

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

CITY OF SAN JOSE, CALIFORNIA,
et al.,

Plaintiffs,

v.

DONALD J. TRUMP, *et al.*,

Defendants.

Case No. 20-CV-05167-LHK-RRC-EMC

Case No. 20-CV-05169-LHK-RRC-EMC

Declaration of Albert E. Fontenot, Jr.

I, Albert E. Fontenot, Jr., make the following Declaration pursuant to 28 U.S.C. § 1746, and state that under penalty of perjury the following is true and correct to the best of my knowledge and belief:

1. I am the Associate Director for Decennial Census Programs, in which capacity I serve as adviser to the Director and Deputy Director on decennial programs. In this role, I provide counsel as to the scope, quality, management and methodology of the decennial programs; provide executive and professional leadership to the divisions and central offices of the Decennial Census Programs Directorate; and participate with other executives in the formulation and implementation of broad policies, which govern the diverse programs of the Census Bureau. I have served in this capacity since November 12, 2017.
2. The following statements are based on my personal knowledge or on information supplied to me in the course of my professional responsibilities. I am providing these statements in support of the Defendants' opposition to the Plaintiffs' Motion for Partial Summary Judgment.
3. Since March 2020, the Census Bureau has been required to make a number of adjustments to its plans for field data collection for the decennial census as a result of the COVID-19 pandemic, and in order to comply with the statutory deadline of December 31, 2020 to deliver the apportionment count.

4. A statutory deadline under 13 U.S.C. § 141(b) requires that the tabulation of total population by States as required for the apportionment of Representatives in Congress among the several States shall be completed within nine months after the official start of the census and reported by the Secretary to the President of the United States. That date is December 31, 2020.
5. To meet that deadline in light of the delays caused by the COVID-19 pandemic, the Census Bureau, (as reflected in the Census Bureau Director's August 3, 2020 Statement), updated its Operational Plan. For clarity, I will refer to the various changes in the operational plan as "the Replan."¹ Our intent in the Replan was to improve the speed of the count without sacrificing completeness. The Replan involved conducting additional training sessions to increase the number of enumerators in the field and providing monetary awards to existing enumerators in recognition of those who maximize hours worked, as well as retention bonuses for those enumerators who serve for multiple weeks. The Census Bureau planned to keep phone and tablet computer devices for enumeration in use for the maximum time possible.
6. Under the Replan, the Census Bureau would end field data collection by September 30, 2020. Self-response options would also close on that date to permit the commencement of data processing. Under the Replan, the Census Bureau intended to meet a similar level of household responses as collected in prior censuses, including outreach to hard-to-count communities. Once the Census Bureau has the data from self-response and field data collection in our secure systems, we would review the data for completeness and accuracy, streamline processing of the data, and prioritize apportionment counts to meet the statutory deadline.
7. Between the time field operations are completed and the statutory deadline, the Census Bureau must engage in post-data collection processing in order to produce the Census Unedited File (CUF), which will then be used to produce the apportionment numbers to be delivered to the Secretary.

¹ On September 5, 2020 the U.S. District Court for the Northern District of California issued a Temporary Restraining Order (TRO) enjoining the Census Bureau from "implementing the August 3, 2020 Replan or allowing to be implemented any actions as a result of the shortened timelines in the August 3, 2020 Replan, including but not limited to winding down or altering any Census field operations, until the Court conducts its September 17, 2020 hearing on Plaintiffs' PI motion." The Census Bureau has taken actions to come into compliance with the TRO, and the case remains pending.

8. As of September 8, 2020, over 96 million households, 65.5 percent of all households in the Nation, have self-responded to the 2020 Census. The Non-Response Followup field work has begun and combined with the self-response numbers approximately 88.8 percent of all the households in the nation have been enumerated. Building on our successful and innovative internet response option, the dedicated women and men of the Census Bureau, including our temporary workforce deploying in communities across the country in recent and upcoming weeks, will work diligently to achieve an accurate count.
9. The Census Bureau has responded to the shortened calendar period for Non-Response Follow-Up (NRFU) operations by taking steps to increase and enhance the ability of its employees in the field to work as efficiently as possible, all in an effort to put in as many hours of work, spread across the total workforce, into field operations as would have been done under the original time frame. We have aimed to improve the speed of our count by continuing to maintain an optimal number of active field enumerators by conducting additional training sessions, providing awards to enumerators in recognition of those who maximize hours worked and retention awards to those who continue on staff for successive weeks. Additionally, we are keeping phone and tablet computer devices for enumeration in use for the maximum time possible.
10. As the Director stated on August 3, 2020, under the revised plan discussed above, the Census Bureau intends to meet a similar level of household responses as collected in prior censuses, including outreach to hard-to-count communities.
11. The Census Bureau will continue to protect and keep confidential respondents' private and personally-identifying information, as is required by law under Title 13.
12. The Census Bureau will continue to comply with the Census Bureau's 2018 Residence Criteria, *Final 2020 Census Residence Criteria and Residence Situations*, 83 Fed. Reg. 5525 (February 8, 2018), which, as in past decennial censuses, requires each person to be counted in their usual place of residence, as defined in the Residence Criteria.
13. The Presidential Memorandum issued on July 21, 2020, *Memorandum on Excluding Illegal*

Aliens From the Apportionment Base Following the 2020 Census, has had no impact on the design of field operations for decennial census, or on the Census Bureau's commitment to count each person in their usual place of residence, as defined in the Residence Criteria.

Albert E. Fontenot, Jr.
Associate Director
Decennial Census Programs
United States Department of Commerce
Bureau of the Census

Dated: _____