

No. 20-16868

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

NATIONAL URBAN LEAGUE, et al.,

Plaintiffs-Appellees,

v.

WILBUR L. ROSS, et al.,

Defendants-Appellants.

On Appeal from the United States District Court
for the Northern District of California

EXCERPTS OF RECORD—VOLUME I

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

NATIONAL URBAN LEAGUE, et al.,
Plaintiffs,
v.
WILBUR L. ROSS, et al.,
Defendants.

Case No. 20-CV-05799-LHK

**ORDER GRANTING PLAINTIFFS’
MOTION FOR STAY AND
PRELIMINARY INJUNCTION**

Re: Dkt. No. 36

Plaintiffs National Urban League; League of Women Voters; Black Alliance for Just Immigration; Harris County, Texas; King County, Washington; City of Los Angeles, California; City of Salinas, California; City of San Jose, California; Rodney Ellis; Adrian Garcia; National Association for the Advancement of Colored People; City of Chicago, Illinois; County of Los Angeles, California; Navajo Nation; and Gila River Indian Community (collectively, “Plaintiffs”) sue Defendants Commerce Secretary Wilbur L. Ross, Jr.; the U.S. Department of Commerce; the Director of the U.S. Census Bureau Steven Dillingham, and the U.S. Census Bureau (“Bureau”) (collectively, “Defendants”) for violations of the Enumeration Clause and the Administrative Procedure Act (“APA”).

Before the Court is Plaintiffs’ motion for stay and preliminary injunction (“motion for preliminary injunction”). Having considered the parties’ submissions; the parties’ oral arguments at the September 22, 2020 hearing and numerous case management conferences; the relevant law; and the record in this case, the Court GRANTS Plaintiffs’ motion, STAYS the Replan’s September

30, 2020 and December 31, 2020 deadlines, and preliminarily ENJOINS Defendants from implementing these deadlines.

I. BACKGROUND

A. Factual Background

The 2020 Census is “a 15.6 billion dollar operation years in the making.” Defendants’ Opp. to Plaintiffs’ Motion for Stay and Preliminary Injunction at 1 (“PI Opp.”). As a result, after nearly a decade of preparation, Defendants adopted a final operational plan for the 2020 Census in December 2018 called the Operational Plan Version 4.0. However, in March 2020, shortly after the beginning of data collection, the COVID-19 pandemic upended Defendants’ Operational Plan and necessitated more time for census operations. Accordingly, on April 13, 2020, Defendants adopted the COVID-19 Plan, which elongated the schedule for data collection and processing and the Secretary of Commerce’s reports of population “tabulations” to the President and the states. *See* 13 U.S.C. § 141(b), (c). On August 3, 2020, Defendants announced the Replan, which reduced the COVID-19 timeframes for data collection and processing by half.

Below, the Court first describes census data collection, data processing, and reporting in general terms. The Court then details the deadlines for these operations under the Operational Plan Version 4.0; the COVID-19 Plan; and the Replan.

1. Deadlines for data collection, data processing, and the Secretary’s reports to the President and the states.

As relevant here, there are four key deadlines in the 2020 Census. First is the deadline for self-responses to census questionnaires. At the end of the self-response period, the Census Bureau stops accepting responses to the census.

Second is the deadline on which Non-Response Follow-Up (“NRFU”) ceases. NRFU refers to the process of “conduct[ing] in-person contact attempts at each and every housing unit that did not self-respond to the decennial census questionnaire.” Fontenot Decl. ¶ 48. “The NRFU Operation is entirely about hard-to-count populations.” ECF No. 37-5 at 219. NRFU is thus “the most important census operation to ensuring a fair and accurate count.” Thompson Decl. ¶ 15.

1 Together, self-responses and NRFU comprise the census's data collection.

2 Third is the deadline for data processing after data collection. Data processing refers to the
3 Bureau's "procedures to summarize the individual and household data that [the Bureau] collect[s]
4 into usable, high quality tabulated data products." Fontenot Decl. ¶ 66.

5 Lastly, at the end of data collection and processing, the Secretary of Commerce issues two
6 reports pursuant to the Census Act: (1) "the tabulation of total population by States" for
7 congressional apportionment to the President by December 31, 2020, *see* 13 U.S.C. § 141(b); and
8 (2) a tabulation of population for redistricting to the states by April 1, 2021, *see id.* § 141(c).

9 **2. The Operational Plan Version 4.0, adopted in December 2018, provided a total**
10 **of 54 weeks for the 2020 Census.**

11 Defendants' sole declarant, Albert E. Fontenot, Jr., Associate Director for Decennial
12 Census Programs at the U.S. Census Bureau,¹ describes the Bureau's extensive work over nearly a
13 decade to develop the Operational Plan Version 4.0 (hereafter, "Operational Plan"). For example,
14 Associate Director Fontenot discusses eight significant census tests the Bureau performed in 2013,
15 2014, 2015, 2016, and 2018 to improve their field operations. Fontenot Decl. ¶ 71. Associate
16 Director Fontenot describes partnerships with stakeholders such as organizations, tribes, and local
17 governments. *E.g.*, Fontenot Decl. ¶¶ 12, 28. The Operational Plan reflects the conclusions of
18 subject-matter experts such as statisticians, demographers, geographers, and linguists. *See, e.g.*,
19 ECF No. 37-5 at 79, 144 (2020 Census Operational Plan—Version 4.0).

20 Under the Operational Plan adopted in December 2018, self-responses spanned 20.5 weeks
21 from March 12 to July 31, 2020. NRFU spanned 11.5 weeks from May 13 to July 31, 2020. Data
22 processing spanned 22 weeks from August 1 to December 31, 2020. These operational dates
23 would culminate in the Secretary of Commerce issuing his reports by the statutory deadlines.
24 Specifically, by December 31, 2020, the Secretary would report "the tabulation of total population

26 ¹ For an organizational chart of the Census Bureau, *see* Census Bureau Organizational Chart,
27 <https://www.census.gov/about/who.html>, ECF No. 150-3. Director Steven Dillingham and Deputy
28 Director Ron Jarmin head the Bureau, and their direct reports are Associate Directors.

by States” to the President for the purpose of Congressional apportionment. By April 31, 2021, the Secretary would report the tabulation of population to the states for the purpose of redistricting. 13 U.S.C. § 141(b).

3. COVID-19 pandemic causes suspension of census operations.

Six days after the self-response period began on March 12, 2020, the Bureau announced on March 18, 2020 that it would suspend all field operations for two weeks because of the COVID-19 pandemic. *See* Press Release, U.S. Census Bureau, *U.S. Census Bureau Director Steven Dillingham on Operational Updates* (Mar. 18, 2020), <https://www.census.gov/newsroom/press-releases/2020/operational-update.html>.

The Bureau foresaw an eight-week operational delay, according to an internal Bureau document dated March 24, 2020 and sent by the Bureau Deputy Director’s Chief Advisor, Enrique Lamas, to senior staff. The document stressed the importance of maintaining an uncompressed schedule. Reasons for maintaining an uncompressed schedule included completing the workload remaining and operations that ensured a complete count of all population groups:

- The document stated that “staff had covered only about 10% of the workload when [the Bureau] had to stop.” DOC_7087.
- The document further noted that operations “focused on counting populations not living in traditional housing, such as nursing home residents, college students, the military, prisoners, the homeless, and the transitory populations are being planned and will be conducted as it is safe for Census employees and the public to engage in face-to-face activities. These operations and our nonresponse follow-up operation, all need to be completed before the Census Bureau can begin processing the data to ensure that we have a complete count of the population and not undercount specific population groups.” DOC_7088.

In line with the Bureau’s expectation of a long delay, the Bureau announced another two-week suspension on March 28, 2020. Press Release, *Census Bureau Update on 2020 Census Field Operations* (Mar. 28, 2020), <https://www.census.gov/newsroom/press-releases/2020/update-on-2020-census-field-operations.html>. Further delays followed.

Ultimately, the Bureau’s projected eight-week delay was nine weeks plus phased restarts.

The Chief of Staff to Secretary Ross, Michael Walsh, analyzed the issues for the Secretary on May 8, 2020. He wrote that “[p]ursuant to OMB guidance, the Census Bureau *completely* suspended decennial field operations for 47 days between March 18 and May 4,” and then resumed operations in phases thereafter. DOC_2287 (emphasis in original) (“Operational Timeline” memo). Walsh flagged issues with two operations especially important to avoiding undercounts, enumerator onboarding and “Update Leave”:

- Onboarding enumerators “entails recruitment, selection, acceptance and gathering of any additional information, fingerprinting, background checks, onboarding, and training” approximately 340,000–500,000 enumerators. *Id.* “The suspension of field operations curtailed preparation for this [onboarding], as much of it required personal contact.” *Id.* After onboarding, enumerators “visit non-responding households and conduct in-person interview to obtain census responses.” DOC_2287.
- Update Leave, as Walsh wrote, “helps reach 5 million homes in the USA in rural and remote areas that lack city-style mail.” *Id.* Update Leave reaches those homes by having Census “field staff hand-deliver questionnaires,” *id.* at 6, to “areas where the majority of the housing units do not have mail delivery . . . or the mail delivery information for the housing unit cannot be verified.” Fontenot Decl. ¶ 46. Before the complete suspension of operations, “approximately 10% of the initial [Update Leave] workload had been completed.” DOC_2287. By contrast, “[u]nder initial projections, 100% of the Update Leave workload should have been completed by April 17.” *Id.*

The May 8, 2020 Operational Timeline memo also foresaw problems with “[d]ata processing and integrity.” *Id.* (emphasis omitted). “[T]he pandemic has made impacts that will require additional processing and expertise because populations have temporarily shifted.” *Id.* As a result, the memo suggested that the 2018 Operational Plan’s provision of 152 days (about 22 weeks) for data processing was not enough. *Id.*

As field operations began restarting under the COVID-19 Plan detailed below, the Bureau encountered COVID-related challenges. In particular, the Bureau had trouble retaining enumerators and conducting in-person visits in NRFU. On retaining enumerators, Associate Director for Field Operations Tim Olson wrote to other senior officials on July 23, 2020 that “[the Bureau] had a huge quit rate from training to deployed in field (and this does not mirror past censuses at all – it is MUCH higher, almost a debilitating higher quit rate). And this translate[d]

1 into much slower production in the field because we have less than half the number of
2 enumerators (38%) we need to get the job done.” DOC_7737.

3 Issues with NRFU visits were flagged in a June 10, 2020 presentation sent by the Chief of
4 Staff to Director Dillingham, Christa Jones, to Deputy Director Jarmin and the Chief of Staff to
5 the Deputy Secretary of Commerce, Dan Risko. DOC_6545. On a slide titled “Risks and
6 Challenges Due to COVID-19,” the presentation stated that COVID-19 had “le[]d to new risks and
7 unknowns for the operation.” *Id.* Four risks stood out: (1) a lower case resolution rate because
8 respondents “may be less likely to answer their door”; (2) challenges with staffing and training;
9 (3) a complex schedule; (4) and a “de-scoped” early NRFU operation that presumably had been
10 delayed by COVID. *Id.*

11 By July 30, 2020—by which time the Bureau had already been directed to create the
12 Replan, as discussed below—enumerator staffing was still low. DOC_8623. Many cities across
13 several Area Census Offices had roughly 50% shortfalls in enumerator staffing compared to the
14 Bureau’s internal target. *Id.* Plaintiffs’ affidavits allude to similar issues with finding enumerators.
15 In Monterey County, California, for instance, the pandemic made it harder to hire and retain
16 enumerators “because traditional applicant groups like senior citizens have concerns about the risk
17 of catching COVID-19.” Gurmilan Decl. ¶ 13.

18 **4. The COVID-19 Plan, adopted on April 13, 2020, provided 71.5 weeks for the**
19 **2020 Census.**

20 As a result, on April 13, 2020, the Bureau issued an adjustment to its Operational Plan to
21 account for the impact of COVID-19 (the “COVID-19 Plan”). ECF No. 37-3 (April 13, 2020
22 statement of Secretary of Commerce Wilbur Ross and Census Bureau Director Steven
23 Dillingham). The COVID-19 Plan extended the deadlines. Specifically, first, the COVID-19 Plan
24 expanded the deadlines for self-responses from 20.5 weeks to 33.5 weeks (March 12 to October
25 31, 2020) to account for the pandemic’s disruptions to Bureau operations and the public’s ability
26 to respond to the census. Second, NRFU likewise expanded from 11.5 weeks (May 13 to July 31,
27 2020) to 12 weeks (August 11 to October 31, 2020).

Third, given the pandemic’s effects on “the quality of the data, especially for groups that are less likely to self-respond (often hard to count populations),” post-data collection quality control was deemed especially important. ECF No. 37-7 at 18. Data processing for congressional apportionment thus expanded from 22 weeks (August 1 to December 31, 2020) to 26 weeks (November 1, 2020 to April 30, 2021). The processing was to include an independent review of the final address list, analysis by subject-matter experts, and the remediation of software errors. Fontenot Decl. ¶ 89.

Lastly, the press release announcing the COVID-19 Plan stated that “the Census Bureau is seeking statutory relief from Congress of 120 additional calendar days to deliver final apportionment counts.” ECF No. 37-3 at 3. The COVID-19 Plan would thus “extend the window for field data collection and self-response to October 31, 2020, which will allow for apportionment counts to be delivered to the President by April 30, 2021, and redistricting data to be delivered to the states no later than July 31, 2021.” *Id.*

Although these delays would result in the Bureau missing statutory deadlines, the President of the United States and Bureau officials publicly stated that meeting the December 31, 2020 deadline would be impossible in any event. On the day the COVID-19 Plan was announced, President Donald J. Trump stated, “I don’t know that you even have to ask [Congress]. This is called an act of God. This is called a situation that has to be. They have to give it. I think 120 days isn’t nearly enough.” ECF No. 131-16 at 4.

On May 26, 2020, the Bureau’s Associate Director for Field Operations, Timothy Olson, stated that “[w]e have passed the point where we could even meet the current legislative requirement of December 31. We can’t do that anymore. We -- we’ve passed that for quite a while now.” Nat’l Conf. of Am. Indians, 2020 Census Webinar: American Indian/Alaska Native at 1:17:30–1:18:30, YouTube (May 26, 2020), <https://www.youtube.com/watch?v=F6IyJMtDDgY>.

Likewise, on July 8, Associate Director Fontenot, Defendants’ sole declarant, confirmed that the Bureau is “past the window of being able to get” accurate counts to the President by December 31, 2020. U.S. Census Bureau, *Operational Press Briefing – 2020 Census Update* at

20–21 (July 8, 2020), <https://www.census.gov/content/dam/Census/newsroom/press-kits/2020/news-briefing-program-transcript-july8.pdf>.

The Bureau’s internal view on missing the statutory deadlines was similar. Days after announcing the COVID-19 Plan, the Bureau prepared for a call on April 28, 2020 with Congressman Jamie Raskin, Chair of the House Oversight Subcommittee on Civil Rights and Civil Liberties, which has jurisdiction over the census. In preparation for that call, the Bureau’s Chief of Congressional Affairs, Christopher Stanley, circulated a memo to Director Dillingham and other senior officials. *See* DOC_2224. The memo answered possible questions about missed deadlines.

Two questions and answers (“Q&As”) stood out. The first Q&A contemplated that any data collection after August 14 would make meeting the deadlines infeasible. The Q&A asked why the Bureau couldn’t “collect data after August 14 and still deliver redistricting data on time?” DOC_2227. The answer was that the Bureau had “examined [the] schedule and compressed it as much as [the Bureau] c[ould] without risking significant impacts on data quality. Given the important uses of census data collection processing, it is vital that [the Bureau] not shortcut these efforts or quality assurance steps.” *Id.*

The second Q&A asked whether “delaying the apportionment data [was] constitutional?” The answer was that “[t]he proposal underwent a constitutional review, and we believe it is constitutional and that the adjusted schedule will help us fulfill the constitutional requirement of a complete and accurate census. . . . In history, especially for the many of the earlier censuses, data collection and reporting the counts shifted beyond the zero year.” DOC_2228. By “counts shifted beyond the zero year,” the Bureau presumably was referring to census reports that had been made in the calendar year after the statutory deadline. Those reports were for the censuses of 1810, 1820, 1830, and 1840. ECF No. 203 (explaining examples); *see, e.g.*, Act of Sept. 1, 1841, ch. 15, § 1, 5 Stat. 452, 452 (second *post hoc* extension of September 1, 1841 for original deadline missed by over nine months). In those censuses, after one or more deadlines had passed without the enumeration having been completed, Congress extended the relevant deadlines after the fact. *See*

ECF No. 203.

On May 8, 2020, Secretary Ross's Chief of Staff, Michael Walsh, sent the "Operational Timeline" memo to the Secretary. The Operational Timeline memo found that:

If the Census Bureau could fully restart today, under ideal conditions . . . the earliest you could finish NRFU, even with the ability to restart immediately every state, is approximately September 1, 2020. By finishing NRFU on September 1, 2020, apportionment counts could not be delivered until January 31, 2021, already after the statutory deadline. Redistricting information would be provided to states by April 30, 2021, already after the statutory deadline.

Based on the initial suspension of field activities in line with OMB guidance, the Census Bureau can no longer meet its statutory deadlines for delivering apportionment and redistricting data, even conducting operations under unrealistically ideal conditions.

DOC_2288 (emphasis in original) (bullet points omitted).

All the above operational concerns were ultimately reflected in the census response data. As of June 2020, "self-response rates var[ied] widely across states and counties," with "markedly different operational environments and challenges" facing the Bureau "from one locale to another." ECF No. 37-7 at 6 (citing self-response rates "below 3 percent" in counties in Alaska, Texas, Utah, and South Dakota).

5. The Replan, adopted on August 3, 2020, reduced the time for the 2020 Census from 71.5 weeks to 49.5 weeks.

On July 21, 2020, President Trump issued a memorandum declaring the United States' policy to exclude undocumented immigrants from the congressional apportionment base.

On July 23, 2020, Associate Director Fontenot started an email thread with several senior Bureau officials, including Deputy Director Ron Jarmin and Associate Director for Field Operations Timothy Olson. Associate Director Fontenot began the thread by stating that on July 27, he would tell the Department of Commerce about the "reality of the COVID Impacts and challenges":

On Monday at DOC [Department of Commerce] I plan to talk about the difference between goal and actual case enumeration (Currently a shortfall (11 % goal vs 7% actual) and attribute it to the higher drop out rate and (ideally with reasons) and

what we are going to do to address the technology drop outs.)

I think it is critical to lay the groundwork for the reality of the COVID Impacts and challenges.

Does anyone have any problems with my approach?

DOC_7737. In response, Associate Director Olson “agree[d] that elevating the reality is critical, especially in light of the push to complete NRFU asap for all the reasons we know about.”

DOC_7738. Those reasons are not in the administrative record.

Associate Director Olson then “sound[ed] the alarm” on “deliver[ing] apportionment by 12/31” in the strongest possible terms:

We need to sound the alarm to realities on the ground – people are afraid to work for us and it is reflected in the number of enumerators working in the 1a ACOs [Area Census Offices]. And this means it is ludicrous to think we can complete 100% of the nation’s data collection earlier than 10/31 and any thinking person who would believe we can deliver apportionment by 12/31 has either a mental deficiency or a political motivation.

Id. One reason that accelerating the schedule would be “ludicrous,” Associate Director Olson stated, was the “awful deploy rate” of enumerators about 62% below target. *Id.* Driving that shortfall was “almost a debilitating higher quit rate”:

Another tack is to provide crystal clear numbers by the 1a ACOs that shows the awful deploy rate - field selected the right number (big number) to training, training show rate was on par with prior censuses (albeit a few points lower ... but overall in line with past censuses). And then we had a huge quit rate from training to deployed in field (and this does not mirror past censuses at all - it is MUCH higher, almost a debilitating higher quit rate). And this translates into much slower production in the field because we have less than half the number of enumerators (38%) we need to get the job done.

DOC_7737.

On the same day as Associate Director Olson’s email (July 23, 2020), the Chief of Decennial Communications and Stakeholder Relationships, Kathleen Styles, shared a so-called “Elevator Speech” memo with GAO official Ty Mitchell and senior Bureau officials. *See* DOC_8026 (sending to GAO). The purpose of the Elevator Speech, Chief Styles wrote, was “to explain, in layman’s terms, why we need a schedule extension.” The Speech begins with a “High

Level Message,” which in its entirety reads:

Curtailing census operations will result in a census that is of unacceptable quality. The Census Bureau needs the full 120 days that the Administration originally requested from Congress to have the best chance to produce high quality, usable census results in this difficult time. Shortening the time period to meet the original statutory deadlines for apportionment and redistricting data will result in a census that has fatal data quality flaws that are unacceptable for a Constitutionally-mandated activity.

DOC_8070.

On July 31, 2020, the Bureau removed from its website the October 31, 2020 deadline for data collection without any announcement or explanation. *Compare* ECF No. 37-8 (July 30 Operational Adjustments Timeline), *with* ECF No. 37-9 (July 31 Operational Adjustments Timeline).

By August 1, 2020, the Bureau had prepared several versions for a presentation to Secretary Ross on Monday, August 3, 2020 (“August 3 Presentation”). The parties identify one version as a key document. ECF Nos. 161 at 2 (Defendants’ identification of DOC_10275), 190 at 6 (Plaintiffs’ identification of same). The Presentation’s very first slide, titled “Overview,” concludes that “to achieve an acceptable level of accuracy, at least 99% of Housing Units in every state must be resolved”:

Due to COVID-19 impacts, the conclusion of field operations for the 2020 Census was previously scheduled to end on October 31. In order to meet the statutory date of December 31, 2020 for apportionment, field operations must now conclude no later than September 30, 2020. Accelerating the schedule by 30 days introduces significant risk to the accuracy of the census data. In order to achieve an acceptable level of accuracy, at least 99% of Housing Units in every state must be resolved.

DOC_10275–76.

On August 3, 2020, the Bureau issued a press release announcing a “new plan,” which the Bureau called the “Replan.” U.S. Census Bureau, *Statement from U.S. Census Bureau Director Steven Dillingham: Delivering a Complete and Accurate 2020 Census Count* (Aug. 3, 2020), ECF No. 37-1 (“August 3 Press Release”). In his declaration, Associate Director Fontenot avers that the Secretary approved the Replan on the day it was announced. Fontenot Decl. ¶ 85.

In the words of the August 3 Press release, the Replan “accelerate[d] the completion of data collection and apportionment counts by our statutory deadline of December 31, 2020, as required by law and directed by the Secretary of Commerce.” ECF No. 37-1. The time for the 2020 Census was reduced from 71.5 weeks to 49.5 weeks. Specifically, self-response compressed from 33.5 weeks to 29 weeks, with the deadline advancing from October 31 to September 30. Fontenot Decl. ¶ 100. NRFU compressed from 11.5 weeks to 7.5 weeks, with the deadline advancing from October 31 to September 30. Lastly, data processing was halved from 26 weeks to 13 weeks, with the deadline advancing from April 30, 2021 to December 31, 2020.

As of August 3, 2020, less than 63% of households had responded to the 2020 Census. ECF No. 37-1.

6. The Government Accountability Office found that the Replan increases the risks to obtaining a complete and accurate 2020 Census.

In June 2020, the Government Accountability Office (“GAO”) issued a Report on the 2020 Census entitled, “COVID-19 Presents Delays and Risks to Census Count,” in which the GAO noted, among other things, that staffing shortages were experienced at the Bureau’s call centers and at the Bureau’s contractor responsible for printing the six mail-in self-response forms.² ECF No. 37-7 at 8 (GAO, COVID-19 Presents Delays and Risks to Census Count (June 2020)). The Report also noted that as of June 1, 2020, counties in Alaska, Texas, Utah, and South Dakota had

² The Court may take judicial notice of matters that are either “generally known within the trial court’s territorial jurisdiction” or “can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b). Courts take judicial notice of information, such as reports of the Government Accountability Office (“GAO”), Census Scientific Advisory Committee (“CSAC”), and Department of Commerce Office of Inspector General (“OIG”), which are found on government agency websites. *See Paralyzed Veterans of Am. v. McPherson*, 2008 WL 4183981, at *5–6 (N.D. Cal. Sept. 9, 2008) (citing circuit and district court cases). However, to the extent any facts in the documents subject to judicial notice are subject to reasonable dispute, the Court will not take judicial notice of those facts. *See Lee v. City of L.A.*, 250 F.3d 668, 689 (9th Cir. 2001) (“A court may take judicial notice of matters of public record But a court may not take judicial notice of a fact that is subject to reasonable dispute.”) (internal quotation marks omitted), *overruled on other grounds by Galbraith v. Cty. of Santa Clara*, 307 F.3d 1119 (9th Cir. 2002).

reported self-response rates below 3 percent. *Id.* at 9.³

In August 2020, the GAO issued a Report on the 2020 Census entitled “Recent Decision to Compress Census Timeframes Poses Additional Risks to an Accurate Count.” <https://www.gao.gov/assets/710/709015.pdf>. The Report stated: “Delays to data collection operations, public reluctance to participate in door-to-door interviews, and compressed timeframes for data collection and processing response data may affect the accuracy, completeness, and quality of the count.” *Id.* at ii (cover memo). The Report also noted that implementation of untested procedures and continuing challenges such as COVID-19 could “undermine the overall quality of the count.” *Id.* at 1.

7. The Bureau’s Scientific Advisory Committee unanimously supports extension of the census schedule.

Associate Director Fontenot’s September 22, 2020 declaration states: “In the midst of major West Coast fires and air quality issues that have accelerated since September 11, and the current impacts of Hurricane Sally across the states of Louisiana, Mississippi, Alabama, the Florida panhandle area, parts of Georgia, and South Carolina, I stated publicly on September 17, 2020 in the Census Scientific Advisory Committee meeting that I did not know whether Mother Nature would allow us to meet the September 30 date.” ECF No. 196-1 ¶ 14.

