to an opposite conclusion that there was not  
21 sufficient potential reason or that there was some  
22 insurmountable legal bar, then I would have

1 reported back to the Secretary, I'm sorry,  
2 Mr. Secretary, it does not appear we can  
3 accomplish this objective.

4 Q Why did you need to come up with a reason  
5 for asking the question, separate and apart from  
6 whatever reason the Secretary had in his own head?

7 A Again, my job is to figure out how to  
8 carry out what my boss asks me to do. So you go  
9 forward and you find a legal rationale. Doesn't  
10 matter what his particular personal perspective is  
11 on it. It's not -- it's not going to be the basis  
12 on which a decision is made.

13 Q That's your understanding, that the way  
14 you should do it, is come up with a rationale that  
15 has nothing to do with what's in the Secretary's  
16 mind as to why he wants it; is that your  
17 understanding of how it's supposed to work?

18 A No. Again, you continue to characterize  
19 things in a way that you believe may be correct,  
20 but not the way I believe to be correct. My job,  
21 as a person who has been doing this for 30-plus  
22 years for clients and people in the government, is

1 if they would like to accomplish an objective, I  
2 see if there's a way to do that. And, again, if  
3 it's not legal, you tell them that. If it can't  
4 be done, you tell them that. If there's a way to  
5 do it, then you help them find the best rationale  
6 to do it. That's what a policy person does.

7 And so, again, if I came up with a  
8 rationale that the Secretary didn't agree with or  
9 didn't support, then he was going to tell me that.  
10 I have no doubt about that. But in the meantime,  
11 he doesn't -- I don't need to know what his  
12 rationale might be, because it may or may not be  
13 one that is -- that is something that's going to a  
14 legally-valid basis.

15 So, again, he's got -- he's asked, can we  
16 put -- can we put a question on? The job of a  
17 policy person is go out and find out how you do  
18 that. Whether that decision is going to be made  
19 ultimately to do it or not, that's up to the  
20 decision-maker.

21 Q Are you saying you're better off not  
22 knowing what the Secretary's own rationale is for