The next day, on September 18, 2020, the Census Scientific Advisory Committee (“CSAC”) unanimously concluded that the Census schedule should be extended. *See* Allison Plyer, Census Scientific Advisory Committee Chair, *Recommendations and Comments to the Census Bureau from the Census Scientific Advisory Committee Fall 2020 Meeting* (September 18, 2020), <https://www.documentcloud.org/documents/7213520-Recommendations-and-Comments->

³ The reports of the GAO, CSAC, and OIG are not in the administrative record. However, the Court is permitted to go outside the administrative record “for the limited purpose of background information.” *Thompson v. U.S. Dep’t of Labor*, 885 F.2d 551, 555 (9th Cir. 1989). The Court thus considers those reports for background information alone. The Court does not consider the reports for APA analysis. That said, many of the documents on which the OIG Report is based are included in the partial administrative record, which is the basis of the Court’s APA analysis.

[to-the-Census.html#document/p2/a581794](https://www.census.gov/2020census/data/2020census.html#document/p2/a581794). Specifically, the CSAC found the following:

To ensure a successful completion of the 2020 Census in a way that is consistent with its mandate of counting everyone once and in the right place, and based on its scientific and methodological expertise, CSAC recommends that the 2020 Census operational timeline be extended per the Bureau's April 2020 request. Counting everyone once and in the right place, using untested and never-before-used technologies, that must work together with precision, requires time. When the weather isn't right, we postpone the launching of rockets into space. The same should be true of the decennial enumeration, the results of which will impact apportionment, redistricting, funding decisions, legal mandates and regulatory uses of decennial Census data over the next decade.

Id. at 2.

8. The Commerce Department's Office of Inspector General found that the Replan increases the risks to obtaining a complete and accurate 2020 Census.

On September 21, 2020, the Department of Commerce's Office of Inspector General ("OIG") released a report entitled "The Acceleration of the Census Schedule Increases the Risks to a Complete and Accurate 2020 Census." Final Management Alert No. OIG-20-050-M (Sept. 18, 2020), <https://www.oig.doc.gov/OIGPublications/OIG-20-050-M.pdf>. The Report drew upon Bureau and Commerce Department documents that were produced to the OIG (the "OIG production" stated below), as well as interviews with senior Bureau officials and Director Steven Dillingham. *Id.* at 2. The report made two findings. First, "[t]he decision to accelerate the Census schedule was not made by the Census Bureau." Information Memorandum for Secretary Ross from Peggy E. Gustafson at 1 (Sept. 18, 2020). Second, "[t]he accelerated schedule increases the risks to obtaining a complete and accurate 2020 Census." *Id.*

On the first finding, the report detailed that:

As of mid-July 2020, the Bureau still viewed the statutory extension as necessary in order to conduct the 2020 Census completely and accurately. This view is consistent with previous public statements made by senior Bureau officials that the Bureau would no longer be able to meet the December 31, 2020, statutory deadline.

Then, in the late afternoon of Wednesday, July 29, 2020, a senior Department official told the Bureau to put together options for meeting the apportionment deadline of December 31, 2020, and brief the Secretary on those options on Monday morning, August 3, 2020.

Id. at 7. On the second finding, the report detailed that “senior Bureau officials believed that the largest risk to data collection posed by the accelerated plan was the decreased time to recover from possible external contingencies affecting local areas or regions.” *Id.* at 8.

As of September 21, 2020, the Census Bureau had resolved 99% of housing units in only four states. ECF No. 196-1 ¶ 13. The Bureau had stated internally in its August 3 Presentation that “[i]n order to achieve an acceptable level of accuracy, at least 99% of Housing Units in every state must be resolved.” DOC_1026.⁴

B. Procedural History

The procedural history of this case highlights why the instant Order is based on a stipulated but incomplete administrative record. At first, Defendants stated that no administrative record existed. Defendants then disclosed that there are documents that were considered by agency decisionmakers at the time of the decision to adopt the Replan. The Court subsequently ordered production of the administrative record. Despite the order, Defendants did not produce the administrative record. Because of the exigency of the motion for preliminary injunction and the imminent September 30, 2020 deadline for data collection, the parties stipulated to an incomplete administrative record for purposes of the instant motion. The Court details each event in turn.

1. At first, Defendants stated that no administrative record existed.

On August 18, 2020, Plaintiffs filed suit to challenge the Census Bureau’s August 3, 2020 Replan, which advanced the 2020 Census deadlines for self-responses to Census questionnaires, Non-Response Follow-Up (“NRFU”) field operations, data processing, and reporting Census counts to the President and the states.

To allow Plaintiffs to effectively challenge the Replan, including the September 30, 2020 end of data collection, the parties stipulated to a briefing schedule and hearing date of September

⁴ The Court notes these later extra-record developments for context, but does not weigh them in its APA analysis. *But cf. Dep’t of Commerce v. New York*, 139 S. Ct. 2551, 2575 (2019) (“It is rare to review a record as extensive as the one before us when evaluating informal agency action—and it should be. . . . [B]ut we are ‘not required to exhibit a naiveté from which ordinary citizens are free.’” (quoting *United States v. Stanchich*, 550 F.2d 1294, 1300 (2d Cir. 1977) (Friendly, J.))).

17, 2020 on Plaintiffs’ motion for preliminary injunction. ECF No. 35. Pursuant to that schedule, Plaintiffs filed a motion for a preliminary injunction on August 25, 2020 based on their claims under the Enumeration Clause and the APA. ECF No. 36.

On August 26, 2020, the Court held a case management conference, at which Defendants repeatedly denied the existence of an administrative record. *E.g.*, ECF No. 65 at 9:22–24 (The Court: “Is there an administrative record in this case?” Defendants: “No, Your Honor. On behalf of the Defendants, no, there’s not.”), 10:17–18 (“[A]t this point there is no administrative record.”). Rather, Defendants suggested that the only document that provided the contemporaneous reasons for the Replan was the Bureau’s August 3, 2020 press release. *Id.* at 20:6–7 (“[A]t this point I’m not aware of any other documents, but I would propose that I check with my client . . .”). Even so, the Court instructed Defendants that “[i]f there’s an administrative record, it should be produced. [The Court] will need it to make a decision in this case.” *Id.* at 10:13–14.

2. Defendants then disclosed that there are documents considered by agency decisionmakers at the time the Replan was adopted.

At the September 4, 2020 hearing on the September 3, 2020 motion for a temporary restraining order (“TRO”), ECF No. 66, Defendants reiterated their position that no administrative record existed. ECF No. 82 at 10:21–23, 33:13–15. However, Defendants disclosed that there were documents considered by agency decisionmakers at the time the Replan was adopted. Defendants stated:

The Census Bureau generates documents as part of its analysis and as part of its decisions and as part of its deliberations. And there are documents that the Replan was not cooked up in a vacuum, it was part of the agency’s ongoing deliberations. And so certainly there are going to be documents that reflect those documents [sic].

Id. at 33:2–7. That said, Defendants stated they would only have to submit the documents “if there is an administrative record on final agency action, which is there is [sic] none here.” *Id.* at 33:14–16. In Defendants’ view, the lack of final agency action meant that “the documents that fed into the operational plans and the operational decisions are internal documents that are subject to the deliberative process privilege.” *Id.* at 32:13–16.

Only a few minutes later, however, Defendants retracted their assertion of deliberative process privilege. *Id.* at 36:15–17 (“[T]o be clear, we are not asserting the deliberative process privilege because there is no record and there’s nothing to consider.”). Defendants conceded that “[i]f there is final agency action that is reviewable and the APA applies, we would have an obligation to produce the administrative record.” *Id.* at 35:24–36:1. However, Defendants urged the Court to rely solely on Associate Director Fontenot’s declaration that Defendants would file that evening with Defendants’ opposition to the motion for preliminary injunction. *E.g., id.* at 16:21–23 (“We will not be filing documents in addition to the declaration.”). Indeed, when Defendants filed their opposition that night, Defendants’ only evidence was Associate Director Fontenot’s declaration. ECF No. 81. After full briefing and the hearing, the Court issued a TRO on September 5, 2020. ECF No. 84.

3. The Court ordered production of the administrative record.

At the September 8, 2020 case management conference, Defendants again stated that “there is no administrative record in this case because there is no APA action.” ECF No. 98 at 62:15–16. Even so, Defendants confirmed their statements from the TRO hearing that the Replan is “indeed codified.” *Id.* at 21:7. The Replan simply was “not necessarily codified in one particular document.” *Id.* at 21:9–10. Accordingly, Plaintiffs asked the Court to order Defendants to produce the administrative record. *E.g., id.* at 44:10–13.

After full briefing, the Court issued its Order to Produce the Administrative Record, which addressed threshold arguments before ordering production. ECF No. 96. However, because of the competing need to resolve the motion for preliminary injunction as quickly as possible, the Court ordered a narrowed portion of the administrative record to be produced on September 13 and 16, 2020, before the September 17, 2020 preliminary injunction hearing. *Id.* at 21. Given these production deadlines, the Court continued the deadline for Plaintiffs’ reply in support of their motion for preliminary injunction from September 10 to September 15, 2020.

4. Despite the Court's order, Defendants did not produce the administrative record.

Twelve hours before the production deadline on September 13, 2020, Defendants produced 58 unredacted documents and 14 heavily redacted documents. ECF No. 105; *see* ECF No. 177 (providing number of documents in September 13 Production). Many of the redacted documents contained little information other than the email metadata that Defendants included in their privilege log. *See, e.g.*, ECF No. 105-1 at 37 (DOC_225: heavily redacted email); *id.* at 65 (DOC_253: same); *id.* at 173 (DOC_361: same); *id.* at 177 (DOC_365: same). Defendants also stated that “[r]eview of the remaining documents remains ongoing” and that “[b]ecause review of the remaining documents remains ongoing, and due to the volume of documents involved, Defendants will be unable to produce or log any additional documents today.” *Id.* Moreover, Defendants did not identify when they would complete the September 13 Production.

At the September 14, 2020 case management conference, Defendants stated that their next production would be on September 16, 2020, but that they “d[id] not anticipate” completing the September 13, 2020 Production on September 16, 2020. ECF No. 126 at 22:6. Moreover, Defendants stated that they were still collecting documents for the September 16 Production and did not know how many documents would be responsive. *See, e.g., id.* at 20:6–10. Overall, Defendants stated that they would be unable to comply with the Court’s Order to Produce the Administrative Record because compliance would be “a physical impossibility.” *Id.* at 41:16–17.

5. The parties stipulated to an incomplete administrative record for purposes of the motion for preliminary injunction.

In response to Defendants’ failure to comply with the Court’s order on September 13, 2020, Plaintiffs filed the Department of Commerce Inspector General’s August 13, 2020 Information Memorandum for Secretary of Commerce Wilbur Ross, which included the following Request for Information:

To assist the OIG [“Office of Inspector General”] in its oversight responsibilities, please provide all documents or communications, including but not limited to email, instant messages, and text messages:

1. Discussing or referring in any manner to the decision to accelerate the

2020 Census schedule as described in the August 3, 2020 press release.

2. Detailing the persons involved, and their respective involvement, in the decision to accelerate the 2020 Census schedule.

3. Detailing the reasons for the decision to accelerate the 2020 Census schedule.

Please provide all requested documents and communications by close of business Monday, August 17, 2020. You may also produce any additional documentation or information you deem relevant to this request for information.

ECF No. 111-2 at 5. Plaintiffs also noted that Associate Director Fontenot's declaration had averred that the Census Bureau had produced many documents to the OIG. ECF No. 111 at 5 (citing Fontenot Decl., ECF No. 81-1 at 36 ¶ 103). Associate Director Fontenot did not disclose the OIG's Request for Information about the Replan, but rather spoke in more general terms: "We produce a massive amount of documents and other information to the Office of Inspector General and the General Accounting Office every week, and these organizations interview Census Bureau staff on almost a daily basis." ECF No. 81-1 at 36 ¶ 103. In other words, Defendants had neither disclosed to the Court the OIG's Request for Information nor produced the OIG documents in response to the Court's Order to Produce the Administrative Record. *See* ECF No. 111-2 at 5.

Given the exigency, both parties ultimately agreed that "in the short term, focusing on the OIG documents for purposes of getting to a PI ruling and whatever appeal follows makes sense." *Id.* at 72:19–21; *see id.* at 33:14–22, 41:6–9 (Defendants' agreement). The Court thus ordered Defendants to produce the OIG documents that would constitute the administrative record or would be included in the administrative record, stayed the Order to Produce the Administrative Record until a case management conference after the impending preliminary injunction decision, and continued the preliminary injunction hearing to Tuesday, September 22, 2020. *Id.* at 71–77; *see* ECF No. 132. As the Court found, both the parties and the Court were "running out of time." ECF No. 141 at 38:6, 71:14.

On September 15, 2020, Plaintiffs filed their reply, for which they only had the benefit of Defendants' incomplete September 13, 2020 production of the administrative record as described above. ECF No. 130 ("Reply").

On September 18, 2020, Defendants produced the OIG documents. Over the weekend on September 19 and 20, 2020, after full briefing, United States Magistrate Judges Nathanael Cousins, Susan van Keulen, and Thomas Hixson resolved the parties' privilege disputes. Defendants produced the documents that the judges had deemed non-privileged on September 19, 20, and 21, 2020.⁵ The resulting set of all non-privileged OIG documents comprise the administrative record for the instant motion.

The Court allowed the parties to file supplemental briefs on the motion for preliminary injunction to address Defendants' productions. Specifically, on September 20, 2020, the parties filed supplemental briefs that addressed Defendants' September 18, 2020 production. *See* ECF No. 176 ("Def. 1st Supp. Br."); ECF No. 178 ("Pls. 1st Supp. Br."). On September 22, 2020, the parties filed supplemental briefs that addressed Defendants' September 19, 20, and 21, 2020 productions. ECF Nos. 196 ("Def. 2nd Supp. Br."); ECF No. 197 ("Pls. 1st Supp. Br."). However, on September 22, 2020, Defendants also filed another Associate Director Fontenot declaration that discussed injunction harms to Defendants that Associate Director Fontenot did not include in his September 5, 2020 declaration in support of Defendants' opposition to the motion for preliminary injunction. ECF No. 196-1. The Court held a hearing on the motion for preliminary injunction on September 22, 2020.

II. LEGAL STANDARD

"A plaintiff seeking a preliminary injunction must establish that [she] is likely to succeed on the merits, that [she] is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in [her] favor, and that an injunction is in the public interest." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). The party seeking the injunction bears the burden of proving these elements. *Klein v. City of San Clemente*, 584 F.3d 1196, 1201 (9th Cir. 2009). "A preliminary injunction is 'an extraordinary and drastic remedy, one that should

⁵ To minimize any intrusion into Defendants' privileges, this Court only reviewed documents in the OIG Production that the United States Magistrate Judges deemed non-privileged. The Court did not itself review *in camera* the OIG Production.

not be granted unless the movant, by a clear showing, carries the burden of persuasion.” *Lopez v. Brewer*, 680 F.3d 1068, 1072 (9th Cir. 2012).

III. REVIEWABILITY

Defendants argue that Plaintiffs are not entitled to a preliminary injunction both because the instant case is unreviewable due to a number of threshold issues, PI Opp. at 4–23, and because the four relevant factors weigh against issuance of a preliminary injunction, *id.* at 23–35. The Court first considers the threshold reviewability questions before turning to the four preliminary injunction factors.

Defendants argue that the instant case is unreviewable on five grounds: (1) the Replan presents a political question; (2) Plaintiffs lack standing; (3) the Replan is not agency action; (4) the Replan is not “final”; and (5) the Replan is committed to agency discretion by law. The Court addresses each ground in turn and then briefly addresses the APA requirements that Defendants do not address, namely that Plaintiffs lack an adequate alternative to judicial review and suffer prejudice from the Replan.

A. The Replan does not present a political question.

Defendants argue that Plaintiff’s Administrative Procedure Act claim is not justiciable because it presents a political question. PI Opp. at 4–9. The Court disagrees.

A “political question” is one which is “outside the courts’ competence and therefore beyond the courts’ jurisdiction.” *Rucho v. Common Cause*, 139 S. Ct. 2484, 2494 (2019). Tellingly, Defendants fail to offer a case that finds that the political question doctrine bars review of decisions regarding the administration of the census. Instead, Defendants point the Court to two defining hallmarks of a political question: “[1] a textually demonstrable constitutional commitment of the issue to a coordinate political department; or [2] a lack of judicially discoverable and manageable standards for resolving” the dispute. *Baker v. Carr*, 369 U.S. 186, 217 (1962); *accord Vieth v. Jubelirer*, 541 U.S. 267, 277–78 (2004). Defendants argue that both are present here because (1) the Enumeration Clause vests Congress with the authority to conduct “actual Enumeration,” PI Opp. at 5–6, and (2) there is no evident standard by which the Court

could evaluate the Bureau's decision. PI Opp. at 6–7. Neither argument is convincing.

First, Defendants cite no case—and the Court is aware of none—in which a court declined jurisdiction over a census case on political question grounds. To the contrary, the Supreme Court and lower courts have repeatedly rejected the argument that the political question doctrine bars review of census-related decisionmaking. *See, e.g., U.S. Dep't of Commerce v. Montana*, 503 U.S. 442, 458–59 (1992) (holding that the “political question doctrine presents no bar”); *Franklin v. Massachusetts*, 505 U.S. 788, 801 n.2 (1992) (noting that the Court “recently rejected a similar argument” in *Montana* that “the courts have no subject-matter jurisdiction over this case because it involves a ‘political question’”); *Carey v. Klutznick*, 637 F.2d 834, 838 (2d Cir. 1980) (per curiam) (rejecting the Census Bureau's argument that “allegations as to mismanagement of the census made in the complaint involve a political question,” and holding the case reviewable under the Constitution and APA) (quotation omitted); *New York v. U.S. Dep't of Commerce*, 315 F. Supp. 3d 766, 791 (S.D.N.Y. 2018) (rejecting political question doctrine in citizenship question litigation; and collecting cases); *Young v. Klutznick*, 497 F. Supp. 1318, 1326 (E.D. Mich. 1980) (rejecting political question doctrine), *rev'd on other grounds*, 652 F.2d 617 (6th Cir. 1981); *City of Philadelphia v. Klutznick*, 503 F. Supp. 663, 674 (E.D. Pa. 1980) (same); *Texas v. Mosbacher*, 783 F. Supp. 308, 312 (S.D. Tex. 1992) (same); *District of Columbia v. U.S. Dep't of Commerce*, 789 F. Supp. 1179, 1185 (D.D.C. 1992) (same); *City of N.Y. v. U.S. Dep't of Commerce*, 739 F. Supp. 761, 764 (E.D.N.Y. 1990) (same); *U.S. House of Representatives v. U.S. Dep't of Commerce*, 11 F. Supp. 2d 76, 95 (D.D.C. 1998) (three-judge court) (same; and stating “the court sees no reason to withdraw from litigation concerning the census”), *aff'd*, 525 U.S. 316 (1999); *see also Utah v. Evans*, 536 U.S. 452 (2002) (engaging in review without noting any jurisdictional defect stemming from political question doctrine); *Wisconsin v. City of N.Y.*, 517 U.S. 1 (1996) (same); *Morales v. Daley*, 116 F. Supp. 2d 801 (S.D. Tex. 2000) (same), *aff'd sub nom. Morales v. Evans*, 275 F.3d 45 (5th Cir. 2001) (unpublished); *Prieto v. Stans*, 321 F. Supp. 420, 421 (N.D. Cal. 1970) (finding jurisdiction over a motion to preliminarily enjoin the census's “mail-out, mail-back procedure” and “community education and follow-up procedures”).

Second, precedent supports the determination that there is a discoverable and manageable standard by which the Court can review the agency action at issue here. For example, the Census Act “imposes ‘a duty to conduct a census that is accurate and that fairly accounts for the crucial representational rights that depend on the census and the apportionment.’” *Dep’t of Commerce v. New York*, 139 S. Ct. 2551, 2569 (2019) (quoting *Franklin*, 505 U.S. at 819–820 (Stevens, J., concurring in part and concurring in judgment)) (discussing 2 U.S.C. § 2a). Similarly, the text, structure, and history of the Constitution evinces “a strong constitutional interest in accuracy.” *Utah*, 536 U.S. at 455–56.

Thus, in its decision on the census citizenship question last year, the Supreme Court rejected Defendants’ claim that there is “no meaningful standard against which to judge the agency’s exercise of discretion.” *Dep’t of Commerce v. New York*, 139 S. Ct. at 2568 (quoting *Weyerhaeuser Co. v. United States Fish and Wildlife Serv.*, 139 S. Ct. 361, 370 (2018)). The standard is provided by the Census Act, the Constitution, and APA. Accordingly, it is no surprise that Defendants do not cite, and the Court could not find, a case in which the political question doctrine barred judicial review of census-related decisionmaking.

In sum, the political question doctrine does not bar the Court from reviewing the instant case.

B. Plaintiffs have standing to challenge the Replan.

“To have standing, a plaintiff must ‘present an injury that is concrete, particularized, and actual or imminent; fairly traceable to the defendant’s challenged behavior; and likely to be redressed by a favorable ruling.’” *Dep’t of Commerce v. New York*, 139 S. Ct. at 2565. Plaintiffs here allege—and support with affidavits—the same four injuries that the Supreme Court found supported standing in the citizenship question case: “diminishment of political representation, loss of federal funds, degradation of census data, and diversion of resources.” *Id.* at 2565 (upholding findings as not clearly erroneous). The Court discusses each of Plaintiffs’ four alleged injuries.

1. Plaintiffs are likely to lose federal funds that turn on census data.

The administrative record shows that the Replan will likely lead to an undercount that

results in “loss of crucial federal funds for programs that affect [Plaintiffs’] daily life.” A. Garcia Decl. ¶ 4. The Supreme Court has specifically agreed that the loss of federal funding “is a sufficiently concrete and imminent injury to satisfy Article III.” *Dep’t of Commerce v. New York*, 139 S. Ct. at 2565. Thus, the Court agrees that the possible loss of federal funds is a sufficient injury to establish Article III standing as explained below.

Local government Plaintiffs are recipients of multiple sources of federal funding that turn on census data. King County, Washington; the City of Los Angeles; and Harris County, Texas are leading examples. The Replan’s shortened schedule for data collection and processing will likely diminish each locality’s funding because each locality has many hard to count persons who risk being undercounted. M. Garcia Decl. ¶¶ 7–8; Dively Decl. ¶ 5; Briggs Decl. ¶¶ 7, 11; *see also* Hillygus Decl. ¶¶ 12, 19, 39 (explaining the statistics of undercounting subpopulations).

Specifically, the Court notes the following:

- In King County, three-quarters of the County’s record population growth of 15% since 2010 is attributable to “populations that are less likely to self-respond to the census.” Dively Decl. ¶ 5. As a result, “[s]hortening the enumeration period risks creating a population undercount.” *Id.* Any undercount would reduce King County’s allocation of funds “proportionately disbursed by census population counts.” *Id.* ¶ 7. These funds include Community Development Block Grants, HOME Investment Partnership Program, and Emergency Solutions Grants from the U.S. Department of Housing and Urban Development. *Id.* ¶ 7. Transit Formula Grants to the Seattle region, of which King County is a part, also turn on census data, and totaled \$108 million in fiscal year 2019.
- Los Angeles County is “the hardest to count in the nation.” M. Garcia Decl. ¶ 7. 57% of the residents in the City of Los Angeles, which is home to roughly 4 million people, live in census block groups that are hard or very hard to count. *Id.* As a result, Los Angeles’ self-response rate of 54.5% (as of August 19, 2020) is well below the city’s 2010 response rate of 68% and the state’s 2020 response rate of 65.9%.
- “[T]he City of Los Angeles receives tens of millions of dollars from the federal government each year based upon the ratio of population derived from the decennial census.” Westall Decl. ¶ 35. In times of national emergency, cities such as Los Angeles receive relief based on census population. *Id.* ¶ 34 (discussing \$20 million received under the Coronavirus Aid, Relief, and Economic Security Act, or CARES Act).
- In Harris County, the Replan’s shortening of the self-response and NRFU timelines risks causing “unprecedented undercounts in the 2020 Census.” Briggs Decl. ¶ 11.

1 “[A]pproximately \$90,529,359 of the grants expended by Harris County in FY2019
2 depended on accurate census data.” Wilden Decl. ¶ 5. Among the grants affected are those
3 that enable “sustainable financing of local health departments” such as Harris County
4 Public Health, which has helped manage COVID-19 for approximately 4.7 million people.
5 Shah Decl. ¶¶ 4, 8.

6 An undercount in any locality matters greatly. Even a *small* undercount of a *subset* of the
7 hard to count population would result in the loss of federal funding. *See Dep’t of Commerce v. New*
8 *York*, 139 S. Ct. at 2565 (“[I]f noncitizen households are undercounted by as little as 2% . . .
9 [states] will lose out on federal funds”). Thus, like in *Department of Commerce v. New York*,
10 Plaintiffs that receive federal funds based on census population suffer “a sufficiently concrete and
11 imminent injury to satisfy Article III.” *Id.*

12 **2. Plaintiffs will likely be deprived of their fair share of political representation.**

13 Plaintiffs allege that the undercount resulting from the Replan will likely result in an unfair
14 apportionment that will deprive local government Plaintiffs, individual Plaintiffs, and members of
15 organizational Plaintiffs of their fair share of representation. The resulting “threat of vote
16 dilution,” whether Congressional or intrastate, is an injury in fact. *Dep’t of Commerce v. U.S.*
17 *House of Representatives*, 525 U.S. 316, 331–32 (1999).

18 For example, given the historically low census response rates in the City of Los Angeles
19 and City of Salinas in California, the Replan creates a substantial risk that their residents will not
20 be counted, and a substantial risk of diminished political representation. *See* M. Garcia Decl. ¶¶ 8–
21 15; Gurmilan Decl. ¶¶ 6, 8–14. Specifically:

- 22 • In the City of Los Angeles, the Replan “will result in extreme inaccuracy” because it would
23 leave “just over six weeks to complete enumeration of roughly half of the exceptionally
24 diverse households of the nation’s second-most-populous city—in the midst of a once-in-a-
25 lifetime pandemic.” M. Garcia Decl. ¶ 8; *see* Westall Decl. ¶ 36 (stating it is “likely” that
26 undercounts will “disproportionally impact Los Angeles” and “cause the City to miss out
27 on a portion of [] funding for an entire decade”).
- 28 • Similarly, the City of Salinas comprises 38.5% of Monterey County’s hard to count
population, and the City’s response rate is 9.5% below its response rate from the 2010
Census and 8% below the current state average. Gurmilan Decl. ¶ 6.

The undercount wrought by the Replan will not only “compromise the success of the apportionment count” for Congressional representation, but also “severely compromise the quality of the redistricting data” for state and local representation. Louis Decl. ¶ 43; *see* Thompson Decl. ¶ 23. In fact, it is undisputed that census data is used to redraw district boundaries for federal, state, and local legislatures, and that drawing districts with unequal population can be unlawful. *See, e.g.*, Westall Decl. ¶¶ 14–29. An undercount from a truncated self-response period, lower-quality NRFU, and rushed data processing all mean that Plaintiffs’ federal, state, and local political representation will be diminished. *See, e.g.*, Westall Decl. ¶¶ 27 (“[R]esidents in Council Districts with large concentrations of undercounted residents would be denied equal representation.”); Soto Decl. ¶ 11 (same); Ellis ¶ 12 (“An undercount on the 2020 Census will also put me at serious risk of political underrepresentation in the U.S. Congress, and in the Texas legislature.”).

3. The Replan will likely degrade census data that Plaintiffs use to deploy services and allocate capital.

The local government Plaintiffs allege that the Replan will degrade granular census data that they rely on to deploy services and allocate capital. “[B]y virtue of the Constitution and the Census Act, it is, of course, the federal government’s job to collect and distribute accurate federal decennial census data.” *New York v. Trump*, No. 20-CV-5770, 2020 WL 5422959, at *18 (S.D.N.Y. Sept. 10, 2020) (three-judge court); *see also* Departments of Commerce, Justice, and State, The Judiciary, and Related Agencies Appropriations Act, 1998, § 209, Pub. L. No. 105-119, 111 Stat. 2440, 2481 (1997) (“1998 Appropriations Act”) (codified at 13 U.S.C. § 141 note) (“Congress finds that . . . it is essential that the decennial enumeration of the population be as accurate as possible, consistent with the Constitution and laws of the United States . . .”).

The degradation of data is thus an informational injury analogous to those that have supported Article III standing. *See New York v. U.S. Dep’t of Commerce*, 351 F. Supp. 3d 502, 611 (S.D.N.Y. 2019) (finding that “degradation in the quality of census data” supported standing), *aff’d in part, rev’d in part and remanded sub nom. Dep’t of Commerce v. New York*, 139 S. Ct. 2551 (2019); *see also, e.g., Fed. Election Comm’n v. Akins*, 524 U.S. 11, 21 (1998) (collecting

cases finding that “deprivation of information” supports standing); *Robins v. Spokeo, Inc.*, 867 F.3d 1108, 1114 (9th Cir. 2017) (finding standing partly because a statute, 15 U.S.C. § 1681e(b), requires “follow[ing] reasonable procedures to assure maximum possible accuracy” of information). For instance, King County, Los Angeles, and Harris County all rely on granular census data:

- King County, Washington uses census data to place public health clinics, plan transportation routes, and mitigate hazards. Dively Decl. ¶ 6.
- The City of Los Angeles uses “reliable, precise, and accurate population count data” to deploy the fire department, schedule trash-pickups, and acquire or improve park properties. Westall Decl. ¶ 32.
- Recently, Harris County has used census data “to estimate the impact of COVID-19 to specific communities at a granular level,” which has helped the county tailor “communications in multiple languages with audience and age-specific prevention messaging and share information about availability of testing or vaccine sites.” Shah Decl. ¶ 7. Inaccurate or incomplete data would “increase risk of misinterpreting the prevalence of the disease in disproportionately impacted communities.” *Id.*

In sum, the Replan’s harm to the accuracy of census data will harm Plaintiffs’ concrete uses of the data.

4. Plaintiffs have diverted and will continue diverting resources to mitigate the undercount that will likely result from the Replan.

Plaintiffs will divert resources to mitigate the undercounting that will likely result from the Replan. The result is “concrete and demonstrable injury to [Plaintiffs’] activities—with the consequent drain on [their] resources.” *New York*, 2020 WL 5422959, at *19 (quoting *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 379 (1982)); see also *Am. Diabetes Ass’n v. U.S. Dep’t of Army*, 938 F.3d 1147, 1154 (9th Cir. 2019) (discussing *Havens Realty*, and finding injury in fact where plaintiffs “had altered their resource allocation” that they would have spent on some other organizational purpose).

The City of Salinas, Harris County, Black Alliance for Just Immigration, League of Women Voters, and National Urban League detail many examples of diverted resources:

- The City of Salinas already promoted the October 31 deadline “on social media and in thousands of paper flyers.” Gurmilan Decl. ¶¶ 11–12. Thus, “some residents who received the City’s messaging will fail to respond before the R[eplan] deadline because the City has limited remaining resources to correct what is now misinformation.” *Id.* ¶ 12. Moreover, the City “is still advertising for census enumerator job listings because traditional applicant groups like senior citizens have concerns about the risk of catching COVID-19. With fewer enumerators working, every extra day the City has to use [] existing staff to support the count” *Id.* ¶ 13.
- Harris County “participated in over 150 events,” including “food distribution events,” during which it “announced the October 31, 2020 deadline for the 2020 Census.” Briggs Decl. ¶ 12. Consequently, “Harris County will be forced to expend additional resources to clear confusion about the last date for self-response during the Census, to ensure that people who have not responded are counted in time.” *Id.* ¶ 16.
- The Black Alliance for Just Immigration already “publicized the October 31 deadline for self-response during digital events between April and July” and is diverting resources to publicize the new September 30 deadline. Gyamfi Decl. ¶¶ 13–14.
- The League of Women Voters “has already had to spend time and financial resources” developing and distributing public education materials on the Replan timeline. Stewart Decl. ¶ 12.
- The National Urban League has similarly had “to divert resources from other programs and projects” to “alleviate the confusion” about the change in deadlines. Green Decl. ¶ 15.

Indeed, even now, the Census Bureau boasts of how its communications program was “more integrated than ever before” with Plaintiffs such as National Urban League. Fontenot Decl. ¶ 40. Mitigating those now-counterproductive education campaigns and a likely undercount will only be harder in the midst of a pandemic. *E.g.*, M. Garcia Decl. ¶¶ 14–15; Gurmilan Decl. ¶¶ 11–14; Briggs Decl. ¶¶ 11–12, 15–17. The result that Plaintiffs have diverted and will continue to divert resources from their organization mission to mitigate the effects of the Replan.

5. Plaintiffs’ injuries are fairly traceable to the Replan and redressable by a stay of the Replan.

The above harms are “concrete, particularized, and actual or imminent.” *Dep’t of Commerce v. New York*, 139 S. Ct. at 2565 (quoting *Davis v. Fed. Election Comm’n*, 554 U.S. 724, 733 (2008)). They are also “fairly traceable to the defendant’s challenged behavior; and likely to be redressed by a favorable ruling.” *Id.* (quoting *Davis*, 554 U.S. at 733). As the Supreme Court

1 stressed last year, “Article III ‘requires no more than de facto causality.’” *Id.* at 2566 (quoting
2 *Block v. Meese*, 793 F.2d 1303, 1309 (D.C. Cir. 1986) (Scalia, J.)). “[T]he defendant’s conduct
3 need not be ‘the very last step in the chain of causation.’” *New York*, 2020 WL 5422959, at *21
4 (quoting *Bennett v. Spear*, 520 U.S. 154, 169 (1997)).

5 Here, Plaintiffs’ theory of standing rests “on the predictable effect of Government action on
6 the decisions of third parties”—specifically, the predictable harms of accelerating census deadlines
7 and curtailing key operations, without warning, after months of publicly operating under a plan
8 tailored to COVID-19. *Id.* Accordingly, enjoining the implementation of the Replan’s September
9 30, 2020 deadline for data collection and December 31, 2020 deadline for reporting the population
10 tabulations to the President would redress those harms. *See, e.g., Dep’t of Commerce v. U.S. House*
11 *of Representatives*, 525 U.S. at 328–34 (affirming injunction against the planned use of statistical
12 sampling to prevent apportionment harms, among others); *New York v. United States Dep’t of*
13 *Commerce*, 351 F. Supp. 3d at 675 (issuing injunction to prevent “the loss of political
14 representation and the degradation of information”).

15 All told, Plaintiffs suffer injuries in fact that are fairly traceable to the Replan and
16 redressable by the relief Plaintiffs seek. Plaintiffs thus have Article III standing.

17 **C. The Replan constitutes agency action.**

18 Defendants’ three remaining arguments against reviewability arise under the APA, not the
19 Constitution. To start, Defendants argue that the Replan is not reviewable because it is not a
20 discrete “agency action.” PI Opp. at 17. They thus claim that Plaintiffs’ suit is “an improper,
21 programmatic attack on the Bureau’s efforts to conduct the 2020 Census.” *Id.* The Court disagrees.
22 The Replan is agency action.

23 “The bite in the phrase ‘final action’ . . . is not in the word ‘action,’ which is meant to cover
24 comprehensively every manner in which an agency may exercise its power.” *Whitman v. Am.*
25 *Trucking Associations*, 531 U.S. 457, 478 (2001) (citations omitted). Thus, agency action is
26 broadly defined to include “the whole or part of an agency rule, order, license, sanction, relief, or
27 the equivalent or denial thereof, or failure to act.” 5 U.S.C. § 551(13). Each word in that definition

has its own expansive definition. A “rule,” for example, includes “the whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency.” *Id.* § 551(4).

To be sure, a reviewable agency action must be one that is “circumscribed” and “discrete.” *Norton v. S. Utah Wilderness All.*, 542 U.S. 55, 62–63 (2004). This requirement “precludes [a] broad programmatic attack” on an agency’s operations. *Id.* at 64. Defendants thus analogize this case to *NAACP v. Bureau of the Census*, 945 F.3d 183 (4th Cir. 2019), and *Lujan v. National Wildlife Federation*, 497 U.S. 871, 893 (1990).

In *NAACP*, the plaintiffs brought a challenge in 2018 to the census “methods and means,” and “design choices.” *NAACP*, 945 F.3d at 186. The *NAACP* plaintiffs challenged as insufficient the numbers of enumerators, the networks of area census offices, the Bureau’s plan to rely on administrative records, and partnership program staffing. *Id.* at 190. The Fourth Circuit found that “[s]etting aside one or more of these ‘choices’ necessarily would impact the efficacy of the others, and inevitably would lead to court involvement in ‘hands-on’ management of the Census Bureau’s operations.” *Id.* (citing *S. Utah Wilderness All.*, 542 U.S. at 66–67). In concluding that there was not final agency action, the Fourth Circuit emphasized that its holding was “based on the broad, sweeping nature of the allegations that the plaintiffs have elected to assert under the APA.” *Id.* at 192.

NAACP is inapposite for two reasons. First, the relief Plaintiffs seek here would not “inevitably [] lead to court involvement in ‘hands-on’ management of the Census Bureau[.]” *Id.* at 191. Plaintiffs do not ask the Court to manage the Bureau’s day-to-day operations or to enforce free-floating standards of “sufficiency.” *See NAACP*, 945 F.3d at 191 (quoting claims of “insufficient network of area census offices,” “insufficient partnership program staffing,” “insufficient testing of ‘new protocols,’” and more). Rather, Plaintiffs challenge the Defendants’ failure to consider important aspects of the problem and lack of reasoned explanation for the Bureau’s change in position. Reply at 14. *See, e.g., Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State*

1 *Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 52 (1983) (finding that agency’s explanation for rescission
2 was not the product of reasoned decisionmaking); *Encino Motorcars, LLC v. Navarro*, 136 S. Ct.
3 2117, 2126 (2016) (setting aside agency’s “change in position” for lacking reasoned explanation).

4 Second, the Replan is a circumscribed, discrete agency action. Indeed, Defendants treated
5 the Replan accordingly. Defendants named it the “Replan” or “Replanned Operational Schedule.”
6 *E.g.*, DOC_10276 (version of August 3, 2020 slide deck identified as key by the parties);
7 DOC_8929 (July 30, 2020 email from Barbara LoPresti, Chief of the Decennial Information
8 Technology Division, to senior officials discussing “this proposed replan”); DOC_10066 (email
9 thread titled “Replan” with senior officials); DOC_11918 (August 3, 2020 email to the Chief of
10 Staff for the Deputy Secretary of Commerce with subject “Revised Replan Deck”).

11 The Secretary directed the Bureau to develop the Replan. *See, e.g.*, August 3 Press Release,
12 ECF No. 37-1 (“directed by the Secretary”). In response to the Secretary’s direction, the Bureau
13 presented the Replan to the Secretary in a single slide deck. *See, e.g.*, DOC_10276. The Secretary
14 made an explicit decision to adopt the Replan. Fontenot Decl. ¶ 85. Census Bureau Director
15 Dillingham announced the Replan in a single press release on August 3, 2020. ECF No. 37-1.
16 Defendants consistently treated the Replan as a circumscribed, discrete agency action.

17 Defendants’ comparison to *Lujan v. National Wildlife Federation* is also misplaced. *See* PI
18 Opp. at 17. In *Lujan*, plaintiffs challenged a “so-called ‘land withdrawal review program’”—“so-
19 called” because the term “land withdrawal review program” was “simply the name by which [the
20 agency] [] occasionally referred to the continuing (and thus constantly changing) operations of
21 the” agency. *Lujan*, 497 U.S. at 890. The term was “not derived from any authoritative text.” Any
22 “land withdrawal review program” in fact comprised at least “1250 or so individual classification
23 terminations and withdrawal revocations.” *Id.*

24 The *Lujan* plaintiffs recognized as much. In their complaint, the *Lujan* plaintiffs
25 challenged: (1) reclassification of some withdrawn lands; (2) the return of other lands to the public
26 domain; (3) petitioners’ failure to develop, maintain, and revise land use plans; (4) petitioners’
27 failure to submit recommendations as to withdrawals in the 11 Western States to the President;

(5) petitioner’s failure to consider multiple uses for disputed lands; (6) petitioners’ failure to provide public notice of decisions; and (7) petitioners’ failure to provide a detailed environmental impact statement in every recommendation or report on major federal actions significantly affecting the quality of the human environment. *Id.* at 879. Moreover, the *Lujan* plaintiffs “[a]ppended to the amended complaint . . . a schedule of specific land-status determinations” that listed several land status-determinations that were each identified by a listing in the Federal Register. *Id.*

By contrast, Plaintiffs here challenge a circumscribed, discrete agency action: the Replan. “Replan” is not an “occasional[.]” informal name for “constantly changing” operations, *id.* at 890, but is a codified term for the agency action directed and adopted by the Secretary. *E.g.*, DOC_11918. Nor is the Replan a disconnected series of hundreds of individual determinations with enough independent significance to be published in the Federal Register like the program in *Lujan*. Rather, the Replan is a census operational plan that replaced the COVID-19 Plan. As *Lujan* held plainly, though, judicial “intervention may ultimately have the effect of requiring a regulation, a series of regulations, or even a whole ‘program’ to be revised by the agency in order to avoid the unlawful result that the court discerns.” *Lujan*, 497 U.S. at 894.

Again, in sum, as Justice Scalia stated: “[t]he bite in the phrase ‘final action’ . . . is not in the word ‘action,’ which is meant to cover comprehensively every manner in which an agency may exercise its power. It is rather in the word ‘final.’” *Whitman*, 531 U.S. at 478 (citations omitted). It is to that finality requirement that the Court now turns.

D. The Replan constitutes final agency action.

Defendants argue that even if the Replan were agency action, “it is not ‘final’ agency action that is subject to judicial review under § 704.” PI Opp. at 19. “To maintain a cause of action under the APA, a plaintiff must challenge ‘agency action’ that is ‘final.’” *Wild Fish Conservancy v. Jewell*, 730 F.3d 791, 800 (9th Cir. 2013) (citing *Norton*, 542 U.S. at 61–62).

An agency’s action is final if two conditions are met. First, the action “must mark the consummation of the agency’s decisionmaking process—it must not be of a merely tentative or

interlocutory nature.” *Bennett*, 520 U.S. at 177–78. Second, the action “must be one by which ‘rights or obligations have been determined,’ or from ‘which legal consequences will flow.’” *Id.* (quoting *Port of Boston Marine Terminal Assn. v. Rederiaktiebolaget Transatlantic*, 400 U.S. 62, 71 (1970)). Five years earlier, the Supreme Court found that the same two requirements applied in a census case. *Franklin*, 505 U.S. at 797 (the central question “is [1] whether the agency has completed its decisionmaking process, and [2] whether the result of that process is one that will directly affect the parties.”). Courts should take a “‘pragmatic’ approach” to finality. *U.S. Army Corps of Engineers v. Hawkes Co., Inc.*, 136 S. Ct. 1807, 1815 (2016) (quoting *Abbott Laboratories v. Gardner*, 387 U.S. 136, 149 (1967)).

The Court finds the Replan is final agency action for purposes of APA review because the Replan meets both criteria, each of which the Court addresses in turn.⁶

1. The Census Bureau completed its decisionmaking process: Defendants have adopted and implemented the Replan.

As to the first factor of final agency action, which is “whether the agency has completed its decisionmaking process,” *Franklin*, 505 U.S. at 797, the Replan marks the consummation of the Bureau’s and Department of Commerce’s decisionmaking process because the Replan is “not subject to further agency review.” *Sackett v. EPA.*, 566 U.S. 120, 127 (2012); *see also Hawkes*, 136 S. Ct. at 1813–14 (holding that an agency action was final because the determination was “typically not revisited”); *Fairbanks North Star Borough v. U.S. Army Corps of Engineers*, 543 F.3d 586, 593 (9th Cir. 2008) (holding that an agency’s action was final where “[n]o further agency decisionmaking on the issue can be expected”). The Secretary made an explicit decision to adopt the Replan. August 3 Press Release; *see Fontenot Decl.* ¶ 85. The Bureau has implemented

⁶ In *Hawkes Co.*, the Supreme Court expressly reserved whether an agency action that satisfies only the first condition—consummation of the agency’s decisionmaking process—can still be final. 136 S. Ct. at 1813 n.2. The Court did not reach that question in *Hawkes Co.* because the agency action under review “satisfie[d] both prongs of *Bennett*.” *Id.* Similarly, the Replan satisfies both prongs. Thus, the Court need not decide whether the first condition alone would suffice to constitute a “final” agency action.

1 the Replan. No further agency decisionmaking will be conducted on the Replan.

2 *Norton v. Southern Utah Wilderness Alliance*, a decision cited by Defendants, is readily
3 distinguishable from the instant case. *See* Defs. 1st Supp. Br. at 1 (citing *Norton*, 542 U.S. at 61–
4 62). In *Norton*, the United States Supreme Court found that the plaintiffs’ challenges to the Bureau
5 of Land Management’s land use plans failed. The *Norton* Court reasoned that the plans were not a
6 “legally binding commitment” that were enforceable under the APA. 542 U.S. at 72. Specifically,
7 the plaintiffs claimed that BLM “failed to comply with certain provisions in its land use plans,”
8 which “describe[], for a particular area, allowable uses, goals for future condition of the land, and
9 specific next steps.” 542 U.S. at 59, 67. The Federal Land Policy and Management Act of 1976
10 “describes land use plans as tools by which ‘present and future use is *projected*.’” *Id.* at 69
11 (emphasis in original) (quoting 43 U.S.C. § 1701(a)(2)).

12 Thus, the *Norton* Court observed that “[t]he implementing regulations make clear that land
13 use plans are a *preliminary* step in the overall process of managing public lands—designed to
14 guide and control future management actions and the development of subsequent, more detailed
15 and limited scope plans for resources and uses.” *Id.* (emphasis added). As a result, “a land use plan
16 is not ordinarily the medium for affirmative decisions that implement the agency’s
17 ‘project[ions].’” *Id.* (quoting 43 U.S.C. § 1712(e)). Similarly, “the regulation defining a land use
18 plan declares that a plan ‘is not a final implementation decision on actions which require further
19 specific plans, process steps, or decisions under specific provisions of law and regulations.’” *Id.* at
20 69–70. In sum, by contrast to a “final” agency action, the type of land use plan challenged by the
21 *Norton* plaintiff “is generally a statement of priorities; it guides and constrains actions, but does
22 not (at least in the usual case) prescribe them.” *Id.* at 71.

23 Here, the Replan was not a “preliminary step” toward deciding the Census schedule. Nor
24 was the Replan a “statement of priorities” that merely “guides and constrains actions.” *See id.* at
25 69, 71. Instead, the Replan constitutes a commitment to terminate the collection of data, analyze
26 that data, and report “[t]he tabulation of total population” to the President by December 31, 2020.
27 13 U.S.C. § 141(b).

Moreover, termination of data collection is practically irreversible. In his September 5, 2020 declaration, Defendants' own declarant, Associate Director Fontenot, requests that if the Court enjoins Defendants, the Court do so earlier than later because it is difficult to rehire field staff who have been terminated:

Lack of field staff would be a barrier to reverting to the COVID Schedule were the Court to rule later in September. The Census Bureau begins terminating staff as operations wind down, even prior to closeout. Based on progress to date, as is standard in prior censuses, we have already begun terminating some of our temporary field staff in areas that have completed their work. It is difficult to bring back field staff once we have terminated their employment. Were the Court to enjoin us tomorrow we would be able to keep more staff on board than were the Court to enjoin us on September 29, at which point we will have terminated many more employees.

Fontenot Decl. at ¶ 98.

In sum, the Replan provides that all data collection, including field operations, cease by September 30, and truncated data processing begin the next day. Absent a preliminary injunction, those practically irrevocable steps are only days away. The Replan is thus the completion of Defendants' decisionmaking process on how the 2020 Census will be conducted.

2. The Replan directly affects the parties.

As to the second factor of final agency action, which is whether an agency action "will directly affect the parties," the Replan certainly does affect the parties and will continue to do so. *Franklin*, 505 U.S. at 797; *see also Bennett*, 520 U.S. at 177–78 (holding that, "[a]s a general matter," a final action "must be one by which 'rights or obligations have been determined,' or from which 'legal consequences will flow'" (citation omitted)). The Court analyzes the Replan's effect on the Plaintiffs and Defendants then distinguishes Defendants' main case, *Franklin v. Massachusetts*.

a. The Replan's undercount will directly affect and harm Plaintiffs.

The Replan "will directly affect" Plaintiffs and result in "legal consequences." *Franklin*, 505 U.S. at 797; *Bennett*, 520 U.S. at 177–78. Specifically, the Replan will directly affect Plaintiffs in three ways: (1) by undercounting hard to count populations; (2) barring governmental

1 Plaintiffs' constituents and organizational Plaintiffs' members from participating in the 2020
2 Census after September 30, 2020; and (3) exposing those same people to violations of federal law
3 and fines.

4 First, the Replan will likely undercount hard to count populations in the decennial census.
5 This undercount necessarily affects the Secretary's "tabulation of total population by States" and
6 the President's apportionment calculations, which "must be based on decennial census data alone."
7 *New York*, 2020 WL 5422959, at *26 (discussing text, legislative history, and the Executive's
8 longstanding understanding of 13 U.S.C. § 141(a) and 2 U.S.C. § 2a(a)). In other words, the
9 Replan will likely result in an undercount in both the numbers that the Secretary reports to the
10 States and the numbers that the President—who must draw on "decennial census data"—reports to
11 Congress.

12 That undercount, as discussed in the Court's standing analysis above, injures Plaintiffs in
13 legally cognizable ways. For instance, an undercount harms the "crucial representational rights
14 that depend on the census," *Dep't of Commerce v. New York*, 139 S. Ct. at 2569, and deprives local
15 government Plaintiffs of federal funds they are entitled to, *cf. City of Kansas City, Mo. v. U.S.*
16 *Dep't of Hous. & Urban Dev.*, 861 F.2d 739, 745 (D.C. Cir. 1988) (discussing procedural rights
17 arising under Community Development Block Grants, which at least King County and Los
18 Angeles receive). These harms and others will last through 2030, if not later. Congress has
19 determined as much by finding that:

20 the decennial enumeration of the population is a complex and vast undertaking, and
21 if such enumeration is conducted in a manner that does not comply with the
22 requirements of the Constitution or laws of the United States, it would be
23 impracticable for the States to obtain, and the courts of the United States to
24 provide, meaningful relief after such enumeration has been conducted.

25 1998 Appropriations Act, § 209(a)(8), 111 Stat. at 2480–81. Thus, because the Replan will likely
26 result in an inaccurate enumeration, the Replan is an action from which legal consequences will
27 flow.

28 Second, the Replan bars people who seek to participate in the Census—such as

governmental Plaintiffs’ constituents and organizational Plaintiffs’ members—from participating after September 30, 2020. *See Sackett*, 566 U.S. at 126 (holding that an agency action determined rights and obligations of property owners where it “severely limit[ed] [the owners’] ability to obtain a permit . . . from [the agency]”); *Alaska, Dep’t of Environmental Conservation v. EPA*, 244 F.3d 748, 750 (9th Cir. 2001) (holding that an agency action determined rights and obligations where its effect was to halt construction at a mine facility). These people will be unable to participate despite their potential reliance on the Census Bureau’s previous, widely publicized representations that they could participate until October 31, 2020. For example:

- The League of Women Voters has over 65,000 members across 800 state and local affiliates. Stewart Decl. ¶ 4. Thus, “[w]hen the Census Bureau extended the deadline for counting operations to October 31, 2020,” the League of Women Voters “published blog posts advertising the new timeline,” “shared numerous letters with [] state and local affiliates providing information about the new timeline,” and “publicized the deadline in letters and [emails].” *Id.* ¶ 11.
- The City of Los Angeles is home to about 4 million people. M. Garcia Decl. ¶ 7. The City “conducted a public education campaign publicizing the October 31, 2020 date for self-response.” *Id.* ¶ 14. For example, the City announced the date in bus shelter posters and social media toolkits. *Id.*
- National Urban League has 11,000 volunteers across 90 affiliates in 37 states. Green Decl. ¶ 4. “[W]hen the Census Bureau announced its extension of the timeline for collecting responses to the 2020 Census, the National Urban league informed all members of the 2020 Census Black Roundtable that the deadline had become October 31, 2020. The members in turn conveyed to their own networks and constituents, causing a cascading effect.” *Id.* ¶ 14.

Third, the Replan exposes the same people—people who believe that October 31, 2020 is still the Census deadline—to fines and violations of federal law. By way of background, the Census Act imposes a “clear legal duty to participate in the decennial census.” *California v. Ross*, 362 F. Supp. 3d 727, 739 (N.D. Cal. 2018) (Seeborg, J.) (citing 13 U.S.C. § 221). Specifically, 13 U.S.C. § 221(a) provides that any adult who “refuses or willfully neglects . . . to answer, to the best of his knowledge, any of the questions on” the census “shall be fined not more than \$100.” 13 U.S.C. § 221(a). “[E]ach unanswered question” risks an additional fine. *Morales v. Daley*, 116 F.

Supp. 2d at 809; *accord United States v. Little*, 317 F. Supp. 1308, 1309 (D. Del. 1970) (“Presumably there could be a separate violation for each unanswered question.”). The 2020 Census form has nine questions for the first person in a household and seven questions for each additional person. *See* U.S. Census Bureau, *2020 Census Questionnaire* (last revised Mar. 7, 2020), <https://www.census.gov/programs-surveys/decennial-census/technical-documentation/questionnaires/2020.html>. The resulting liability for “refus[ing] or willfully neglect[ing]” to answer an entire Census questionnaire is thus significant. 13 U.S.C. § 221(a).

Because of the excellent publicizing of the COVID-19 Plan, the Replan increases the risk that people will incur that liability. Before the Replan was announced on August 3, 2020, the Bureau and its partners (such as Plaintiff National Urban League) advertised for months that the deadline for census responses was October 31, not September 30, 2020. *See supra* Section III-B-4. Now, some people may refuse to respond to the questionnaire—or an enumerator’s non-response follow-up—on the misunderstanding that they still have another month to comply. This “increase [in] risk of incurring penalties in a future enforcement proceeding” still “constitute[s] ‘legal consequences’ under *Bennett*.” *Ipsen Biopharmaceuticals, Inc. v. Azar*, 943 F.3d 953, 957–59 (D.C. Cir. 2019) (emphasis in original) (holding also that “the agency’s exercise of prosecutorial discretion” is not enough to render agency action non-final).

b. The Replan directly affects Defendants by binding them for 10 years to a less accurate tabulation of total population.

For Defendants, the Replan gives rise to legal consequences because it effectively binds Defendants—for the next decade—to a less accurate “tabulation of total population by States” under the “decennial census.” 13 U.S.C. § 141(b). The Replan does this by committing Defendants to compressing census self-response from 33.5 weeks to 29 weeks; Non-Response Follow Up (“NRFU”) from 11.5 weeks to 7.5 weeks; and data processing from 26 weeks to 13 weeks. *See, e.g., Nat. Res. Def. Council v. EPA*, 643 F.3d 311, 319–20 (D.C. Cir. 2011) (“[T]he Guidance binds EPA regional directors and thus qualifies as final agency action.”).

The result of this significant compression in these extraordinary times will be inaccuracies

1 in the “tabulation of total population.” Inaccuracies in the tabulation harm constitutional and
 2 statutory interests. *See, e.g., Evans*, 536 U.S. at 478 (finding a “strong constitutional interest in
 3 accuracy”); 1998 Appropriations Act, § 209, 111 Stat. at 2481 (“Congress finds that . . . it is
 4 essential that the decennial enumeration of the population be as accurate as possible . . .”). Those
 5 constitutional and statutory harms—and Defendants’ choice of speed over accuracy—will endure
 6 until 2030.

7 A less weighty and more easily revocable constraint on the Government was found final in
 8 *Hawkes Co.*, 136 S. Ct. at 1814. There, an internal memorandum of agreement between two
 9 federal agencies provided that the Army Corps of Engineers could issue “jurisdictional
 10 determinations” (“JDs”) that were generally “binding on the Government” for five years. *Id.* The
 11 Supreme Court held that the JDs were final agency action under *Bennett v. Spear* even though
 12 (1) the JDs could be appealed and “revisited,” *see id.* at 1813–14; and (2) the JDs’ source of
 13 authority, the memorandum of agreement, never went through notice and comment and was
 14 represented as *non*-binding by the United States. *See id.* at 1817 (opinions of Kennedy, J.,
 15 concurring; and Ginsburg, J., concurring in part and concurring in the judgment). By contrast, here
 16 (1) Defendants do not waver in their commitment to end data collection by September 30, 2020
 17 and to report population data to the President by December 31, 2020; and (2) there is no doubt that
 18 the Replan will bind the United States to this Census and “tabulation of total population” until
 19 2030.

20 Thus, because the Replan determines rights and obligations and gives rise to legal
 21 consequences, the Replan constitutes final agency action.

22 **c. *Franklin v. Massachusetts* shows why the Replan is final agency action.**

23 To argue that the Replan does not constitute final agency action, Defendants rely on the
 24 Supreme Court’s decision in *Franklin v. Massachusetts*, 505 U.S. 788 (1992). PI Opp. 19–20. That
 25 case concerned the Secretary of Commerce’s transmission of the census report to the President.
 26 *Franklin*, 505 U.S. at 797–98. There, the data presented to the President—the allocation of
 27 overseas military personnel to states based on their “home of record”—was still subject to

correction by the Secretary. *Id.* In addition, the President could instruct the Secretary to reform the census. *Id.* at 798. The Secretary’s report to the President thus was a “moving [target]” or a “tentative recommendation,” rather than a “final and binding determination.” *Id.* It carried “no direct consequences for the reapportionment.” *Id.* Based on these characteristics, the transmission of the census report was not final agency action. *Id.* at 798.

Franklin underscores why the Replan constitutes final agency action. The Replan is neither a “tentative recommendation” nor a decision that will be reviewed by a higher official. *Id.* Rather, the Secretary directed the Bureau to develop the Replan on July 29, 2020 and approved the Replan on August 3, 2020. Moreover, as a practical matter, no time remains for agency reconsideration. The Replan’s field operations will irreversibly wind down on September 30, 2020. Fontenot Decl. ¶ 98.

The Replan also has “direct consequences for the reapportionment.” *Id.* The Replan determines when data collection will end—past which people can no longer participate in the census—and solidifies an undercount that will carry through to Congressional reapportionment, federal funding, and more for a decade. By contrast, in *Franklin*, the data the Secretary reported could have had zero effect. The President could have “reform[ed] the census” and allocated already-counted servicemembers not by “home of record,” but by “legal residence,” “last duty station,” or no “particular State[.]” *Id.* at 792, 794; *see also U.S. House of Reps. v. U.S. Dep’t of Commerce*, 11 F. Supp. 2d at 93 (distinguishing *Franklin* on the same ground).

In any event, “[e]ven in the [*Franklin*] Court’s view, the Secretary’s report of census information to recipients other than the President would certainly constitute ‘final agency action.’” *Franklin*, 505 U.S. at 815 n.14 (Stevens, J., concurring in part and concurring in the judgment). That is because only the President may order the Secretary “to reform the census, even after the data are submitted to him.” *Id.* at 798. Data recipients such as the states can do no such thing. Accordingly, the Secretary’s reporting of “counts as they are used for intra-state *redistricting* and for *federal fund allocation* . . . is final agency action for purposes of APA review.” *City of New York v. U.S. Dep’t of Commerce*, 822 F. Supp. 906, 918–19 (E.D.N.Y. 1993) (emphasis in original)

(challenging guidelines that led Secretary not to adjust undercount), *vacated on non-APA grounds*, 34 F.3d 1114 (2d Cir. 1994), *rev'd sub nom. Wisconsin v. City of New York*, 517 U.S. at 12 n.7 (noting that “[plaintiffs] did not appeal the District Court’s treatment of their statutory claims” to the Second Circuit). Plaintiffs here likewise challenge the Replan’s undercount as it will be used in intra-state redistricting and federal fund allocation.

Last year’s citizenship question cases further underscore why the Replan is final agency action. In those cases, the United States conceded that adding the citizenship question to the census questionnaire constituted final agency action. *See New York*, 351 F. Supp. 3d at 645; *Kravitz v. Dep’t of Commerce*, 336 F. Supp. 3d 545, 566 n.13 (D. Md. 2018). There is no reason that a memorandum announcing the addition of a question would mark the agency “complet[ing] its decisionmaking process” and “directly affect[ing] the parties,” *Franklin*, 505 U.S. at 797, but the Replan would not. In both cases, the Secretary directed the development of and adopted the Replan; the Bureau viewed the Secretary’s decision as binding; and the decision directly affects the parties. In sum, the Replan is final agency action.

E. The Replan is not committed to agency discretion by law.

Defendant’s last argument on reviewability is that the administration of the census—including the Replan—is “committed to agency discretion by law.” 5 U.S.C. § 701(a)(2). The Court disagrees.

The APA creates a “strong presumption favoring judicial review of administrative action.” *Mach Mining, LLC v. EEOC*, 575 U.S. 480, 489 (2015). One exception includes those actions that are “committed to agency discretion by law.” 5 U.S.C. § 701(a)(2). However, courts have read this exception quite narrowly. This exception encompasses situations where Congress explicitly precludes review, or “those rare circumstances where the relevant statute is drawn so that a court would have no meaningful standard against which to judge the agency’s exercise of discretion.” *Weyerhaeuser*, 139 S. Ct. at 370 (quoting *Lincoln v. Vigil*, 508 U.S. 182, 191 (1993)). This latter exception has generally been limited to “certain categories of administrative decisions that courts traditionally have regarded as committed to agency discretion . . . such as a decision not to

1 institute enforcement proceedings . . . or a decision by an intelligence agency to terminate an
2 employee in the interest of national security.” *Dep’t of Commerce*, 139 S. Ct. at 2568 (citations and
3 quotation marks omitted) (citing *Hecker v. Chaney*, 470 U.S. 821, 831–32 (1985) and *Webster v.*
4 *Doe*, 486 U.S. 592, 600–01 (1988)).

5 *Department of Commerce v. New York* controls. There, the Supreme Court concluded that
6 “[t]he taking of the census is not one of those areas traditionally committed to agency discretion.”
7 139 S. Ct. at 2568. Collecting case law, the Supreme Court noted that “courts have entertained
8 both constitutional and statutory challenges to census-related decisionmaking.” *Id.* (citing, *e.g.*,
9 *Carey*, 637 F.2d at 839, in which the Second Circuit concluded that the Bureau’s decision not to
10 use “Were You Counted” forms or to compare census records with records of Medicaid-eligible
11 people “was not one of those ‘rare instances’ where agency action was committed to agency
12 discretion”); *see also City of Los Angeles v. U.S. Dep’t of Commerce*, 307 F.3d 859, 869 n.6 (9th
13 Cir. 2002) (rejecting argument that the Bureau’s decision not to adopt statistically adjusted
14 population data was committed to agency discretion by law). The Supreme Court explained that
15 there were meaningful standards against which to judge the taking of the census, including the
16 Census Act, which requires that the agency “conduct a census that is accurate and that fairly
17 accounts for the crucial representational rights that depend on the census and the apportionment.”
18 *Id.* at 2568–69 (quoting *Franklin*, 505 U.S. at 819–20 (Stevens, J., concurring in part and
19 concurring in judgment)).

20 Here, Plaintiffs challenge the Replan—a set of deadlines for “the taking of the census.” *Id.*
21 at 2568. Plaintiffs’ claims, like those in *Department of Commerce v. New York*, arise under the
22 Enumeration Clause and the APA. Here too, the Census Act provides a meaningful standard
23 against which to judge Defendants’ action. The Replan’s change in deadlines affects the accuracy
24 of the enumeration, as did the decision to omit certain records in *Carey* or reinstate the citizenship
25 question in *New York*. Accordingly, the Replan is not committed to agency discretion.

F. Plaintiffs lack an adequate alternative to judicial review and suffer prejudice from the Replan.

To avoid any doubt that the instant case is reviewable, the Court briefly addresses two remaining APA requirements even though Defendants waive one and forfeit the other. *See generally United States v. Olano*, 507 U.S. 725, 733 (1993) (“[F]orfeiture is the failure to make the timely assertion of a right; waiver is the ‘intentional relinquishment or abandonment of a known right.’” (quoting *Johnson v. Zerbst*, 304 U.S. 458, 464 (1938))).

The first is that “an agency action is reviewable under the APA only if there are no adequate alternatives to APA review in court.” *Hawkes Co.*, 136 S. Ct. at 1815 (citing 5 U.S.C. § 704). Defendants waived this argument at the September 22, 2020 preliminary injunction hearing, and for good reason. Tr. of Sept. 22, 2020 Preliminary Injunction Hearing, ECF No. 207, at 41:13–17 (The Court: “But you are not arguing that they have an adequate alternative to APA review in Court; is that correct?” Defendants: “That is not an argument that we have presented in our papers, Your Honor.”). The effects of a census undercount now would irrevocably reverberate for a decade. Congress has reached the same conclusion. *See* 1998 Appropriations Act, § 209, 111 Stat. at 2481 (providing that if “enumeration is conducted in a manner that” is unlawful, it would be impracticable for the “courts of the United States to provide[] meaningful relief after such enumeration has been conducted”).

The second APA requirement is that “due account shall be taken of the rule of prejudicial error.” 5 U.S.C. § 706; *accord Organized Vill. of Kake v. Dep’t of Agric.*, 795 F.3d 956, 968 (9th Cir. 2015) (en banc) (“[N]ot every violation of the APA invalidates an agency action; rather, it is the burden of the opponent of the action to demonstrate that an error is prejudicial.”). Defendants do not raise this argument in their briefs and so forfeit it. In any event, as the above analysis of Plaintiffs’ injuries shows, *see supra* Section III-B, the Replan’s violation of the APA prejudices Plaintiffs in four ways. First, Plaintiffs risk losing important federal funding from undercounting. Second, Plaintiffs state that an inaccurate apportionment will violate their constitutional rights to political representation. Third, Plaintiffs will need to expend resources to mitigate the undercounting that will result from the Replan. Lastly, local government Plaintiffs’ costs will

increase because those Plaintiffs rely on accurate granular census data to deploy services and allocate capital. Thus, an APA error would be prejudicial.

IV. MERITS

A party seeking a preliminary injunction must show (1) a likelihood of success on the merits; (2) irreparable harm in the absence of preliminary relief; (3) that the balance of equities tips in the party's favor; and (4) that an injunction is in the public interest. *Winter*, 555 U.S. at 20. The Court concludes that Plaintiffs meet all four factors and discusses each factor in turn below.⁷

A. Plaintiffs are likely to succeed on the merits of their claim that the Replan was arbitrary and capricious in violation of the APA.

Plaintiffs argue that they are likely to succeed on the merits with respect to their constitutional claim, which is brought under the Enumeration Clause, Mot. at 25–28, as well as their statutory arbitrary and capricious claim and pretext claim, which are both brought under the APA, *id.* at 14–25. Although Plaintiffs' constitutional and statutory claims overlap substantially because they both challenge the extent to which the Replan can accomplish a “full, fair, and accurate” count, Plaintiffs' constitutional and statutory claims present distinct bases on which the Court may grant injunctive relief.

Because the Court holds below that Plaintiffs are likely to succeed on the merits of their APA arbitrary and capricious claim, the Court need not reach Plaintiffs' Enumeration Clause claim or APA pretext claim. *See, e.g., New York*, 2020 WL 5422959, at *2 (finding that the plaintiffs were entitled to a permanent injunction on their statutory claim and thus declining to “reach the

⁷ Under Ninth Circuit precedent, “‘serious questions going to the merits’ and a balance of hardships that tips sharply towards the plaintiff can support issuance of a preliminary injunction, so long as the plaintiff also shows that there is a likelihood of irreparable injury and that the injunction is in the public interest.” *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th Cir. 2011); *accord Short v. Brown*, 893 F.3d 671675 (9th Cir. 2018) (holding that these factors are “on a sliding scale”). Thus, “when the balance of hardships tips sharply in the plaintiff's favor, the plaintiff need demonstrate only ‘serious questions going to the merits.’” *hiQ Labs, Inc. v. LinkedIn Corp.*, 938 F.3d 985, 992 (9th Cir. 2019) (quoting *All. for the Wild Rockies*, 632 F.3d at 1135). In the instant case, the Court finds not only serious questions going to the merits, but also a likelihood of success on the merits.

overlapping, albeit distinct, question of whether the [challenged action] constitutes a violation of the Constitution itself”).

Before discussing Plaintiffs’ APA arbitrary and capricious claim, though, the Court addresses the scope of its review. As the procedural history sets forth, Defendants have resisted producing the administrative record. Defendants also have explicitly conceded that if the Court finds that the Replan constitutes final agency action, then Defendants lose on likelihood of success on the merits. ECF No. 88 at 4. Defendants even “ask[ed] that the Court simply enter the TRO as a preliminary injunction” on September 8, 2020. ECF No. 98 at 65:18–20. Defendants have made these statements repeatedly:

- September 8, 2020 brief regarding whether Defendants must produce the administrative record:
 - “[W]ere the Court to brush past the threshold justiciability and jurisdiction bars, and conclude, contrary to the Fourth Circuit’s holding in *NAACP*, that the Replan is discrete, circumscribed final agency action subject to the APA—then the appropriate course would be to consider Mr. Fontenot’s declaration, and to find against the Defendants on the likelihood of success on the merits prong if that declaration is insufficient.” ECF No. 88 at 4.
- September 8, 2020 further case management conference:
 - “Your Honor, we ask that the Court simply enter the TRO as a preliminary injunction at this point. I think that will serve everybody’s interests best.” ECF No. 98 at 65:18–20.
 - “Our position is that if the Court rejects the five threshold arguments that we have made, determines that there was final agency action and determines that an explanation was required under the APA and finds that Mr. Fontenot’s declaration does not provide that explanation, then the conclusion would have to be that the Government loses on the likelihood of success on the merits prong of the PI.” ECF No. 98 at 55:6–13.

Accord Tr. of Sept. 14, 2020 Further Case Management Conference, ECF No. 126 at 35:20–36:6 (conceding same); Tr. of Sept 15, 2020 Hearing on Allegations of Potential Non-Compliance with TRO, ECF No. 141 at 52:24–53:8, 62:10–13 (conceding same).

The Court has found that the Replan is reviewable final agency action. Thus, if the Court

finds that Associate Director Fontenot’s declaration is insufficient, Defendants have conceded that Defendants lose on likelihood of success on the merits.

Associate Director Fontenot’s declaration is facially insufficient to serve as a basis for APA review of whether the agency action was arbitrary and capricious. APA review “is limited to ‘the grounds that the agency invoked when it took the action.’” *Dep’t of Homeland Sec. v. Regents of the Univ. of Ca.*, 140 S. Ct. 1891, 1913 (2020). To assess those grounds, “the focal point for judicial review should be the administrative record.” *Camp v. Pitts*, 411 U.S. 138, 142 (1973). Litigation affidavits are “merely ‘post hoc’ rationalizations which have traditionally been found to be an inadequate basis for review.” *Overton Park, Inc. v. Volpe*, 401 U.S. 402, 419 (1972) (quoting *Burlington Truck Lines v. United States*, 371 U.S. 156, 168–169 (1962)); *accord Cmty. for Creative Non-Violence v. Lujan*, 908 F.2d 992, 998 (D.C. Cir. 1990) (R. Ginsburg, Thomas, Sentelle, JJ.) (holding that “[t]he use of an affidavit by the agency decisionmaker was manifestly inappropriate for a case” under the APA); *see also Regents*, 140 S. Ct. at 1909 (rejecting Secretary of Homeland Security’s post-litigation memorandum). The Court thus views Plaintiffs’ claims through the lens of the administrative record.⁸

On review of the administrative record, the Court agrees that Plaintiffs are likely to succeed on the merits of their APA arbitrary and capricious claim for five reasons: (1) Defendants failed to consider important aspects of the problem, including their constitutional and statutory obligations to produce an accurate census; (2) Defendants offered an explanation that runs counter to the evidence before them; (3) Defendants failed to consider alternatives; (4) Defendants failed to articulate a satisfactory explanation for the Replan; and (5) Defendants failed to consider reliance interests. Although likelihood of success on the merits of one of the five reasons would support a preliminary injunction, the Court finds that Plaintiffs are likely to succeed on all five. Below, the Court analyzes the five reasons in turn.

⁸ As stated in the procedural history, the administrative record for the purposes of the preliminary injunction comprises Defendants’ non-privileged OIG documents. United States Magistrate Judges adjudicated Defendants’ assertions of privilege after *in camera* review.

1. Plaintiffs are likely to succeed on the merits of their claim that Defendants failed to consider important aspects of the problem.

Plaintiffs argue that, by failing to adequately provide for the fulfillment of its constitutional and statutory duty to conduct an accurate enumeration, Defendants neglected to consider important aspects of the problem in violation of the APA. Mot. at 18–21.

The arbitrary and capricious standard requires an agency to “examine the relevant data and articulate a satisfactory explanation for its action including a ‘rational connection between the facts found and the choice made.’” *State Farm*, 463 U.S. at 43 (quoting *Burlington Truck Lines v. United States*, 371 U.S. 156, 168 (1962)). In order to meet this requirement, the agency must consider the “important aspect[s]” of the problem before it. *State Farm*, 463 U.S. at 43.

The Court concludes that Defendants failed to consider “important aspect[s]” of the problem before them. *State Farm*, 463 U.S. at 43. Rather, Defendants adopted the Replan to further one alleged goal alone: meeting the Census Act’s statutory deadline of December 31, 2020 for reporting congressional apportionment numbers to the President. In the process, Defendants failed to consider how Defendants would fulfill their statutory and constitutional duties to accomplish an accurate count on such an abbreviated timeline.

Defendants’ constitutional and statutory obligations are “important aspects” of the problem before them. *See Oregon Natural Resources Council v. Thomas*, 92 F.3d 792, 798 (9th Cir. 1996) (“Whether an agency has overlooked ‘an important aspect of the problem,’ . . . turns on what [the] relevant substantive statute makes ‘important.’”); *see, e.g., Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania*, 140 S. Ct. 2367, 2383–84 (2020) (“If the Department did not look to [the Religious Freedom Restoration Act’s] requirements or discuss [RFRA] at all when formulating their solution, they would certainly be susceptible to claims that the rules were arbitrary and capricious for failing to consider an important aspect of the problem.”). Here, the relevant constitutional and statutory provisions focus first and foremost on the obligation to produce an accurate census.

As a constitutional matter, the Enumeration Clause evinces a “strong constitutional interest in [the] accuracy” of the census. *Evans*, 536 U.S. at 478. This interest in accuracy is driven by “the

1 constitutional purpose of the census, [which is] to determine the apportionment of the
2 Representatives among the States.” *Wisconsin v. City of New York*, 517 U.S. at 20.

3 In turn, the Census Act imposes a statutory duty of accuracy. “[B]y mandating a population
4 count that will be used to apportion representatives, see § 141(b), 2 U.S.C. § 2(a), the [Census] Act
5 imposes ‘a duty to conduct a census that is accurate and that fairly accounts for the crucial
6 representational rights that depend on the census and the apportionment.’” *Dep’t of Commerce v.*
7 *New York*, 139 S. Ct. at 2568–69 (quoting *Franklin*, 505 U.S. at 819–20 (Stevens, J., concurring in
8 part and concurring in the judgment)). Congress has underscored this duty in legislation amending
9 the Census Act. See 1998 Appropriations Act, § 209(a), 111 Stat. at 2480–81 (codified at 13
10 U.S.C. § 141 note) (finding that “it is essential that the decennial enumeration of the population be
11 as accurate as possible, consistent with the Constitution and laws of the United States”). Thus, the
12 Census Act requires the Defendants to produce an accurate census.

13 Defendants failed to sufficiently consider these constitutional and statutory obligations
14 when adopting the Replan. As the administrative record shows, the Replan will decrease the
15 census’s accuracy and undercount historically undercounted individuals. The Replan cuts Non-
16 Response Follow Up (“NRFU”) from 11.5 weeks to 7.5 weeks. The Replan cuts data processing
17 from 26 weeks to 13 weeks. The effect of this shorter timeframe will be particularly pronounced
18 due to the pandemic. COVID-19 has not only made it more difficult to hire enumerators, but also
19 made it more difficult for enumerators to conduct safe and effective NRFU. ECF No. 37-7 at 8, 18.
20 After all, the goal of NRFU is to “conduct in-person contact attempts at each and every housing
21 unit that did not self-respond to the decennial census questionnaire.” Fontenot Decl. ¶ 48.

22 The record before the agency demonstrates the effect of these significant cuts on census
23 accuracy. Several internal Bureau documents are especially illustrative.

24 First, a March 24, 2020 set of talking points explained the effect of reducing operations on
25 accuracy. These talking points were circulated by Enrique Lamas, Chief Advisor to Deputy
26 Director Ron Jarmin, to senior Bureau officials as late as July 21, 2020 on “urgent” notice.
27 DOC_7085–86. “Call me please,” he wrote to Senior Advisor for Decennial Affairs, James B.

1 Treat. DOC_7075. The talking points stated: “The 2020 Census operations are designed to cover
2 specific populations for a complete count of the population. If specific operation are cut or
3 reduced, the effect would be to miss specific parts of the population [and] lead to an undercount of
4 specific groups. That is why operations like Update Leave targeting rural populations or group
5 quarters enumeration are critical to full coverage and need to be done in specific orders.”
6 DOC_7086.

7 A set of April 17, 2020 talking points regarding the COVID-19 Plan, which were drafted
8 by Assistant Director for Decennial Programs Deborah Stempowski, stated: “We have examined
9 our schedule and compressed it as much as we can without risking significant impacts on data
10 quality.” DOC_265. Bureau officials repeated this statement to Congressman Jamie Raskin, who
11 chairs the House Subcommittee on Civil Rights and Civil Liberties, which has jurisdiction over
12 the census. *See* DOC_2224.

13 On July 23, 2020, the Chief of Decennial Communications and Stakeholder Relationships,
14 Kathleen Styles, shared a so-called “Elevator Speech” memo with GAO official Ty Mitchell and
15 senior Bureau officials. *See* DOC_8026 (sending to GAO). The purpose of the Elevator Speech,
16 Chief Styles wrote, was “to explain, in layman’s terms, why we need a schedule extension.” The
17 Speech begins with a “High Level Message,” which in its entirety reads:

18 Curtailing census operations will result in a census that is of unacceptable quality.
19 The Census Bureau needs the full 120 days that the Administration originally
20 requested from Congress to have the best chance to produce high quality, usable
21 census results in this difficult time. Shortening the time period to meet the original
22 statutory deadlines for apportionment and redistricting data will result in a census
23 that has fatal data quality flaws that are unacceptable for a Constitutionally-
24 mandated activity.

25 ECF No. 155-8 at 295, 332 (DOC_8070).

26 The rest of the Speech makes three overarching points that are similarly grim. The first
27 point is that “[s]hortening field data collection operations will diminish data quality and introduce
28 risk.” The main reason is that “COVID-19 presents an unprecedented challenge to field data
collection. . . . Areas that are now low risk for COVID will become high risk and vice versa, and

the Census Bureau will need to adapt NRFU on an almost daily basis to conduct data collection using the Administration’s gating criteria.” *Id.* Other necessary adaptations include “development of systems for an outbound telephone operation,” “significantly increasing selections for field positions to compensate for a much higher dropout rate from enumerator training,” and finding ways to count people who lived in group quarters and in college. *Id.* “All of these adapted operations are intended to produce the most accurate census possible, and cannot be rushed without diminishing data quality or introducing unacceptable risk to either operations or field staff.” *Id.*

The second point is that “[s]hortening post processing operations will diminish data quality and introduce risk.” *Id.* “[I]t is not possible to shorten the schedule appreciably without directly degrading the quality of the results and introducing great risk.” *Id.* The reason is that “[e]ach and every step in post processing is necessary and eliminating any step would result in a diminished data product. . . . [N]o step can be eliminated or overlap with another step.” For instance:

Some of these steps provide for quality reviews. While it may be tempting to think that quality reviews can be shortened, through decades of experience[,] the Census Bureau has learned that quality reviews are essential to producing data products that do not need to be recalled, products that stand the test of time. [The Bureau] routinely discover[s] items that need to be corrected during data review and appreciably shortening data review would be extremely unwise.

Id. Furthermore, “[t]he Census Bureau needs 30 [more] days for risk mitigation.” Risks include natural disasters, “e.g., a hurricane, or a COVID outbreak,” and “to account for additional processing steps and reviews made necessary by the COVID adaptations (e.g., extra time for processing responses related to college students).” *Id.*

The Elevator Speech’s last overarching point is that “[c]urtailing either field operations or post-processing may result in loss of public confidence in the census results such that census results would be unusable regardless of quality.” DOC_8071. Specifically, “[t]he administration already requested 120 days and Census officials have repeatedly said we need this time.” *Id.* Changing tack could “result in great skepticism about the numbers and unwillingness to use them.” *Id.* That is because “[t]here are always winners and losers in census results.” *Id.* As a result,

“[c]ensus results have always been about confidence . . . confidence in the Census Bureau’s ability to produce high quality, impartial data, free from political interference. In this sense being seen to produce politically-manipulated results is as much of a danger as low quality data.” *Id.*

Many of the fears expressed in the Elevator Speech were borne out by the time the Replan was ordered, adopted, and announced:

- The Secretary directed the Bureau to develop a plan with an accelerated schedule within days, which led to the drafting of the Replan. *See* DOC_10183.
- The Replan shortened both data collection and data processing.
- Four days before the Replan was announced, enumerator staffing was roughly 50 percent of the Bureau’s target at some sites within major regions such as the Los Angeles Region. *See* DOC_8631.
- On the date of the Replan’s announcement, COVID-19 had resurged in much of the country, Hurricane Hanna had hit Texas, and Hurricane Isaias had almost made landfall in North Carolina.⁹

On July 23, 2020, the same day that the Bureau circulated the Elevator Speech, several senior Bureau officials, including Deputy Director Ron Jarmin, Defendants’ sole declarant Associate Director Fontenot, and Associate Director for Field Operations Timothy Olson, conferred in an email thread. Associate Director Fontenot began the thread by stating he would soon tell the Department of Commerce about the “reality of the COVID Impacts and challenges”:

On Monday at DOC [Department of Commerce] I plan to talk about the difference between goal and actual case enumeration (Currently a shortfall (11 % goal vs 7% actual) and attribute it to the higher drop out rate and (ideally with reasons) and what we are going to do to address the technology drop outs.)

⁹ The Court may take judicial notice of matters that are either “generally known within the trial court’s territorial jurisdiction” or “can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b). Accordingly, the Court takes judicial notice that Hurricane Hanna hit Texas on July 25, 2020, while Hurricane Isaias made landfall on the coast of North Carolina on August 3, 2020 at 11 pm Eastern Time. *See Hurricane Hanna*, https://www.weather.gov/crp/Hurricane_Hanna; *Hurricane Isaias*, <https://www.weather.gov/mhx/HurricaneIsaias080420#:~:text=Isaias%20marked%20the%20earliest%20ninth,peak%20intensity%20of%2085%20mph.&text=Across%20eastern%20North%20Carolina%2C%20Isaias,minor%20storm%20surge%20and%20tornadoes>.

I think it is critical to lay the groundwork for the reality of the COVID Impacts and challenges.

Does anyone have any problems with my approach?

DOC_7737. In response, Associate Director Olson “agree[d] that elevating the reality is critical, especially in light of the push to complete NRFU asap for all the reasons we know about.”

DOC_7738.

“All the reasons we know about” are not described in the administrative record. Olson does allude, however, to the reason of “political motivation.” DOC_7737. In doing so, he “sound[s] the alarm” on “deliver[ing] apportionment by 12/31” in the strongest possible terms:

We need to sound the alarm to realities on the ground – people are afraid to work for us and it is reflected in the number of enumerators working in the 1a ACOs. And this means it is ludicrous to think we can complete 100% of the nation’s data collection earlier than 10/31 and any thinking person who would believe we can deliver apportionment by 12/31 has either a mental deficiency or a political motivation.

Id. One reason that accelerating the schedule would be “ludicrous,” Associate Director Olson stated, was the “awful deploy rate” of enumerators about 62% below target. *Id.* Driving that shortfall was an “almost [] debilitating quit rate”:

Another tack is to provide crystal clear numbers by the 1a ACOs that shows the awful deploy rate - field selected the right number (big number) to training, training show rate was on par with prior censuses (albeit a few points lower ... but overall in line with past censuses). And then we had a huge quit rate from training to deployed in field (and this does not mirror past censuses at all - it is MUCH higher, almost a debilitating higher quit rate). And this translates into much slower production in the field because we have less than half the number of enumerators (38%) we need to get the job done.

DOC_7559.¹⁰ The email thread thus showed senior Bureau officials’ serious concerns

¹⁰ At the preliminary injunction hearing, Defendants had no comment on Associate Director Olson’s email or other documents in the administrative record. In response to Associate Director Olson’s email, for instance, Defendants stated: “to the extent that the Court does undertake some sort of APA or record review, then in an APA case the Court acts as an appellate tribunal and reviews the record[,] and the record speaks for itself.” Tr. of Sept. 22, 2020 Preliminary Injunction

about the Replan only days before July 29, 2020, the day Associate Director Fontenot asserts that the Secretary ordered the development of the Replan. The staffing shortfall persisted. In the Bureau’s July 30, 2020 Periodic Performance Management Reports slideshow, the Bureau acknowledged that “[s]taffing remains a challenge.” DOC_9423.

Like field operations, data processing also needed more time in order to yield an accurate census. On July 24, 2020, a memo titled “2020 Decennial Census – Apportionment Data Processing” was circulated by Chief of Decennial Communications Stakeholder Relationships Kathleen Styles to senior staff, including Associate Director Fontenot and Assistant Director Stempowski. DOC_8019. The Apportionment Data Processing memo explained that “[t]he time spent on data processing is essential to ensuring an accurate and complete count.” DOC_8019. The Bureau further acknowledged that “[t]he three month delay in the largest field data collection operations, which impacted more than 35 percent of all responding households, will require additional data processing to ensure people are accurately counted in the correct location.” *Id.* The Bureau explained the shortfalls to accuracy that would result if data processing were cut short:

- Actions that would condense or remove parts of [data processing] run the risk of:
 - Incorrect geographic placement of housing units or missing units that were added through peak field operations.
 - Duplicative or conflicting data for certain households.
 - Unreliable characteristic data for redistricting files.
 - Additional legal challenges of apportionment counts, redistricting results, or other data products as a result of diminished quality of decennial data.

DOC_8019.

Despite the Bureau’s conclusions that it needed more time, the Bureau was directed just

Hearing, at 13:25–14:3, ECF No. 207; *accord id.* at 18:20–19:1 (The Court: “Would [Defendants] like to comment on this document [the ‘Elevator Speech’]?” Defendants: “No, I don’t have any further comment, Your Honor. I think for the reasons we said that the documents speak for themselves.”).

before or on July 30, 2020¹¹ to create the Replan and present it to the Secretary on August 3, 2020. *Cf.* Fontenot Decl. ¶ 81 (“July 29, the Deputy Director informed us that the Secretary had directed us . . .”). Although the Bureau had taken nearly a decade to develop the Operational Plan Version 4.0 for the 2020 Census, the Bureau developed the Replan in the span of 4 or 5 days at most. On July 30, 2020, the Chief of the Population Division, Karen Battle, sent an email with the subject “EMERGENCY MEETING on 12_31 Delivery of Appo__.” DOC_8364. Thereafter, senior Bureau officials met at 11 a.m., and again at 5:00 p.m. that day. The officials then conferred in an email thread that extended to at least 10:57 p.m. DOC_8353. In the thread, the Chief of the Geography Division, Deirdre Bishop, thanked fellow senior officials for “exhibiting patience and kindness as we brainstormed and adjusted the schedule.” DOC_8356.

Even as the Bureau began to develop the Replan at the Secretary’s direction, the Bureau continued to acknowledge that the Replan would present an unacceptable level of accuracy. On July 31, 2020, the Chief of the Decennial Statistical Studies Division, Patrick Cantwell, sent an email to senior Bureau officials that mentioned “global risks”:

- “Many of these changes delay activities required for developing the remaining data products following apportionment, some of them (but not all) until after 12/31/20, increasing the risk that they will not be completed on time, whatever that schedule becomes.”
- “Many of these changes, separately or in combination, have not been previously studied or analyzed for their effects on data quality. We risk decreasing the accuracy of apportionment counts and other statistics released later.”
- “With these changes to the original operational plan and schedule, we increase the chance of subsequent data concerns. For example, it may be necessary to release tabulations later that are not all completely consistent.”

DOC_9073–74.

¹¹ The administrative record does not contain any communications from Deputy Director Jarmin on July 29, 2020, let alone a specific communication between Deputy Director Jarmin and Associate Director Fontenot. Because Associate Director Fontenot’s declaration is not the administrative record, the Court relies on the July 30 “EMERGENCY MEETING” email discussed below and subsequent communications for the latest date of the Secretary’s order.

In a later July 31, 2020 email chain, senior Bureau officials, including Victoria Velkoff, the Associate Director for Demographic Programs; Christa Jones, the Chief of Staff to Director Dillingham; John Maron Abowd, Associate Director for Research & Methodology; Michael T. Thieme, Assistant Director for Decennial Census Programs (Systems & Contracts), and Benjamin J. Page, Chief Financial Officer, signed off on the following document describing the Replan:

All of the changes below, taken together, reduce the time required for post-processing such that, when combined with the operational changes above in this document, make it possible to deliver the apportionment package in time to meet the current statutory deadline. All of these activities represent abbreviated processes or eliminated activities that will reduce the accuracy of the 2020 Census. Additionally, the downstream effect of separating apportionment and redistricting processing activities could not be assessed. This results in additional risk to the delivery of the redistricting products in order to meet the statutory deadline and will have a negative impact on the accuracy of the redistricting data.

DOC_9496.

Because of the Replan's negative impact on accuracy, top Bureau staff hesitated to "own" the Replan. On August 1, 2020, Christa Jones, Chief of Staff to Director Dillingham, wrote in an email to other senior officials: "I REALLY think we need to say something on page 2 [of the Bureau's presentation on the Replan] that this is what we've been directed to do or that we are presenting these in response to their direction/request. This is not our idea and we shouldn't have to own it." DOC_10183. Jones also wrote that "I think we need to include the language about the quality that we have on the Word document. We really shouldn't give this as a presentation without making this clear up front." That Word document, "Options to meet September 30_v11," was circulated to senior Bureau officials by the Chief of the Decennial Census Management Division, Jennifer Reichert. The document stated that "accelerating the schedule by 30 days introduces significant risk to the accuracy of the census data. In order to achieve an acceptable level of accuracy, at[]least 99% of Housing Units in every state must be resolved." DOC_9951; *accord* DOC_8779 (another version of "Options to meet September 30" circulated by Assistant Director Stempowski on July 31, 2020, that states "[a]cceptable quality measure: 99% if HUs

1 resolved (similar to 2010)').

2 The same significant concerns were presented to Secretary Ross on August 3, 2020
3 ("August 3 Presentation").¹² That presentation began, like the Elevator Speech and the "Options to
4 meet September 30" document, with a tough assessment: "Accelerating the schedule by 30 days
5 introduces significant risk to the accuracy of the census data. In order to achieve an acceptable
6 level of accuracy, at least 99% of Housing Units in every state must be resolved." DOC_10276.
7 The August 3 Presentation then described the many changes in field operations that the Replan
8 will necessitate, such as reducing the number of NRFU visits from six to three or one.¹³ See
9 DOC_10281–82.

10 In addition to detailing those changes in field operations, the August 3 Presentation also
11 details the Replan's impact on data processing. Among these impacts is possible harm to a
12 different statutory deadline—the deadline for the Secretary's report of redistricting data to the
13 states:

14 Additionally, the downstream effect of separating apportionment and redistricting
15 processing activities could not be assessed, but we anticipate it will, at a minimum,
16 reduce the efficiency in data processing and could further reduce the accuracy of
17 the redistricting data if there is a similar requirement to deliver that data by the
18 current statutory deadline of March 31, 2021 [sic; should be April 1, 2021].

19 DOC_10281. The August 3 Presentation thus contemplated sacrificing not only the accuracy of the
20 December 31, 2020 congressional apportionment figures, but also the accuracy and timeliness of

21 ¹² Like Defendants had done with the Elevator Speech, Defendants produced several versions of
22 the August 3 Presentation as non-privileged and not pre-decisional. However, the parties identified
23 one version, DOC_10275, as a key document. ECF Nos. 161, 190. The Court thus mainly analyzes
24 that version of the document. See 5 U.S.C. § 706 ("[T]he court shall review the whole record or
25 those parts of it cited by a party . . .").

26 ¹³ On September 8, 2020, Defendants sua sponte filed a notice regarding compliance with the
27 Court's September 5, 2020 TRO. ECF No. 86. The notice attached the "Guidance for Field
28 Managers related to Action Required following the 9/5 Court Order" in which Defendants stated
that the Replan reduced the number of visits from six to one. ECF No. 86 Attachment C ("We will
resume making six contact attempts to confirm vacant housing units, instead of the one contact
attempt set forth in the Replan").

the April 1, 2021 redistricting numbers.

In sum, the Bureau concluded internally that trying to get the count done by the December 31, 2020 statutory deadline would be unacceptable to the Bureau's statutory and constitutional interests in accuracy. These conclusions were consistently and undisputedly reflected in documents leading up to the August 3 Press Release, including in the contemporaneous August 3, 2020 Presentation.

However, Director Dillingham's August 3 Press Release, which is less than one and a half pages, did not consider how the Replan would feasibly protect the same essential interests that the Bureau had identified. Rather, the August 3 Press Release based its decision on one statutory deadline and the Secretary's direction. The August 3 Press Release "accelerate[d] the completion of data collection and apportionment counts by our statutory deadline of December 31, 2020, *as required by law and directed by the Secretary of Commerce.*" *Id.* (emphasis added).

The August 3 Press Release then asserts that the Replan's shortening of data collection and processing will not affect census accuracy: "We will improve the speed of our count without sacrificing completeness. . . . Under this plan, the Census Bureau intends to meet a similar level of household responses as collected in prior censuses, including outreach to hard-to-count communities." *Id.* To support these assertions, the August 3 Press Release tersely mentions three operational changes related to enumerators conducting NRFU; data processing; and staffing:

- *[Enumerators conducting NRFU]* "As part of our revised plan, we will conduct additional training sessions and provide awards to enumerators in recognition of those who maximize hours worked. We will also keep phone and tablet computer devices for enumeration in use for the maximum time possible."
- *[Data processing]* "Once we have the data from self-response and field data collection in our secure systems, we plan to review it for completeness and accuracy, streamline its processing, and prioritize apportionment counts to meet the statutory deadline."
- *[Staffing]* "In addition, we plan to increase our staff to ensure operations are running at full capacity."

These announcements, and nothing more, comprised the August 3 Press Release's explanation of changes that would ensure an accurate count. The August 3 Press Release thus did not grapple

1 with the Bureau's contemporaneous, detailed, and unqualified internal concerns.

2 Moreover, the Bureau's internal documents undermine the August 3 Press Release's claims
3 of efficiency. As to enumerators and staffing, the Bureau's head of field operations had "sound[ed]
4 the alarm" on July 23, 2020. DOC_7738. "Crystal clear numbers" showed that "people are afraid
5 to work for us." DOC_7738. Specifically, the Bureau had an "awful deploy rate" and "less than
6 half the number of enumerators (38%) [it] need[ed] to get the job done." *Id.* How "awards" and
7 "additional training sessions" in the midst of a pandemic would close that 62% gap was unclear. A
8 week later, the "High-Level Summary Status" dated July 30, 2020 confirmed the staffing shortfall.
9 In sites and Area Census Offices across the county, the Bureau lacked about half of the
10 enumerators "compared to [its] goal." DOC_8623.

11 As for data processing, senior Bureau officials had received on July 29, 2020 a "High
12 Level Summary of the Post-Data Collection" from the Director's Senior Advisor for Decennial
13 Affairs, James Treat. DOC_8337. The High Level Summary unambiguously concluded that:

14 Any effort to concatenate or eliminate processing and review steps to reduce the
15 timeframes will significantly reduce the accuracy of the apportionment counts and
16 the redistricting data products. Decades of experience have demonstrated that these
17 steps and time are necessary to produce data products that do not need to be
18 recalled, meet data user expectations and needs, [are] delivered on time, and stand
19 the test of time.

20 *Id.*; accord DOC_8086 (July 27, 2020 memo from Treat with similar language).

21 Similarly, in the very August 3 Presentation on the Replan, the Bureau found that a
22 "compressed review period creates risk for serious errors not being discovered in the data –
23 thereby significantly decreasing data quality. Additionally, serious errors discovered in the data
24 may not be fixed." DOC_10285.

25 Although the Operational Plan Version 4.0 took nearly a decade to develop, the Replan was
26 developed in four to five days. All told, in the four or five days that the Bureau developed the
27 Replan, Defendants did not sufficiently consider how the Replan would fulfill their statutory and
28 constitutional duty to conduct an accurate census. Rather, the Bureau followed the Secretary's
orders even though "[s]hortening the time period to meet the original statutory deadlines for

apportionment and redistricting data w[ould] result in a census that has fatal data quality flaws that are unacceptable for a Constitutionally-mandated activity.” DOC_8022.

2. Defendants offered an explanation that runs counter to the evidence before the agency.

An agency action is “arbitrary and capricious if the agency has . . . offered an explanation for its decision that runs counter to the evidence before the agency.” *State Farm*, 463 U.S. at 43. “Reliance on facts that an agency knows are false at the time it relies on them is the essence of arbitrary and capricious decisionmaking.” *Mo. Pub. Serv. Comm’n v. FERC*, 337 F.3d 1066, 1075 (D.C. Cir. 2003). If an agency has offered an explanation that runs counter to the evidence before the agency, the agency’s action is arbitrary and capricious. *E. Bay Sanctuary Covenant v. Barr*, 964 F.3d 832, 851–52 (9th Cir. 2020) (concluding that an agency’s rule was arbitrary and capricious because the agency’s reasoning “runs counter to the evidence before the agency”); *Mo. Pub. Serv. Comm’n*, 337 F.3d at 1075 (concluding that the agency’s action was arbitrary and capricious because the agency “had adopted a new rationale premised on old facts that were no longer true”).

Defendants’ alleged justification for the Replan is the need to meet the December 31, 2020 statutory deadline for the Secretary of Commerce to report to the President “the tabulation of total population by States” for congressional apportionment because Congress failed to grant an extension. However, before the adoption of the Replan, the President and multiple Bureau officials repeatedly stated, publicly and internally, that the Bureau could not meet the December 31, 2020 statutory deadline. For instance:

- On April 3, 2020, the day the COVID-19 Plan was announced, President Donald J. Trump publicly stated, “I don’t know that you even have to ask [Congress]. This is called an act of God. This is called a situation that has to be. They have to give it. I think 120 days isn’t nearly enough.” ECF No. 131-16 at 4.
- On May 7 and 8, 2020, Associate Director for Communications Ali Ahmad wrote to Secretary Ross’s Chief of Staff and other senior officials. Ahmad stated that “[his memo] shows that if we could snap restart everywhere we would still need legislative fix. It also then explains why we can’t [snap restart] and estimates when we can start in the last places, getting us to the October 31, 2020 end date for data collection, and then explains

why we need an additional 30 for risk mitigation.” DOC_365. Risks included “another system shock, such as a Hurricane hitting the [S]outh during NRFU.” *Id.*

- On May 8, 2020, Secretary Ross’s Chief of Staff sent the Secretary a memo that among other things stated, “**Based on the initial suspension of field activities in line with OMB guidance, the Census Bureau can no longer meet its statutory deadlines for delivering apportionment and redistricting data, even conducting operations under unrealistically ideal conditions.**” DOC_2287 (emphasis in original).
- On May 26, 2020, the head of census field operations, Tim Olson, publicly stated that “[w]e have passed the point where we could even meet the current legislative requirement of December 31. We can’t do that anymore. We – we’ve passed that for quite a while now.” Nat’l Conf. of Am. Indians, 2020 Census Webinar: American Indian/Alaska Native at 1:17:30–1:18:30, YouTube (May 26, 2020), <https://www.youtube.com/watch?v=F6IyJMtDDgY>.
- On July 8, 2020, Associate Director Fontenot publicly confirmed that the Bureau is “past the window of being able to get” accurate counts to the President by December 31, 2020. U.S. Census Bureau, *Operational Press Briefing – 2020 Census Update* at 20–21 (July 8, 2020), <https://www.census.gov/content/dam/Census/newsroom/press-kits/2020/news-briefing-program-transcript-july8.pdf>.

As the Replan’s adoption drew near, the Bureau found that they could potentially miss even the COVID-19 Plan’s data collection deadline of October 31, 2020—to say nothing of the Replan’s data collection deadline of September 30, 2020.

- On July 23, 2020, Chief of Decennial Communications and Stakeholder Relationships, Kathleen Styles, shared the “Elevator Speech” memo with GAO. *See* DOC_8026 (sending to GAO). The Elevator Speech echoed Associate Director Ahmad’s concerns about natural disasters: “[t]he Census Bureau needs [] 30-days for risk mitigation[] in case we are not able to complete data collection operations everywhere by October 31 (e.g., a hurricane, or a COVID outbreak).” DOC_8022.
- Also on July 23, 2020, several senior officials stated internally that meeting the deadline was impossible. Associate Director Fontenot identified “the difference between goal and actual case enumeration[,] [c]urrently a shortfall (11% goal vs 7% actual).” DOC_7739. He thus thought it “critical to lay the groundwork for the reality of the COVID Impacts and challenges” in an upcoming meeting with the Department of Commerce. Associate Director of Field Operations Olson agreed. He concluded that “any thinking person who would believe we can deliver apportionment by 12/31 has either a mental deficiency or a political motivation.” DOC_7737.

- On July 27, 2020, the Director Dillingham's Senior Advisor for Decennial Affairs, James B. Treat, circulated a memo intended for Deputy Director Jarmin and authored by Associate Director Fontenot. The memo stated that "appreciably shortening the quality checks and reviews would be extremely unwise. Each and every step in post data collection processing is necessary." DOC_8085. Furthermore, hurricane season, early snow events, and COVID-19 all "increased the risk of our ability to complete the field data collection operations by the [COVID-19 Plan] deadline of October 31, 2020." DOC_8086.
- On July 29, 2020, the Senior Advisor for Decennial Affairs to Director Dillingham, James Treat, circulated to Associate Director Fontenot and other senior officials a "High Level Summary of the Post-Data Collection." DOC_8337. The High Level Summary repeated the Bureau's strong concerns. It stressed that "[d]ecades of experience have demonstrated that [processing and review] steps and time are necessary to produce data products that do not need to be recalled, meet data user expectations and needs, [are] delivered on time, and stand the test of time." DOC_8337.

Even less than two weeks before the Replan's September 30, 2020 data collection deadline, the Bureau expressed uncertainty about its ability to meet the September 30 deadline. One reason was that the natural disasters about which Bureau officials had warned had come to pass. On September 17, 2020 at a meeting of the Census Scientific Advisory Committee, Associate Director Fontenot, Defendants' sole declarant, stated "that [he] did not know whether Mother Nature would allow us to meet the September 30 date." ECF No. 196-1 at ¶ 14 (Fontenot's September 22, 2020 declaration). Mother Nature had wreaked "major West Coast fires," "air quality issues," and "Hurricane Sally across the states of Louisiana, Mississippi, Alabama, the Florida panhandle area, parts of Georgia, and South Carolina." *Id.*

The timing of Congressional *action* further belies Defendants' claim that Congressional inaction on the deadline justified the Replan. In the weeks and days leading up to Secretary Ross's direction to develop the Replan, Congress took major steps toward extending statutory deadlines. On May 15, 2020, the House passed a bill extending deadlines, The Heroes Act. *See* H.R. 6800, <https://www.congress.gov/bill/116th-congress/house-bill/6800>.¹⁴ On June 1, 2020, the Senate

¹⁴ The Court takes judicial notice of the congressional hearing dates. The Court may take judicial notice of matters that are either "generally known within the trial court's territorial jurisdiction" or

placed The Heroes Act on the legislative calendar. On July 23, 2020 at 10 a.m. Eastern, the Senate’s Small Business and Entrepreneurship Committee held a hearing on The Heroes Act.

Yet during that hearing, senior Bureau officials were strategizing how to resist the Department of Commerce’s ongoing pressure to accelerate census operations. On July 23, 2020, Associate Director Fontenot wrote at 10:31 a.m. that “[o]n Monday at DOC I plan to talk about the difference between goal and actual case enumeration[,] [c]urrently a shortfall (11% goal vs 7% actual). . . . [I]t is critical to lay the groundwork for the reality of the COVID Impacts and challenges.” DOC_7739. Associate Director Olson responded at 11:19 a.m., “agree[ing] that elevating the reality is critical, especially in light of the push to complete NRFU asap for all the reasons we know about.” DOC_7738. Lastly, by 11:48 a.m., Associate Director Olson “sound[ed] the alarm to realities on the ground.” *Id.*

In fact, the Commerce Department’s pressure on the Bureau had started at least a few days earlier. Three days before the July 23, 2020 Senate hearing, the Bureau’s Chief Financial Officer, Ben Page, asked other senior officials whether the Bureau still supported Congressional extension of the statutory deadlines. DOC_6852 (July 20, 2020 email to Director Dillingham et al.). Page wrote:

Among the first questions I am getting is “Does the Census bureau still need the change in the statutory dates?” Can we find a time to discuss how we should respond to that question? Given that the Senate may introduce a bill today or tomorrow, I anticipate we’ll need a set answer for discourse over the next 24-48 hours.

Id. The answer to Page’s question was, of course, no.

By July 28, 2020, the Bureau asked Congress for \$448 million for a timely completion of the Census without an extension of the statutory deadline. DOC_8037 (July 28, 2020 email from Secretary Ross’s Director of Public Affairs, Meghan Burris, to Secretary Ross).

“can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b). As stated above, the Court is permitted to go outside the administrative record “for the limited purpose of background information.” *Thompson*, 885 F.2d at 555.

Moreover, at the House Oversight and Reform hearing on July 29, 2020, Director Dillingham did not support extending the statutory deadline. Rather, he sidestepped questions about whether the “Administration has [] reversed direction on [the extension], and is now suggesting that they want the Census to be wrapped up quickly so that th[e] tabulation . . . could actually happen before the end of the year.” Oversight Committee, *Counting Every Person* at 3:50:42–3:51:40, YouTube (July 29, 2020), <https://youtu.be/SKXS8e1Ew7c?t=13880> (questions by Congressman John Sarbanes). Director Dillingham’s response was that “I’m not aware of all the many reasons except to say that the Census Bureau and others really want us to proceed as rapidly as possible.” *Id.* at 3:51:48–3:52:02.

Accordingly, Defendants’ explanation—that the Replan was adopted in order to meet the December 31, 2020 statutory deadline because Congress failed to act—runs counter to the facts. Those facts show not only that the Bureau could not meet the statutory deadline, but also that the Bureau had received pressure from the Commerce Department to cease seeking an extension of the deadline. In other words, Defendants “adopted a new rationale premised on old facts that were no longer true”: assumptions that the Bureau could possibly meet the deadline and that Congress would not act. *Mo. Pub. Serv. Comm’n.*, 337 F.3d at 1075. Thus, because Defendants “offered an explanation for its decision that runs counter to the evidence before the agency,” Plaintiffs are likely to succeed on the merits of their claim that Defendants’ decision is arbitrary and capricious. *State Farm*, 463 U.S. at 43.

3. Defendants failed to consider an alternative.

In order to meet APA standards, an agency “must consider the ‘alternative[s]’ that are ‘within the ambit of the existing [policy].’” *Dep’t of Homeland Sec. v. Regents of the Univ. of California*, 140 S. Ct. 1891, 1913 (2020) (alterations in original) (quoting *State Farm*, 463 U.S. at 51). An agency that fails to consider alternatives may have acted arbitrarily and capriciously. *See Regents*, 140 S. Ct. at 1913 (concluding that the DACA Termination was arbitrary and capricious because the Secretary, confronted with DACA’s illegality, failed to consider alternative actions short of terminating DACA, such as eliminating DACA benefits); *State Farm*, 463 U.S. at 43

(holding that the National Highway Traffic Safety Administration had acted arbitrarily and capriciously by not considering airbags as an alternative to automatic seatbelts).

Defendants similarly failed to consider an alternative here: not adopting the Replan while striving in good faith to meet statutory deadlines. By adopting the Replan, Defendants sacrificed adequate accuracy for an uncertain likelihood of meeting one statutory deadline. Defendants “did not appear to appreciate the full scope of [their] discretion.” *Regents*, 140 S. Ct. at 1911. Specifically, Defendants could have taken measures short of terminating the census early only to possibly meet the deadline. These measures could have included good faith efforts to meet the deadline coupled with an operational plan that would—at least in the Bureau’s view—generate results that were not “fatal[ly]” or “unacceptabl[y]” inaccurate. Elevator Speech, DOC_8070.

Because agencies must often fulfill statutory obligations apart from deadlines, case law is replete with agency actions that missed statutory deadlines but nevertheless survived judicial review. *See, e.g., Barnhart v. Peabody Coal Co.*, 537 U.S. 149, 157, 171–72 (2003) (upholding the Social Security Commissioner’s late assignment of beneficiaries to coal companies despite the fact that it “represent[ed] a default on a statutory duty, though it may well be a wholly blameless one”); *Newton Cty. Wildlife Ass’n v. U.S. Forest Serv.*, 113 F.3d 110, 112 (8th Cir. 1997) (“Absent specific statutory direction, an agency’s failure to meet a mandatory time limit does not void subsequent agency action”); *Linemaster Switch Corp. v. EPA*, 938 F.3d 1299, 1304 (D.C. Cir. 1991) (explaining that the Court did not want to restrict the agency’s powers “when Congress . . . has crafted less drastic remedies for the agency’s failure to act”).¹⁵

In fact, single-mindedly sacrificing statutory objectives to meet a statutory or judicial

¹⁵ Defendants cite *Forest Guardians v. Babbitt*, which explains that “when Congress . . . sets a specific deadline for agency action, neither the agency nor any court has discretion.” 174 F.3d 1178, 1190 (10th Cir. 1999). But *Forest Guardians* addresses the question of whether a court can compel an agency’s late action, not the question of whether an agency’s late action can be upheld by a court. Under the Supreme Court’s reasoning in *Barnhart*, the Bureau’s action after the deadline would be upheld by a court. *See, e.g., Barnhart*, 537 U.S. at 157, 171–72 (upholding the Social Security Commissioner’s late assignment despite the fact that “represent[ed] a default on a statutory duty, though it may well be a wholly blameless one”).

1 deadline can itself violate the APA. Examples abound because the Census Act is far from the only
2 statute that sets a deadline for agency action. Environmental regulation and occupational safety are
3 just two illustrative examples.

4 Environmental statutes have set hundreds of deadlines, of which only a fraction have been
5 met. *See* Richard J. Lazarus, *The Tragedy of Distrust in the Implementation of Federal*
6 *Environmental Law*, Law & Contemp. Probs., Autumn 1991, at 311, 323–28 (noting that “EPA has
7 met only about 14 percent of the congressional deadlines imposed”). For example, in
8 *Environmental Defense Fund v. Environmental Protection Agency*, the D.C. Circuit set a “court-
9 imposed schedule” after the EPA violated statutory deadlines for studying and designating
10 hazardous mining wastes. 852 F.2d 1316, 1331 (D.C. Cir. 1988); *see id.* at 1319–31 (discussing
11 interlocking deadlines). The D.C. Circuit set judicial deadlines that were years *after* the missed
12 statutory deadlines. *See id.*¹⁶ The D.C. Circuit’s order thus allowed the EPA to continue violating
13 the statutory deadlines so that the EPA could fulfill its other statutory duties.

14 Moreover, when the EPA promulgated a rule to comply with the judicial deadlines—and to
15 stanch the ongoing violation of statutory deadlines—the D.C. Circuit set that rule aside. *See Am.*
16 *Min. Cong. v. EPA*, 907 F.2d 1179, 1191–92 (D.C. Cir. 1990). The D.C. Circuit reasoned that the
17 rule was unsupported by the data. *See id.* at 1191. It was immaterial that the rule lacked support
18 only because the EPA felt compelled to comply with the deadlines. “That an agency has only a
19 brief span of time in which to comply with a court order cannot excuse its obligation to engage in
20 reasoned decisionmaking under the APA.” *Id.* at 1192.

21 In the area of occupational safety, the Occupational Safety and Health Act of 1970 set a
22 “statutory timetable” in “mandatory language” for rulemaking. *Nat’l Cong. of Hispanic Am.*

24 ¹⁶ The deadlines at issue in *Environmental Defense Fund v. EPA* were complicated. In simple
25 terms, the statutory deadlines were for the EPA to conduct studies by October 21, 1983, and to list
26 wastes under Subtitle C of the Resource Conservation and Recovery Act within six months of
27 completing those studies. *See* 852 F.2d at 1319–20. The D.C. Circuit set deadlines of July 31, 1989
28 for completion of the studies, and August 31, 1988 for relisting of six specific wastes. *See id.* at
1331.

Citizens (El Congreso) v. Marshall, 626 F.2d 882, 883–84 & n.3 (D.C. Cir. 1979) (discussing 29 U.S.C. § 655(b)(1)–(4), which provides that the Secretary “shall publish” rules within certain numbers of days). When the Secretary of Labor missed those deadlines, a “14-year struggle to compel the Secretary of Labor” to promulgate a rule ensued. *Farmworker Justice Fund, Inc. v. Brock*, 811 F.2d 613, 614 (D.C. Cir.), *vacated sub nom. as moot, Farmworkers Justice Fund, Inc. v. Brock*, 817 F.2d 890 (D.C. Cir. 1987).

As relevant here, when the Secretary of Labor first missed the deadlines, the district court ordered him to follow them. *See id.* at 884. Despite even the “mandatory language” of the statutory deadline, the D.C. Circuit reversed. The D.C. Circuit held that “the mandatory language of the Act did not negate the ‘implicit acknowledgement that traditional agency discretion to alter priorities and defer action due to legitimate statutory considerations was preserved.’” *Id.* (quoting *National Congress of Hispanic American Citizens v. Usery*, 554 F.2d 1196, 1200 (D.C. Cir. 1977) (Clark, J.)). The D.C. Circuit reasoned that the Secretary could “giv[e] priority to the most severe hazards” rather than those demanded by the statutory deadline. *Id.* at 891 & n.44. Agencies cannot and should not ignore their full range of legal obligations to prioritize meeting statutory deadlines at all costs.

So too here. Secretary Ross and the Census Bureau could have given priority to avoiding “fatal data quality flaws that are unacceptable for a Constitutionally-mandated national activity.” ECF No. 155-8 at 332 (Bureau’s Elevator Speech). The Census Act’s “mandatory language” of “shall” on deadlines did not displace Defendants’ duty to consider other express statutory and constitutional interests. *Compare, e.g.*, 1998 Appropriations Act, § 209, 111 Stat. at 2481 (“Congress finds that . . . it is essential that the decennial enumeration of the population be as accurate as possible . . .”), *and Utah*, 536 U.S. at 478 (finding a “strong constitutional interest in [the] accuracy” of the census), *with, e.g.*, 29 U.S.C. § 655(b)(1)–(4) (“shall publish” rules within certain timetable), *and Nat’l Cong. of Hispanic Am. Citizens*, 554 F.2d at 1198 (reversing order to follow deadlines and finding “traditional agency discretion to alter priorities” despite statutory deadlines because the statute provided feebly that “in determining the priority for establishing

standards . . . the Secretary shall give due regard to the urgency of the need” (quoting 29 U.S.C. § 655(g)).

Indeed, in analyzing the COVID-19 Plan—but never the Replan—the Bureau itself concluded that missing the statutory deadline was constitutional and in line with historical precedent. Bureau officials included these conclusions in their notes for their April 28, 2020 call with Congressman Jamie Raskin, Chair of the House Oversight Subcommittee on Civil Rights and Civil Liberties, which has jurisdiction over the census. DOC_2224. The notes stated that the COVID-19 proposal “underwent a constitutional review, and we believe it is constitutional.” DOC_2228; *see also* DOC_1692 (preparation materials for April 19, 2020 briefing with House Oversight Committee, stating that the COVID-19 plan “went through inter-agency review, including review by the Department of Justice,” and “[t]heir view is that there is not a constitutional issue with the proposal”).

The notes further stated that “in history, especially for [] many of the earlier censuses, data collection and reporting in the counts shifted beyond the zero year.” DOC_2228. Officials in charge of the census have previously missed statutory deadlines imposed by Congress. Assistants conducting four different censuses failed to transmit returns to marshals or the Secretary of State within the deadline imposed by Congress. In each case, only after the deadline had passed without the required transmission did Congress act by extending the statutory deadlines. This post-deadline extension took place in four censuses: the 1810, 1820, 1830, and 1840 Censuses. ECF No. 203 (explaining examples); *see, e.g.*, Act of Sept. 1, 1841, ch. 15, § 1, 5 Stat. 452, 452 (1841) (*post hoc* extension of September 1, 1841 for original deadline missed by over nine months).

Defendants’ failure “to appreciate the full scope of [their] discretion” also resembles the Secretary of Homeland Security’s decisionmaking in *Regents*, 140 S. Ct. 1891. There, the Secretary terminated the DACA program by relying on the Attorney General’s determination that DACA was unlawful. *Id.* at 1903. The government argued that the decision was not arbitrary and capricious because it was based on the Attorney General’s binding legal conclusion. The Supreme Court agreed that the Attorney General’s conclusion was binding but set aside the Secretary’s

1 decision anyway. *Id.* at 1910. The Court held that the Secretary failed to consider the full scope of
 2 her discretion, which would have permitted her to take measures short of terminating the program
 3 to address the illegality of the program. *Id.* at 1911.

4 Like the Secretary in *Regents*, Defendants argue that binding law compels their decision.
 5 Similarly, the Court agrees that the Census Act’s statutory deadlines bind Defendants. Even so,
 6 Defendants should have “appreciate[d] the full scope of their discretion” to preserve other
 7 statutory and constitutional objectives while striving to meet the deadlines in good faith. *Regents*,
 8 140 S. Ct. at 1911. By not appreciating their discretion, Defendants failed to consider important
 9 aspects of the problem before them. That failure was likely arbitrary and capricious under the
 10 APA.

11 **4. Plaintiffs are likely to succeed on the merits of their claim that Defendants**
 12 **failed to articulate a satisfactory explanation for the Replan.**

13 Plaintiffs argue that the Defendants failed to articulate a satisfactory explanation for its
 14 decision to adopt the Replan. The Court concludes that Plaintiffs are likely to succeed on the
 15 merits of this claim.

16 An agency must “examine the relevant data and articulate a rational connection between
 17 the facts found and the choice made.” *State Farm*, 463 U.S. at 43. The agency must have
 18 “considered the relevant factors, weighed [the] risks and benefits, and articulated a satisfactory
 19 explanation for [its] decision.” *Dep’t of Commerce*, 139 S. Ct. at 2570. In evaluating agency
 20 action, the Court must ensure that “the process by which [the agency] reache[d] its result [was]
 21 logical and rational.” *Michigan v. EPA*, 135 S. Ct. 2699, 2706 (2015) (quoting *Allentown Mack*
 22 *Sales & Serv., Inc. v. NLRB*, 522 U.S. 359, 374 (1998)). “[T]he agency’s explanation [must be]
 23 clear enough that its ‘path may reasonably be discerned.’” *Encino Motorcars*, 136 S. Ct. at 2125
 24 (quoting *Bowman Transp., Inc. v. Arkansas–Best Freight System, Inc.*, 419 U.S. 281, 286 (1974)).
 25 “[W]e may not supply a reasoned basis for the agency’s action that the agency itself has not
 26 given.” *Id.* at 2127 (quoting *State Farm*, 463 U.S. at 43).

27 When an agency changes position, the agency must provide a “reasoned explanation” why

1 it has done so. *FCC v. Fox Television Stations*, 556 U.S. 502, 515 (2009). At a minimum, this
 2 explanation must “display awareness that [the agency] is changing position” and “show that there
 3 are good reasons for the new policy.” *Fox Television*, 556 U.S. at 515. In addition, “sometimes [an
 4 agency] must” “provide a more detailed justification than what would suffice for a new policy
 5 created on a blank slate.” *Id.*

6 More detail is required “when, for example, [the agency’s] new policy rests upon factual
 7 findings that contradict those which underlay its prior policy; or when its prior policy has
 8 engendered serious reliance interests that must be taken into account.” *Id.* “In such cases it is not
 9 that further justification is demanded by the mere fact of policy change; but that a reasoned
 10 explanation is needed for disregarding facts and circumstances that underlay or were engendered
 11 by the prior policy.” *Encino Motorcars*, 136 S. Ct. at 2126 (quoting *Fox Television*, 556 U.S. at
 12 515–16); *see also Organized Vill. of Kake*, 795 F.3d at 968 (“[A]n agency may not simply discard
 13 prior factual findings without a reasoned explanation.”). “It follows that an ‘[u]nexplained
 14 inconsistency’ in agency policy is ‘a reason for holding an interpretation to be an arbitrary and
 15 capricious change from agency practice.’” *Encino Motorcars*, 136 S. Ct. at 2126 (alteration in
 16 original) (quoting *Nat’l Cable & Telecommunications Ass’n v. Brand X Internet Servs.*, 545 U.S.
 17 967, 981 (2005)); *see, e.g., Humane Society v. Locke*, 626 F.3d 1040, 1049–50 (9th Cir. 2010)
 18 (concluding that an agency acted arbitrarily and capriciously where the agency took a “seemingly
 19 inconsistent approach” with the approach it had taken previously).

20 Defendants took an inconsistent approach that failed to “articulate a rational connection
 21 between the facts found and the choice made.” *State Farm*, 463 U.S. at 43. The facts before the
 22 Defendants included the COVID-19 pandemic, its significant effect on census operations, and the
 23 inability to conduct an accurate count by September 30, 2020. *See supra* Section IV-A-1
 24 (contemporaneous statements from Bureau officials explaining how it was impossible to complete
 25 an accurate count by the statutory deadline); Section IV-A-2 (contemporaneous statements from
 26 Bureau officials explaining how they were past the point of being able to finish the count by the
 27 statutory deadline, even if they replanned the census).

Defendants never articulated a satisfactory explanation between these facts and the decision to adopt the Replan. All Defendants offer is the August 3, 2020 Press Release, which is less than one-and-a-half pages in length. *See* Tr. of August 26, 2020 Case Management Conference, ECF No. 65 at 20 (The Court: “[T]he Plaintiffs point to a press release as the reason for advancing the date and -- are there other documents that provide the contemporaneous reasons for advancing the date, other than the press release?” Defendants: “Your Honor, at this point I’m not aware of any other documents, but I would propose that I check with my client and answer that in the September 2nd filing.”).¹⁷ In less than a page and a half, the August 3 Press Release simply asserts that Defendants planned to deliver an accurate census in time for the statutory deadline. *See* Section IV-A-1 (analyzing the assertions in the press release and determining that they contradicted the facts before the Bureau). The August 3 Press Release never explains why Defendants are “required by law” to follow a statutory deadline that would sacrifice constitutionally and statutorily required interests in accuracy. ECF No. 37-1.

The August 3 Press Release stands in stark contrast to Secretary Ross’s memorandum on adding a citizenship question to the 2020 Census. *See Dep’t of Commerce*, 139 S. Ct. at 2569. In that memorandum, Secretary Ross outlined the four options available to him and the benefits and drawbacks of each option. *See* Ross Memorandum at 2–5, *New York v. U.S. Dep’t of Commerce*, 351 F. Supp. 3d 502 (S.D.N.Y. 2019), ECF No. 173 at 1314–17. He also explained the potential impact of each option on depressing 2020 Census response rates, drew on empirical evidence available to the Bureau, and weighed concerns voiced by census partners. *Id.* at 1317–19. Finally, he explained how his decision followed from the evidence and relevant considerations. *Id.* at 1319–20. The Supreme Court held that the memorandum provided adequate explanation because the Secretary “considered the relevant factors, weighed risks and benefits, and articulated a satisfactory explanation for his decision.” *Dep’t of Commerce*, 139 S. Ct. at 2570.

The August 3 Press Release contains nowhere close to the same level of reasoned

¹⁷ Defendants did not mention any other documents in their September 2, 2020 filing. ECF No. 63.

1 explanation. Here, Defendants failed to explain the options before them, failed to weigh the risks
 2 and benefits of the various options, and failed to articulate why they chose the Replan. In other
 3 words, Defendants failed to “articulate a rational connection between the facts found and the
 4 choice made.” *State Farm*, 463 U.S. at 43. Specifically, Defendants failed to explain why they
 5 disregarded the facts and circumstances that underlay their previous policy: the COVID-19 Plan.
 6 The facts underlying the COVID-19 Plan include the rapid spread of the coronavirus pandemic
 7 across the United States and its significant effect on Census operations, which are well-
 8 documented throughout the record. *See, e.g.*, DOC_2287 (“Operational Timeline” memo from
 9 Secretary Ross’s Chief of Staff, Michael Walsh, to the Secretary on May 8, 2020).

10 In fact, in the August 3, 2020 Press Release, Defendants never acknowledged or mentioned
 11 the COVID-19 Plan or COVID-19, let alone the ongoing pandemic. It follows that this
 12 “[u]nexplained inconsistency” in agency policy” renders the Replan arbitrary and capricious.
 13 *Encino Motorcars*, 136 S. Ct. at 2126 (quoting *Brand X*, 545 U.S. at 981).

14 **5. Plaintiffs are likely to succeed on the merits of their claim that Defendants**
 15 **failed to consider reliance interests.**

16 Plaintiffs also argue that the Replan was arbitrary and capricious in violation of the APA
 17 because Defendants failed to consider the reliance interests of their own partners, who relied on
 18 the October 31 deadline and publicized it to their communities. The Court concludes that Plaintiffs
 19 are likely to succeed on the merits of this claim.

20 When an agency is reversing a prior policy, the agency must “be cognizant that
 21 longstanding policies may have ‘engendered serious reliance interests that must be taken into
 22 account.’” *Encino Motorcars*, 136 S. Ct. at 2126 (quoting *Fox Television*, 556 U.S. at 515). “It
 23 would be arbitrary and capricious [for the agency] to ignore such matters.” *Fox Television*, 556
 24 U.S. at 515. An agency reversing a prior policy must “assess whether there were reliance interests,
 25 determine whether they were significant, and weigh any such interests against competing policy
 26 concerns.” *Regents*, 140 S. Ct. at 1913.

27 Where an agency fails to consider reliance interests, its action is arbitrary and capricious.

1 *Regents*, 140 S. Ct. at 1913 (holding that termination of the Deferred Action for Childhood
2 Arrivals (“DACA”) policy was arbitrary and capricious because the agency failed to consider
3 reliance interests); *see also Encino Motorcars*, 136 S. Ct. at 2126 (declining to defer to the
4 Department of Labor’s regulation because of failure to consider the reliance interests of car
5 dealerships when newly permitting service advisors to receive overtime pay). In fact, reliance
6 interests should be considered even where the document giving rise to reliance expressly disclaims
7 conferring any rights. *See Regents*, 140 S. Ct. at 1913–14 (holding that “disclaimers are surely
8 pertinent in considering the strength of any reliance interests, but that consideration must be
9 undertaken by the agency in the first instance”).

10 Defendants ignored reliance interests when Defendants developed and adopted the Replan.
11 Defendants’ COVID-19 Plan had engendered serious reliance interests on the part of
12 municipalities and organizations who encouraged people to be counted and publicized the
13 COVID-19 Plan’s October 31, 2020 deadline for data collection.

14 Defendants themselves acknowledge the important role that their partners play in
15 encouraging participation in the Census. Associate Director Fontenot describes at length the
16 Bureau’s partnerships with community organizations—including Plaintiffs such as National Urban
17 League. He explains that the Bureau “depend[s] on [its] partners to seal the deal with communities
18 that may be fearful or distrustful of the government”; to supplement and verify address lists; and
19 to identify locations to best count people experiencing homelessness. Fontenot Decl. ¶¶ 40–42; *see*
20 *id.* ¶¶ 12, 22. Overall, the Bureau engages in “[e]xtensive partnerships.” *Id.* ¶ 28.

21 Accordingly, when the COVID-19 pandemic began to spread in March 2020, Defendants
22 concluded that “[t]he virus will cause operational changes for the census, and may necessitate
23 changes in our planned communications approach.” DOC_970 (March 13, 2020 “COVID-19
24 Contingency Planning” sent by Program Analyst Christopher Denno to Director Dillingham et al.).
25 Defendants thus stated that they would “[d]evelop[] talking points to share with our partners”
26 about the pandemic. *Id.* Once Defendants adopted the COVID-19 Plan, Defendants’ partners
27 began to rely on the extended deadlines. For instance:

- The City of Los Angeles is home to about 4 million people. M. Garcia Decl. ¶ 7. The City “conducted a public education campaign publicizing the October 31, 2020 date for self-response.” *Id.* ¶ 14. For example, the City announced the date in bus shelter posters and social media toolkits. *Id.*
- Harris County, Texas “participated in over 150 events,” including “food distribution events,” during which it “announced the October 31, 2020 deadline for the 2020 Census.” Briggs Decl. ¶ 12.
- The City of Salinas promoted the October 31, 2020 deadline “on social media and in thousands of paper flyers.” Gurmilan Decl. ¶¶ 11–12.
- The League of Women Voters has over 65,000 members across 800 state and local affiliates. Stewart Decl. ¶ 4. Thus, “[w]hen the Census Bureau extended the deadline for counting operations to October 31, 2020,” the League of Women Voters “published blog posts advertising the new timeline,” “shared numerous letters with [] state and local affiliates providing information about the new timeline,” and “publicized the deadline in letters and [emails].” *Id.* ¶ 11.
- National Urban League has 11,000 volunteers across 90 affiliates in 37 states. Green Decl. ¶ 4. “[W]hen the Census Bureau announced its extension of the timeline for collecting responses to the 2020 Census, the National Urban League informed all members of the 2020 Census Black Roundtable that the deadline had become October 31, 2020. The members in turn conveyed to their own networks and constituents, causing a cascading effect.” *Id.* ¶ 14.

However, Defendants quietly removed the October 31 deadline from its website on July 31, 2020 without any explanation or announcement. *Compare* ECF No. 37-8 (July 30 Operational Adjustments Timeline), *with* ECF No. 37-9 (July 31 Operational Adjustments Timeline). Then on August 3, 2020, the Bureau advanced data collection deadlines to September 30.

As a result, people who believe they could submit their census responses in October and try to do so would not be counted. *See, e.g.,* Gurmilan Decl. ¶ 12 (“some residents who received the City [of Salinas]’s messaging will fail to respond before the R[eplan] deadline because the City has limited remaining resources to correct what is now misinformation.”). Moreover, Plaintiffs’ efforts to mitigate the widely advertised the Bureau’s October 31 deadline and now-counterproductive education campaigns will only be harder in the midst of a pandemic. *E.g.,* M. Garcia Decl. ¶¶ 14–14; Gurmilan Decl. ¶¶ 11–14; Briggs Decl. ¶¶ 11–12, 15–17.

Accordingly, “[i]n light of the serious reliance interests at stake, [Defendants’] conclusory

statements do not suffice to explain [their] decision.” *Encino Motorcars*, 136 S. Ct. at 2127. The Replan is thus arbitrary and capricious on this ground as well.

B. Plaintiffs will suffer irreparable harm without an injunction.

As to irreparable harm, Plaintiffs identify and support with affidavits four potential irreparable harms that Plaintiffs will suffer as a result of inaccurate census data. First, Plaintiffs risk losing important federal funding from undercounting. Second, Plaintiffs state that an inaccurate apportionment will violate their constitutional rights to political representation. Third, Plaintiffs will need to expend resources to mitigate the undercounting that will result from the Replan. Lastly, local government Plaintiffs’ costs will increase because those Plaintiffs rely on accurate granular census data to deploy services and allocate capital.

These harms are potentially irreparable in two ways. First, at least part of the harms may be constitutional in nature, and “the deprivation of constitutional rights ‘unquestionably constitutes irreparable injury.’” *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). Second, to the extent the harm involves expending money or resources, “[i]f those expenditures cannot be recouped, the resulting loss may be irreparable.” *Philip Morris USA Inc. v. Scott*, 561 U.S. 1301, 1304 (2010) (Scalia, J., in chambers).

Plaintiffs aver that implementation of the Replan deadlines would lead to an undercount of their communities. PI Mot. at 28. Because the decennial census is at issue here, an inaccurate count would not be remedied for another decade. An inaccurate count would affect the distribution of federal and state funding, the deployment of services, and the allocation of local resources. Similar harms have thus justified equitable relief in previous census litigation. *See, e.g., Dep’t of Commerce v. U.S. House of Representatives*, 525 U.S. at 328–34 (affirming injunction against the planned use of statistical sampling in census and citing apportionment harms, among others); *New York v. United States Dep’t of Commerce*, 351 F. Supp. 3d at 675 (issuing injunction and finding irreparable “the loss of political representation and the degradation of information”). Accordingly, the Court concludes that Plaintiffs have demonstrated that they are likely to suffer irreparable harm in the absence of a stay of the Replan. *Winter*, 555 U.S. at 22.

C. The balance of the hardships tips sharply in Plaintiffs' favor.

Plaintiffs would suffer several irreparable harms without a preliminary injunction. In his September 5, 2020 declaration, Defendants' own declarant, Associate Director Fontenot, stated that the sooner the Court enjoined Defendants, the fewer field staff Defendants would terminate and not be able to rehire:

Lack of field staff would be a barrier to reverting to the COVID Schedule were the Court to rule later in September. The Census Bureau begins terminating staff as operations wind down, even prior to closeout. Based on progress to date, as is standard in prior censuses, we have already begun terminating some of our temporary field staff in areas that have completed their work. It is difficult to bring back field staff once we have terminated their employment. Were the Court to enjoin us tomorrow we would be able to keep more staff on board than were the Court to enjoin us on September 29, at which point we will have terminated many more employees.

Fontenot Decl. at ¶ 98. Thus, Fontenot's declaration underscores Plaintiffs' claims of irreparable harm because Defendants would have difficulty rehiring terminated field staff.¹⁸

Furthermore, Defendants' stated reason for the August 3, 2020 Replan is to get the Census count to the President by December 31, 2020 instead of April 30, 2021 as scheduled in the COVID-19 Plan. Fontenot Decl. ¶ 81. However, the President, Defendants' sole declarant, and other senior Bureau officials have stated, even as recently as September 17, 2020, that meeting the statutory deadline is impossible. *See supra* Section IV-A-2; ECF No. 196-1 ¶ 14. These statements show that the hardship imposed on Defendants from a stay—missing a statutory deadline they had expected to miss anyway—would be significantly less than the hardship on Plaintiffs, who will suffer irreparable harm from an inaccurate census count.

Thus, the Court finds that the balance of hardships tips sharply in favor of Plaintiffs.

D. A preliminary injunction is in the public interest.

As to the public interest, when the government is a party, the analysis of the balance of the

¹⁸ Associate Director Fontenot's untimely September 22, 2020 declaration, ECF No. 196-1, claims that the Court's TRO dictates case assignments to enumerators. Neither the Court's TRO nor the instant Order dictate case assignments to enumerators.

hardships and the public interest merge. *See Drakes Bay Oyster Co. v. Jewell*, 747 F.3d 1073, 1092 (9th Cir. 2014) (citing *Nken v. Holder*, 556 U.S. 418, 435 (2009)). As the United States Supreme Court recognized, Congress has codified the public’s interest in “a census that is accurate and that fairly accounts for the crucial representational rights that depend on the census and the apportionment.” *Dep’t of Commerce v. New York*, 139 S. Ct. at 2569 (quoting *Franklin*, 505 U.S. at 819–820 (Stevens, J., concurring in part and concurring in judgment)) (discussing the Census Act, 2 U.S.C. § 2a). Other courts have held that “the public interest . . . requires obedience to the Constitution and to the requirement that Congress be fairly apportioned, based on accurate census figures” and that “it is in the public interest that the federal government distribute its funds . . . on the basis of accurate census data.” *Carey*, 637 F.2d at 839. Thus, an injunction is in the public interest.

E. The scope of the injunction is narrowly tailored.

The Bureau has explained that data processing cannot begin until data collection operations are completed nationwide. Because the steps are sequential, the Bureau cannot grant relief to particular geographic regions and not others. Specifically, the Bureau explained in its Elevator Speech, circulated to high level Bureau officials and to the GAO, “[n]or can post processing operations begin until data collection operations are completed everywhere. There is no option, e.g., to begin post processing in one region or state of the country while other areas are still collecting data.” Elevator Speech, DOC_8071.

Associate Director Fontenot’s September 22, 2020 declaration affirmed this point: “[P]ost data collection processing is a particularly complex operation, and the steps of the operation must generally be performed consecutively. . . . It is not possible, however, to begin final census response processing in one region of the country while another region is still collecting data.” Fontenot Decl. ¶ 19–20.

The Court is aware of the ongoing debate regarding nationwide injunctions and their scope. *See U.S. Dep’t of Homeland Sec. v. New York*, 140 S. Ct. 599, 600 (2020) (Gorsuch, J.,

concurring) (criticizing the “routine issuance of universal injunctions”).¹⁹ Nevertheless, the Supreme Court has upheld nationwide injunctions in the limited circumstance in which they are necessary to provide relief to the parties. *See, e.g., Trump v. International Refugee Assistance Project*, 137 S. Ct. 2080, 2088–89 (leaving in place a nationwide injunction with respect to the parties and non-parties that are similarly situated). The Supreme Court has followed this practice in past cases involving the census. *See Dep’t of Commerce v. U.S. House of Representatives*, 525 U.S. at 343–44 (affirming district court’s nationwide injunction against the Census Bureau’s proposed use of statistical sampling for apportionment purposes in the 2000 Census). This reflects the longstanding principle that “injunctive relief should be no more burdensome to the defendant than necessary to provide complete relief to the plaintiffs.” *Califano v. Yamasaki*, 442 U.S. 682, 702 (1979). The Court finds that this is an instance in which the injunction must be nationwide in order to grant necessary relief to the Plaintiffs.

Moreover, although Plaintiffs’ motion for preliminary injunction sought to stay Defendants’ August 3, 2020 Replan and to enjoin Defendants from implementing the August 3, 2020 Replan, at the September 22, 2020 preliminary injunction hearing, Plaintiffs narrowed their request to a stay and injunction of the August 3, 2020 Replan’s September 30, 2020 and December 31, 2020 deadlines. Specifically, Plaintiffs stated:

So I want to be clear about this. Our APA action challenges the timelines in the Replan. It is very discrete in that respect.

The final agency action is the announcement on August 3rd that they are going to shorten the deadlines for completing the Census, two deadlines in particular, leaving the October 31st one to September 30th for data collection and moving the April date to December 31st for reporting to the President. That is our APA

¹⁹ Compare, e.g., Hon. Milan D. Smith Jr., *Only Where Justified: Toward Limits and Explanatory Requirements for Nationwide Injunctions*, 95 Notre Dame L. Rev. 2013 (2020) (criticizing the rise in universal injunctions, but acknowledging that they are justified in certain contexts), with Mila Sohoni, *The Power to Vacate a Rule*, 88 Geo. Wash. L. Rev. ____ (forthcoming 2020), https://papers.ssrn.com/sol3/Papers.cfm?abstract_id=3599266 (arguing that the APA § 706’s provision that “[t]he reviewing court shall . . . hold unlawful and set aside agency action” permits universal vacatur).

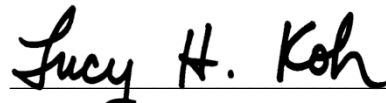
challenge, the moving and shortening and accelerating of those particular deadlines. Tr. of Sept. 22, 2020 Preliminary Injunction Hearing at 23:21–24:5, ECF No. 207. Plaintiffs may narrow the scope of their requested injunctive relief. *See Vasquez v. Rackauckas*, 734 F.3d 1025, 1037 (9th Cir. 2013) (recognizing that plaintiffs “clarified and narrowed” the injunctive relief that they sought). Thus, the Court grants Plaintiffs’ narrowed requested relief. By this order, the Court in no way intends to manage or direct the day-to-day operations of Defendants.

V. CONCLUSION

For the foregoing reasons, IT IS HEREBY ORDERED THAT, effective as of the date of this Order: The U.S. Census Bureau’s August 3, 2020 Replan’s September 30, 2020 deadline for the completion of data collection and December 31, 2020 deadline for reporting the tabulation of the total population to the President are stayed pursuant to 5 U.S.C. § 705; and Defendants Commerce Secretary Wilbur L. Ross, Jr.; the U.S. Department of Commerce; the Director of the U.S. Census Bureau Steven Dillingham, and the U.S. Census Bureau are enjoined from implementing these two deadlines.

IT IS SO ORDERED.

Dated: September 24, 2020


LUCY H. KOH
United States District Judge

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

NATIONAL URBAN LEAGUE, et al.,

Plaintiffs,

v.

WILBUR L. ROSS, et al.,

Defendants.

Case No. 20-CV-05799-LHK

**ORDER RE: CLARIFICATION OF
STAY AND PRELIMINARY
INJUNCTION**

Re: Dkt. No. 279

Plaintiffs National Urban League; League of Women Voters; Black Alliance for Just Immigration; Harris County, Texas; King County, Washington; City of Los Angeles, California; City of Salinas, California; City of San Jose, California; Rodney Ellis; Adrian Garcia; National Association for the Advancement of Colored People; City of Chicago, Illinois; County of Los Angeles, California; Navajo Nation; and Gila River Indian Community (collectively, “Plaintiffs”) sue Defendants Commerce Secretary Wilbur L. Ross, Jr.; the U.S. Department of Commerce; the Director of the U.S. Census Bureau Steven Dillingham, and the U.S. Census Bureau (“Bureau”) (collectively, “Defendants”) for violations of the Enumeration Clause and the Administrative Procedure Act (“APA”).

Before the Court are two motions: (1) Plaintiffs’ motion to compel and for sanctions

(“motion to compel”); and (2) Plaintiffs’ motion for temporary restraining order pending ruling on Plaintiffs’ motion to compel and for sanctions (“second TRO motion”). Having considered the parties’ submissions on the motion to compel and the second TRO motion; the parties’ arguments at the September 28 and 29, 2020 case management conferences; many briefs and court proceedings discussing Defendants’ alleged violations of the Temporary Restraining Order and the Court’s Order Granting Plaintiffs’ Motion for Stay and Preliminary Injunction (“Injunction Order,” ECF No. 208); the relevant law; and the record in this case, the Court:

- CLARIFIES the scope of the Court’s Injunction Order;
- ORDERS Defendants to issue on October 2, 2020 a new text message to all Census Bureau employees notifying them of the Court’s Injunction Order, stating that the October 5, 2020 “target date” is not operative, and stating that data collection operations will continue through October 31, 2020. On October 2, 2020, after the text message is sent, Defendants shall file a copy of the text message with the Court;
- ORDERS Census Bureau Director Steven Dillingham to file, by Monday, October 5, 2020 at 2 p.m. Pacific Time, a declaration under penalty of perjury that unequivocally confirms Defendants’ ongoing compliance with the Injunction Order and details the steps Defendants have taken to prevent future violations of the Injunction Order; and
- DENIES AS MOOT Plaintiffs’ motion to compel and second TRO motion.

I. BACKGROUND

On Thursday, September 24, 2020, the Court issued an Order Granting Plaintiffs’ Motion for Stay and Preliminary Injunction (“Injunction Order”), ECF No. 208. In the Injunction Order, the Court detailed how Defendants had violated the APA by adopting the “Replan”: a schedule for the 2020 Census that accelerated the deadlines for Census self-responses, non-response follow-up, data processing, and reports to the President and the states. Although the Census Bureau had taken most of a decade to develop the December 2018 Operational Plan Version 4.0 for the 2020 Census, the Bureau developed the Replan in the span of four or five days.

The Court found that Defendants had acted arbitrarily and capriciously in five independent ways: (1) Defendants failed to consider important aspects of the problem, including their constitutional and statutory obligations to produce an accurate census; (2) Defendants offered an

1 explanation that runs counter to the evidence before them; (3) Defendants failed to consider an
 2 alternative; (4) Defendants failed to articulate a satisfactory explanation for the Replan; and
 3 (5) Defendants failed to consider reliance interests. *Id.* at 44–74. Although any one of the five
 4 reasons would have supported a preliminary injunction, the Court found for Plaintiffs on all five.¹

5 The Court also found that Plaintiffs would suffer irreparable injury; that the balance of
 6 hardships tipped sharply in Plaintiffs’ favor; and that a preliminary injunction would serve the
 7 public interest. *Id.* at 74–75. Accordingly, the Court ordered that, effective as of Thursday,
 8 September 24, 2020:

9 The U.S. Census Bureau’s August 3, 2020 Replan’s September 30, 2020 deadline
 10 for the completion of data collection and December 31, 2020 deadline for reporting
 11 the tabulation of the total population to the President are stayed pursuant to 5
 12 U.S.C. § 705; and Defendants Commerce Secretary Wilbur L. Ross, Jr.; the U.S.
 13 Department of Commerce; the Director of the U.S. Census Bureau Steven
 14 Dillingham, and the U.S. Census Bureau are enjoined from implementing these two
 15 deadlines.

16 *Id.* at 78.

17 **II. DISCUSSION**

18 Below, the Court describes (1) the effect of the Injunction Order; (2) Defendants’ repeated
 19 violations of the Injunction Order; and (3) the further relief needed to ensure Defendants’
 20 compliance with the Injunction Order. Given the Bureau’s announcement that it will end field
 21 operations on Monday, October 5, 2020, time is of the essence.

22 **A. The Injunction Order enjoined Defendants from implementing the Replan’s 23 deadlines and reinstated the COVID-19 Plan’s deadlines.**

24 The effect of staying the two Replan deadlines was to reinstate the rule previously in force.
 25 *See, e.g., Dep’t of Homeland Security v. Regents of the Univ. of California*, 140 S. Ct. 1891, 1916
 26 & n.7 (2020) (affirming judgment vacating recession and restoring Deferred Action for Childhood
 27 Arrivals (“DACA”) program); *Organized Village of Kake v. USDA*, 795 F.3d 956, 970 (9th Cir.

28 ¹ Before reaching the merits, the Court found that Plaintiffs’ claims are reviewable. *See* Injunction
 Order at 21–44. The Court’s Injunction Order is incorporated herein by reference.

2015) (en banc) (“The effect of invalidating an agency rule is to reinstate the rule previously in force.” (quoting *Paulsen v. Daniels*, 413 F.3d 999, 1008 (9th Cir. 2005))).

The rule previously in force was the COVID-19 Plan—specifically, the COVID-19 Plan’s deadline of October 31, 2020 for data collection (self-responses and non-response follow-up (“NRFU”)) and deadline of April 30, 2021 for reporting the tabulation of total population to the President. *See, e.g.*, Injunction Order at 6–9 (discussing COVID-19 Plan); 29–32 (discussing the broad scope of a “rule” under the APA). The injunction’s effect was to require Defendants to cure the legal defects identified in the Injunction Order if Defendants were to insist on implementing the two Replan deadlines. *See Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 165–66 (2010) (“If a less drastic remedy (such as partial or complete vacatur of [the agency’s] decision) was sufficient to redress [] injury, no recourse to the additional and extraordinary relief of an injunction was warranted.”); *New York v. United States Dep’t of Commerce*, 351 F. Supp. 3d 502, 676–78, 679 (S.D.N.Y.) (analyzing *Monsanto* and enjoining Secretary Ross until he cured the legal defects identified in opinion), *aff’d in part, rev’d in part and remanded sub nom. Dep’t of Commerce v. New York*, 139 S. Ct. 2551 (2019). Until those legal defects are cured, the two COVID-19 Plan deadlines remain in force.

B. Defendants violated the Injunction Order by implementing the Replan deadlines.

Despite the Injunction Order, Defendants continued to implement the Replan’s September 30, 2020 deadline for data collection. For instance, as recently as Monday, September 28, 2020, four days after the Injunction Order, the Census Bureau’s website, which is updated daily, declared that the “2020 Census will conclude data collection on September 30, 2020.” ECF No. 243 (attaching screenshot of <https://2020census.gov/content/dam/2020census/news/daily-nrfu-rates/nrfu-rates-report-09-28.pdf>). Only after Plaintiffs raised this issue with the Court during the September 28, 2020 case management conference did the Census Bureau finally remove the erroneous statement from the Census Bureau’s website.

As another example, on Saturday, September 26, 2020, a Census Bureau enumerator² forwarded to the Court a text from the Census Bureau's Regional Director in Dallas, Texas stating:

Team,

Even though the courts have made a decision; nothing has changed. Our deadline to count everyone is still September 30, 2020. I will keep everyone as updated as possible. DO NOT SPREAD RUMORS, OR MAKE ASSUMPTIONS. STICK TO THE FACTS! The facts are, we are still moving forward with original plan to finish by September 30, 2020.

ECF No. 214 at 4. Defendants responded to this text by confessing error: the Regional Director in Dallas had in fact sent that text message to staff despite the Injunction Order. ECF No. 219-1 (Christy Decl. ¶ 6). According to James T. Christy, the Bureau's Assistant Director for Field Operations, the information in that text message was "not consistent with [his] understanding of what field offices should be doing." *Id.* ¶ 5.

The level of misinformation and confusion nationwide is not surprising given that the Census Bureau's own website continued to tout the September 30, 2020 end of data collection four days after the Injunction Order. The Court has received a slew of emails from enumerators across the country that include supervisor texts with erroneous information and that express concern about the ending of field operations without adequate counts. The following are just a few examples:

- On Monday, September 28, 2020, a Census Field Supervisor stated that he "learned of this court's September 5, 2020 TRO from media reports. As a Census Field Supervisor[,] I have received zero notice from the Census Bureau about the existence of the TRO issued by this court on September 5, 2020." ECF No. 222. In response, Assistant Director Christy avers that "[t]he implementation of the Court's Temporary Restraining Order and the Preliminary Injunction involved actions by Headquarters and Regional Management Staff." ECF No. 244-1 (Christy Decl. ¶ 14). In the Los Angeles Region where the complainant works, the

² Enumerators are Census Bureau employees who collect data in the field. Specifically, enumerators conduct follow up with housing units that "did not self-respond to the decennial census questionnaire." Injunction Order at 2 (quoting Fontenot Decl. ¶ 48, ECF No. 81-1 and Thompson Decl. ¶ 15, ECF No. 36-2).

Regional Director did not email Census Field Supervisors about the TRO or Injunction Order. *Id.* (Christy Decl. ¶ 16).

- On Tuesday, September 29, 2020, an individual claiming to be an attorney at the Environmental Protection Agency wrote that he and his wife, who are working as enumerators, have been told by their census supervisors “that we are wrapping up tomorrow.” The individual attached a screenshot of text messages that show the Bureau’s instructions “not to enter availability past tomorrow.” ECF No. 248.
- Again on Tuesday, September 29, 2020, an enumerator wrote that “in the last few days we have been under strict instructions to close down remaining cases by whatever means necessary.” ECF No. 238.

See also, e.g., ECF Nos. 214, 224, 229, 235, 254, 257, 263, 268, 270–73, 276, 285 (other allegations).

Perhaps the most egregious violation of the Injunction Order occurred on Monday, September 28, 2020. At 1:58 p.m., two minutes before the Court’s case management conference, the Census Bureau tweeted one sentence: “The Secretary of Commerce has announced a target date of October 5, 2020 to conclude 2020 Census self-response and field data collection operations.” @USCensusBureau, <https://twitter.com/uscensusbureau/status/1310685274104569856>. Later, the Census Bureau issued a one sentence press release with the exact same sentence. *See* U.S. Census Bureau, 2020 Census Update (Sept. 28, 2020), <https://www.census.gov/newsroom/press-releases/2020/2020-census-update.html>.

Neither the one sentence tweet nor the one sentence press release provided any explanation or information. The Court thus ordered Defendants to produce the administrative record of this announcement. ECF No. 225. The Court notes that Defendants deny that the October 5 end date for data collection constitutes final agency action. For example, minutes after the October 5 “target date” tweet during the Monday, September 28, 2020 case management conference, Defendants stated that the announcement “doesn’t involve a final agency action. It is a giant endeavor with constantly changing pieces. And our position is the tweet does not have an administrative record. That is our position.” Tr. at 44, ECF No. 237.

Similarly, the next day, at the September 29, 2020 case management conference, the Court

asked whether Defendants had produced the full record of the October 5 “target date” tweet. Tr. at 7, ECF No. 259. Defendants responded in the affirmative, “[s]ubject to not calling it a record because in our view it is not a record.” *Id.* When asked about the Secretary’s approval of the October 5 “target date,” Defendants stated: “[e]ven to call it a decision is perhaps to endow it with significance that it otherwise does not have.” *Id.*

Even though the Census is a \$15.6 billion dollar operation that took nearly a decade to plan, Defendants’ production showed that the Census Bureau developed the October 5 “target date” in the span of four days with the same legal defects as the Replan. For example, Census Bureau Deputy Director Ron Jarmin presented to Secretary Ross two “Proposed Options for Completion of Enumeration”—both of which focused on the December 31, 2020 deadline that the Court had stayed and enjoined Defendants from implementing:

Option 1: Conclude field work by October 5, 2020 *in order to meet apportionment delivery date of December 31, 2020.*

Option 2: Continue field work beyond October 5, 2020 in order to increase state completion rates to 99% and to continue to improve enumeration of lagging sub-state areas, such as tribal areas, rural areas, and hard-to-count communities. *However, this would not allow for delivery of state counts for apportionment by December 31, 2020.*

ECF No. 233 at 148 (italics added). As Deputy Director Jarmin explained to Director Dillingham and other senior officials, Option 2 “would preclude meeting the 12/31 date, *but furthers the goal of a complete and accurate 2020 Census.*” *Id.* at 130 (emphasis added). Option 1, by contrast, would not further that goal.

Option 1’s data processing, like the Replan’s data processing, focuses solely on congressional apportionment and leaves redistricting data for another day. *See id.* at 148 (Presentation to Secretary Ross highlighting “streamlined post data collection processing and focusing only on state counts for apportionment”). This bifurcation of data processing is unprecedented. As the Census Bureau found when considering the Replan, “the downstream effect of separating apportionment and redistricting processing activities could not be assessed. This results in additional risk to the delivery of the redistricting products in order to meet the statutory

1 deadline and will have a negative impact on the accuracy of the redistricting data.” *E.g.*, Injunction
2 Order at 55 (quoting DOC_9496 (July 31, 2020 email chain with top Bureau officials)); *id.* at 53
3 (quoting DOC_8019 (July 24, 2020 Apportionment Data Processing Memo)).

4 In sum, the Census Bureau repeatedly found that “[s]hortening the time period to meet the
5 original statutory deadlines for apportionment and redistricting data will result in a census that has
6 fatal data quality flaws that are unacceptable for a Constitutionally-mandated activity.” Injunction
7 Order at 49 (quoting so-called “Elevator Speech” memo prepared by senior Bureau officials
8 shared with the Government Accountability Office, DOC_8070). In the words of Timothy Olson,
9 the Bureau’s Associate Director for Field Operations, “it is ludicrous to think we can complete
10 100% of the nation’s data collection earlier than 10/31 and any thinking person who would believe
11 we can deliver apportionment by 12/31 has either a mental deficiency or a political motivation.”
12 Injunction Order at 52 (quoting DOC_7738).

13 Still, to pick between the two options (ending data collection by or after October 5, 2020),
14 Secretary Ross asked which would implement the December 31, 2020 deadline. Three short
15 emails on that enjoined topic ensued:

- 16 • On Monday, September 28, 2020 at 3:52 p.m. Eastern, Secretary Ross wrote to Deputy
17 Director Jarmin and other senior Bureau officials: “As I prepare to make the decision, I
18 would like to make sure that I understood correctly that your team’s opinion is that if we
19 stay in the field beyond October 5, we would not be able to meet the statutory deadline of
20 December 31.” ECF No. 256-1 at 2.
- 21 • At 4:30 p.m. Eastern, Deputy Director Jarmin responded: “Yes sir, we need to finish field
22 work on 10/5 if we are to have enough time (and assuming all goes well) to finish the
23 processing of the resident population, federally affiliated overseas and, if requested,
24 unlawful aliens in ICE Detention Centers by 12/31. Other PM [Presidential Memorandum]
25 related outputs would be pushed to 1/11/2021.” *Id.* at 1.
- 26 • At 5:12 p.m. Eastern—14 minutes *after* the Bureau’s tweet announcing the Secretary’s
27 decision—Secretary Ross wrote back: “Thanks for the confirmation. Based on the staff
28 recommendation I am extending the field operation to October [sic] 5.” *Id.*

ECF No. 256-1.

Thus, Defendants’ production shows three significant things: (1) Defendants set the

October 5 date to meet the December 31, 2020 statutory deadline, even though Defendants are “enjoined from implementing” that deadline; (2) the December 31, 2020 statutory deadline intertwined with the President’s July 21, 2020 Memorandum on Excluding Illegal Aliens from the Apportionment Base Following the 2020 Census; and (3) Secretary Ross approved the October 5 date 14 minutes after the Census Bureau tweeted the October 5 date.

Moreover, Defendants’ claim that October 5 is merely a “target date” is belied by Defendants’ own documents, representations in federal court, and communications with Bureau enumerators:

- The “Proposed Options for Completion of Enumeration” presentation to Secretary Ross on Monday, September 28, 2020 shows that the Bureau will “[c]onclude field work by October 5, 2020 in order to meet apportionment delivery date of December 31, 2020.” ECF No. 233 at 148.
- Hours after the tweet on Monday, September 28, 2020, Assistant Director Christy “instructed staff to send a text message to all Decennial field staff (Enumerators and [Census Field Supervisor]s) that read: ‘A federal district court issued a preliminary injunction on 9/24. The Census Bureau is complying with the Court’s Order which moves the finishing date for NRFU operations after September 30. The Secretary announced today that *NRFU operations will finish on October 5*. We will post updated guidance on the content locker.’” ECF No. 234 (Christy Decl. ¶ 14) (emphasis added).
- Also on Monday, September 28, 2020, an enumerator received a text message that stated: “The Secretary announced today that NRFU operations will finish on October 5.” ECF No. 230-1. Several enumerators have alerted the Court that they have received this text message. *See, e.g.*, ECF No. 238 (“I awoke this morning to an internal message from the Bureau that Secretary Ross has ordered that the NRFU (non response follow up) cases will be terminating on October 5th.”); ECF No. 231 (text message dated September 29, 2020 that “NRFU operations will finish on October 5”). Assistant Director Christy confirms that he ordered this message sent to field staff. ECF No. 234 (Christy Decl. ¶ 14).
- The Government has represented to a three-judge court of the United States District Court for the District of Columbia that field operations “are set to conclude” on October 5. Rough Tr. of Oral Argument at 8, *Common Cause v. Trump*, No. 20-cv-02023-CRC-GGK-DLF (D.D.C. Sept. 29, 2020).

If that were not enough, Defendants’ clear, fast, and concerted advertising of the October 5 date stands in stark contrast with Defendants’ chaotic, dilatory, and incomplete compliance with

the Injunction Order. As recounted above, Defendants have violated the Injunction Order in several ways. A flood of emails to the Court and the parties suggests ongoing non-compliance in the field.

Even today, in response to Plaintiffs' second TRO motion, Associate Director Fontenot again failed to acknowledge the COVID-19 Plan dates that the Injunction Order reinstated. *See* ECF No. 284-1 (comparing December 2018 Operational Plan Version 4.0, the Replan, and "clos[ing] field data collection on October 5, 2020 and submit[ing] apportionment counts by the statutory deadline, December 31, 2020"); ECF No. 81-1 ¶ 69 (comparing dates under the December 2018 Operational Plan Version 4.0 and the Replan). At no point have Defendants unambiguously communicated to all field staff what the Injunction Order requires: immediate reinstatement of the COVID-19 Plan's deadlines of October 31, 2020 for data collection and April 30, 2021 for reporting the tabulation of total population to the President.

C. The Ninth Circuit has denied Defendants' request to stay the Injunction Order.

On September 30, 2020, the Court of Appeals for the Ninth Circuit denied Defendants' motion for an administrative stay of the Injunction Order. ECF No. 277. The Ninth Circuit held in its published opinion that, among other things, this Court's "September 5 temporary restraining order and September 24 preliminary injunction preserve the status quo because they maintain the Bureau's data-collection apparatus." *Id.* at 5.

The Ninth Circuit also held that:

Given the extraordinary importance of the census, it is imperative that the Bureau conduct the census in a manner that is most likely to produce a workable report in which the public can have confidence. The Bureau must account for its competing constitutional and statutory obligation to produce a fair and accurate census report. The hasty and unexplained changes to the Bureau's operations contained in the Replan, created in just 4 to 5 days, risks undermining the Bureau's mission.

Id. at 7–8. Despite the Ninth Circuit's ruling, the Bureau is still "conclud[ing] field work by October 5, 2020 in order to meet [the] apportionment delivery date of December 31, 2020." ECF No. 233 at 148.

Like the Replan, the decision to end data collection on October 5 is a hasty and

unexplained change to the Bureau’s operations that was created in 4 days. The decision also risks further undermining trust in the Bureau and its partners, sowing more confusion, and depressing Census participation. Consider, for instance, the whiplash inflicted on the Bureau’s partners by the Bureau’s rapid changes in deadlines. The Bureau recognized its “extensive partnerships” with organizations such as Plaintiff National Urban League. Injunction Order at 72 (quoting Fontenot Decl. ¶¶ 28, 41). Before the Replan’s adoption, those partners advertised the COVID-19 Plan’s October 31, 2020 data collection deadline for four months. After the Replan’s adoption, partners diverted significant resources to mitigate the widely advertised October 31 deadline:

- The City of Salinas already promoted the October 31 deadline “on social media and in thousands of paper flyers.” Gurmilan Decl. ¶¶ 11–12. Thus, “some residents who received the City’s messaging will fail to respond before the R[eplan] deadline because the City has limited remaining resources to correct what is now misinformation.” *Id.* ¶ 12. Moreover, the City “is still advertising for census enumerator job listings because traditional applicant groups like senior citizens have concerns about the risk of catching COVID-19. With fewer enumerators working, every extra day the City has to use [] existing staff to support the count” *Id.* ¶ 13.
- Harris County “participated in over 150 events,” including “food distribution events,” during which it “announced the October 31, 2020 deadline for the 2020 Census.” Briggs Decl. ¶ 12. Consequently, “Harris County will be forced to expend additional resources to clear confusion about the last date for self-response during the Census, to ensure that people who have not responded are counted in time.” *Id.* ¶ 16.
- The Black Alliance for Just Immigration already “publicized the October 31 deadline for self-response during digital events between April and July” and is diverting resources to publicize the new September 30 deadline. Gyamfi Decl. ¶¶ 13–14.
- The League of Women Voters “has already had to spend time and financial resources” developing and distributing public education materials on the Replan timeline. Stewart Decl. ¶ 12.
- The National Urban League has similarly had “to divert resources from other programs and projects” to “alleviate the confusion” about the change in deadlines. Green Decl. ¶ 15.

See, e.g., id. at 27–28, 37. Yet on Monday, September 28, 2020, the Bureau announced it will end field operations by October 5, 2020 in order to meet the December 31, 2020 deadline. This announcement gives the Bureau’s partners just one week to advertise yet another accelerated deadline.

Moreover, Defendants' sole witness in this case, Associate Director Fontenot, swore under penalty of perjury that the Census Bureau could not meet the December 31, 2020 statutory deadline if data collection were to extend past September 30, 2020. Specifically, Associate Director Fontenot declared under oath that:

We wish to be **crystal clear** that if the Court were to extend the data collection period past September 30, 2020, the Census Bureau would be unable to meet its statutory deadlines to produce apportionment counts prior to December 31, 2020 and redistricting data prior to April 1, 2021. The post processing deadlines for the Replan Schedule are tight, and **extending the data collection deadline would, of necessity, cause the Census Bureau to fail to be able to process the response data in time to meet its statutory obligations.** We have already compressed the post processing schedule from 5 months to only 3 months. We previously planned and tested our post processing systems assuming that we would follow a traditional, sequential processing sequence, and the 3-month schedule necessary for the Replan Schedule has already increased risk. **We simply cannot shorten post processing beyond the already shortened 3-month period.**

Letter Order, *La Union Del Pueblo Entero, et al. v. Trump, et al.*, 19-cv-02710-PX-PAH-ELH (D. Md. Oct. 1, 2020) (three-judge court), ECF No. 125 (emphasis in original) (quoting ECF No. 117-1 ¶ 107). As a result of this blatant contradiction, the three-judge court in the District of Maryland ordered Defendants to explain how the Census Bureau would "accomplish an accurate final enumeration given that the post-data processing phase has been shortened further." *Id.* at 2.

D. The Court clarifies the Injunction Order and orders tailored relief to ensure compliance.

Defendants' dissemination of erroneous information; lurching from one hasty, unexplained plan to the next; and unlawful sacrifices of completeness and accuracy of the 2020 Census are upending the status quo, violating the Injunction Order, and undermining the credibility of the Census Bureau and the 2020 Census. This must stop.

Time is of the essence. Every day that passes, the Bureau winds down field operations in order to end data collection by Monday, October 5, 2020 and start data processing. Once field operations are terminated, they are difficult to resume; and once data processing begins, no more data can be added for processing. *See* ECF No. 81-1 (Fontenot Decl. at ¶¶ 67–68) ("[P]ost data

collection activities are like building a house There is an order of steps that must be maintained. . . . [T]here is no opportunity to begin the post data collection processing until data collection operations close everywhere.”).

As Associate Director Fontenot stated on September 5, 2020 in opposition to the motion for stay and preliminary injunction, the sooner the Court enjoins Defendants, the fewer field staff Defendants would terminate and not be able to rehire:

Lack of field staff would be a barrier to reverting to the COVID Schedule were the Court to rule later in September. The Census Bureau begins terminating staff as operations wind down, even prior to closeout. Based on progress to date, as is standard in prior censuses, we have already begun terminating some of our temporary field staff in areas that have completed their work. It is difficult to bring back field staff once we have terminated their employment. Were the Court to enjoin us tomorrow we would be able to keep more staff on board than were the Court to enjoin us on September 29, at which point we will have terminated many more employees.

Id. (Fontenot Decl. at ¶ 98).

The Court thus exercises its authority to enforce compliance with its orders. *See, e.g., Int’l Ladies’ Garment Workers’ Union v. Donovan*, 733 F.2d 920, 922 (D.C. Cir. 1984) (per curiam) (holding that “the District Court certainly was empowered to protect” “the interest of the judicial branch in seeing that an unambiguous mandate is not blatantly disregarded by parties to a court proceeding”).³

Pursuant to that authority, the Court clarifies⁴ that until Defendants cure all the legal

³ Defendants argue that the Court lacks jurisdiction to “radically modify the preliminary injunction” now that the Injunction Order is on appeal. ECF No. 284 at 3. Defendants’ argument misses the point. Far from “radically modifying” the Injunction Order, the Court simply enforces the Injunction Order to halt Defendants’ repeated violations. In any event, even the case that Defendants cite holds that a district court may modify an injunction “to maintain the status quo among the parties.” *Id.* (quoting *Prudential Real Estate Affiliates, Inc. v. PPR Realty, Inc.*, 204 F.3d 867, 880 (9th Cir. 2000)). Defendants are upending the status quo here.

⁴ The Court notes that broad swaths of the public and the judiciary understood the Injunction Order. For instance, during oral argument in *Common Cause v. Trump*, United States Circuit Judge

defects identified in the Injunction Order, Defendants are enjoined from “implementing the September 30, 2020 deadline for the completion of data collection and December 31, 2020 deadline for reporting the tabulation of the total population to the President.” Injunction Order at 78. In the meantime, the Court’s stay pursuant to 5 U.S.C. § 705 “postpone[s] the effective date of” those two Replan deadlines and so reinstates the rule previously in force: the COVID-19 Plan deadlines of October 31, 2020 for the completion of data collection and April 30, 2021 for reporting the tabulation of total population to the President.

Moreover, to preserve the status quo, the Court orders some of the relief requested in Plaintiffs’ motion to compel and second TRO motion. On October 2, 2020, Defendants shall issue a text message to all the Census Bureau’s employees notifying them of the Court’s Injunction Order, stating that the October 5, 2020 “target date” is not operative, and stating that data collection operations will continue through October 31, 2020. On October 2, 2020, after the text message is sent, Defendants shall file a copy of the text message with the Court. In addition, by October 5, 2020 at 2 p.m. Pacific Time, Census Bureau Director Steven Dillingham shall file a declaration under penalty of perjury that unequivocally confirms Defendants’ ongoing compliance with the Injunction Order and details the steps Defendants have taken to prevent future violations of the Injunction Order.

The Court will subject Defendants to sanctions or contempt proceedings if Defendants violate the Injunction Order again.

The Court sets a case management conference on Tuesday, October 6, 2020 at 2 p.m.

Gregory G. Katsas of the Court of Appeals for the D.C. Circuit stated that census operations “would have stopped September 30, and [Judge Koh] extended it until the end of October.” Judge Katsas further stated, “[a]gain, maybe I misread the Koh order, but I thought that in terms of deadlines, it extended the transmittal date from December 31st to April 1st, and that’s four months [sic; in fact a four-month extension but to April 30, 2021].” Rough Tr. of Oral Argument at 9, 15; *see also, e.g.,* Associated Press, *Federal Judge Says 2020 Census Must Continue for Another Month*, Wall Street Journal (Sept. 25, 2020), <https://www.wsj.com/articles/federal-judge-says-2020-census-must-continue-for-another-month-11601034711>.

Pacific Time and vacates the Friday, October 2, 2020 hearing on the motion to compel.

III. CONCLUSION

For the foregoing reasons, the Court:

- CLARIFIES the scope of the Court's Injunction Order;
- ORDERS Defendants to issue on October 2, 2020 a new text message to all Census Bureau employees notifying them of the Court's Injunction Order, stating that the October 5, 2020 "target date" is not operative, and stating that data collection operations will continue through October 31, 2020. On October 2, 2020, after the text message is sent, Defendants shall file a copy of the text message with the Court;
- ORDERS Census Bureau Director Steven Dillingham to file, by Monday, October 5, 2020 at 2 p.m. Pacific Time, a declaration under penalty of perjury that unequivocally confirms Defendants' ongoing compliance with the Injunction Order and details the steps Defendants have taken to prevent future violations of the Injunction Order; and
- DENIES AS MOOT Plaintiffs' motion to compel and second TRO motion.

IT IS SO ORDERED.

Dated: October 1, 2020



LUCY H. KOH
United States District Judge

United States District Court
Northern District of California

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

NATIONAL URBAN LEAGUE, et al.,
Plaintiffs,
v.
WILBUR L. ROSS, et al.,
Defendants.

Case No. 20-CV-05799-LHK

**ORDER EXTENDING TEMPORARY
RESTRAINING ORDER FOR
DEFENDANTS' PARTIAL
PRODUCTION OF THE
ADMINISTRATIVE RECORD**

Plaintiffs National Urban League; League of Women Voters; Black Alliance for Just Immigration; Harris County, Texas; King County, Washington; City of Los Angeles, California; City of Salinas, California; City of San Jose, California; Rodney Ellis; Adrian Garcia; National Association for the Advancement of Colored People; City of Chicago, Illinois; County of Los Angeles, California; Navajo Nation; and Gila River Indian Community (collectively, "Plaintiffs") sue Defendants Commerce Secretary Wilbur L. Ross, Jr.; the U.S. Department of Commerce; the Director of the U.S. Census Bureau Steven Dillingham, and the U.S. Census Bureau ("Bureau") (collectively, "Defendants") for violations of the Enumeration Clause and Administrative Procedure Act ("APA").

Plaintiffs seek to preliminarily enjoin Defendants from implementing Defendants' August 3, 2020 Replan. The Replan shortens census data collection and processing timelines from the eight months set forth in the Defendants' April 13, 2020 COVID-19 Plan to four months. The first approaching Replan deadline is the September 30, 2020 deadline for the end of data collection, which consists of both self-responses to Census questionnaires and Non-Response Follow Up ("NRFU") field operations. Under the COVID-19 Plan, data collection would end on October 31, 2020. Plaintiffs claim that the Replan's shortened timelines will unlawfully harm the accuracy of crucial census data.

On September 5, 2020, the Court granted Plaintiffs' motion for a Temporary Restraining Order ("TRO") in order to preserve the status quo until the September 17, 2020 hearing on Plaintiffs' motion for stay and preliminary injunction ("preliminary injunction motion"). ECF No. 84 at 2.

On September 10, 2020, the Court ordered Defendants to produce the administrative record on September 13 and 16, 2020. ECF No. 96. Defendants have failed to comply with that order. As of today, September 17, 2020, Defendants have failed to produce the administrative record. Because of Defendants' failure to comply with the Court's Order to Produce the Administrative Record and the need for the Court to rule on Plaintiffs' preliminary injunction motion quickly, the parties and the Court agreed that on September 18, 2020 Defendants shall produce the documents that Defendants produced to the United States Department of Commerce Office of the Inspector General ("OIG production") regarding the Defendants' decision to adopt the Replan. ECF No. 132. Defendants have represented that the OIG production includes about 1,800 documents totaling about 15,000 pages. ECF No. 141 at 26:15–16. Defendants have represented that they may assert the deliberative process, attorney-client, attorney work product, and White House privileges as to the OIG production. *Id.* at 35:25–36:18.

Accordingly, Defendants' September 18, 2020 OIG production has necessitated a continuance of the preliminary injunction hearing from September 17, 2020 to September 22,

2020 to allow for the following:

- September 18, 2020: Defendants to produce the OIG production and a privilege log
- September 19, 2020: Plaintiffs to file any objections to Defendants' assertions of privilege
- September 20, 2020: Defendants to file responses to Plaintiffs' privilege objections and the parties to file supplemental briefs on the motion for preliminary injunction addressing the OIG production
- September 21, 2020: United States Magistrate Judges to rule on the parties' privilege disputes
- September 22, 2020: Hearing on motion for preliminary injunction

ECF No. 140. The Court understands the urgency of issuing a ruling on the motion for preliminary injunction. To that end, the Court has issued rulings within 24 hours and 48 hours throughout this case thus far. The Court will issue its reasoned decision on the motion for preliminary injunction as soon as possible after the September 22, 2020 hearing. However, because of the complexity of the issues and the fact that 1,800 documents may be produced three days before the hearing, the Court finds good cause to extend the TRO until the Court issues its decision on the preliminary injunction motion or through September 24, 2020, whichever is sooner.

I. PROCEDURAL HISTORY

The procedural history of this case is necessary to understand why there is good cause to extend the TRO. The Court thus recounts the events leading up to the TRO, the issuance of the TRO, and Defendants' subsequent failure to produce the administrative record. In brief, the timeline below is as follows: (1) at first, Defendants denied the existence of an administrative record; (2) Defendants then disclosed that there are documents that were considered by agency decisionmakers at the time of the decision to adopt the Replan and that field operations are already winding down; (3) the Court issued a TRO that expires on September 17, 2020; (4) the Court ordered production of the administrative record; and (5) despite that order, Defendants failed to

1 produce the administrative record. The Court details each event in turn.

2 **A. At First, Defendants Repeatedly Denied the Existence of an Administrative Record.**

3 On August 18, 2020, Plaintiffs filed suit to challenge the Census Bureau’s August 3, 2020
4 Replan which advanced the 2020 Census deadlines for self-responses to Census questionnaires,
5 Non-Response Follow-Up (“NRFU”) field operations, data processing, and deadlines for reporting
6 Census counts to the President and the states.

7 To allow Plaintiffs to effectively challenge the Replan, including the September 30, 2020
8 end of data collection, the parties stipulated to a briefing schedule and hearing date of September
9 17, 2020 on Plaintiffs’ motion for stay and preliminary injunction (hereafter, “motion for
10 preliminary injunction”). ECF No. 35. Pursuant to that schedule, Plaintiffs filed a motion for a
11 preliminary injunction on August 25, 2020 based on their claims under the Enumeration Clause
12 and the APA. ECF No. 36.

13 On August 26, 2020, the Court held a case management conference. At that conference, the
14 Court asked Defendants whether there was an administrative record for the purposes of APA
15 review. Defendants repeatedly denied the existence of an administrative record. *E.g.*, ECF No. 65
16 at 9:22–24 (Q: “Is there an administrative record in this case?” A: “No, Your Honor. On behalf of
17 the Defendants, no, there’s not.”), 10:17–18 (“[A]t this point there is no administrative record.”).
18 Rather, Defendants suggested that the only document that provided the contemporaneous reasons
19 for the Replan was the Bureau’s August 3, 2020 press release. *Id.* at 20:6–7 (“[A]t this point I’m
20 not aware of any other documents, but I would propose that I check with my client . . .”). Even
21 so, the Court instructed Defendants that “[i]f there’s an administrative record, it should be
22 produced. [The Court] will need it to make a decision in this case.” *Id.* at 10:13–14.

23 **B. Defendants Disclosed That There Are Documents Considered by Agency**
24 **Decisionmakers at the Time the Replan Was Adopted and that Field Operations are**
Already Concluding.

25 To assist the Court in determining by what date a ruling on Plaintiffs’ motion for
26 preliminary injunction must be issued, Defendants agreed to file a statement by September 2, 2020

as to when the winding down of field operations would begin relative to the September 30, 2020 deadline for ending data collection. Defendants filed the following statement:

[T]he Census Bureau has already begun taking steps to conclude field operations. Those operations are scheduled to be wound-down throughout September by geographic regions based on response rates within those regions. As will be described in Defendants' forthcoming filing on Friday, September 4, 2020, any order by the Court to extend field operations, regardless of whether those operations in a particular geographic location are scheduled to be wound-down by September 30 or by a date before then, could not be implemented at this point without significant costs and burdens to the Census Bureau.

ECF No. 63. Based on Defendants' statement, Plaintiffs moved on September 3, 2020 for a TRO to preserve the status quo for 12 days until the September 17, 2020 preliminary injunction hearing.

ECF No. 66. On September 4, 2020, Defendants opposed the motion, ECF No. 74, and the Court held a hearing on the motion. During the hearing, Defendants relied upon a declaration that would be filed later that evening in opposition to Plaintiffs' motion for preliminary injunction. ECF No. 81-1. On September 5, 2020, Plaintiffs filed a reply. ECF No. 83.

At the September 4, 2020 hearing on the motion for a TRO, Defendants reiterated their position that no administrative record existed, ECF No. 82 at 33:13–15, but disclosed that there were documents considered by agency decisionmakers at the time the Replan was adopted.

Defendants stated:

The Census Bureau generates documents as part of its analysis and as part of its decisions and as part of its deliberations. And there are documents that the Replan was not cooked up in a vacuum, it was part of the agency's ongoing deliberations. And so certainly there are going to be documents that reflect those documents [sic].

Id. at 33:2–7. That said, Defendants said no administrative record technically existed because “the documents that fed into the operational plans and the operational decisions are internal documents that are subject to the deliberative process privilege.” *Id.* at 32:14–16.

Only a few minutes later, however, Defendants retracted their assertion of deliberative process privilege. *Id.* at 36:15–17 (“[T]o be clear, we are not asserting the deliberative process privilege because there is no record and there's nothing to consider.”). Defendants conceded that “[i]f there is final agency action that is reviewable and the APA applies, we would have an

obligation to produce the administrative record.” *Id.* at 35:24–36:1. However, Defendants urged the Court to rely solely on the declaration that Defendants would file that evening with Defendants’ opposition to the motion for preliminary injunction. *E.g., id.* at 16:21–23 (“We will not be filing documents in addition to the declaration.”). Indeed, when Defendants filed their opposition that night, Defendants’ only evidence was the declaration of Albert E. Fontenot, Jr., Associate Director for Decennial Census Programs at the U.S. Census Bureau. ECF No. 81.

C. The Court Issued a TRO That Expires on the September 17 Hearing Date.

On September 5, 2020, the Court issued a TRO after full briefing and a hearing on the motion. ECF No. 84. The Court made the requisite TRO findings. Specifically, the Court found that the balance of the hardships tipped sharply in Plaintiffs’ favor; that Plaintiffs presented serious questions going to the merits at least as to Plaintiffs’ claims under the APA; that Plaintiffs would likely suffer irreparable harm without a TRO; and that a TRO would further the public interest. ECF No. 84.

The Court also expressly recognized that TROs “serv[e] the[] underlying purpose of preserving the status quo and preventing irreparable harm just so long as is necessary to hold a hearing, and no longer.” *Id.* at 2 (quoting *Granny Goose Foods, Inc. v. Bhd. of Teamsters & Auto Truck Drivers Local No. 70 of Alameda Cty.*, 415 U.S. 423, 439 (1974)). Thus, the Court ordered that the TRO expire after the “September 17, 2020 hearing on Plaintiffs’ PI motion.” *Id.* at 7. The Court incorporates its TRO, ECF No. 84, herein by reference.

D. The Court Ordered Production of the Administrative Record.

On September 8, 2020, three days after issuing the TRO, the Court held a case management conference and inquired into Defendants’ earlier statements about documents considered by the agency decisionmakers when the Replan was adopted. Defendants again stated that “there is no administrative record in this case because there is no APA action.” ECF No. 98 at 62:15–16.

Even so, Defendants confirmed their statements from the TRO hearing that the Replan is

“indeed codified.” *Id.* at 21:7. The Replan simply was “not necessarily codified in one particular document.” *Id.* at 21:9–10. Accordingly, Plaintiffs asked the Court to order Defendants to produce the administrative record. *E.g., id.* at 43:16–17. The parties briefed the issue on September 8 and 9, 2020. *See* ECF Nos. 88–89, 92.

On September 10, 2020 at 2:46 a.m., the Court issued its Order to Produce the Administrative Record. ECF No. 96. In response to Defendants’ claim that the Court needed to address threshold arguments before ordering production, the Court addressed those arguments to avoid any doubt about its authority to compel production. Specifically, the Court addressed whether the Replan presented a political question, whether Plaintiffs have standing to challenge the Replan, whether the Replan constitutes final agency action, and whether the Replan is not committed to agency discretion by law. *Id.* at 9. The Court ruled in Plaintiffs’ favor on each threshold issue. Thus, the Court concluded that the instant case was reviewable. The Court noted, though, that its conclusions in this APA case were necessarily “provisional” and “subject to change after production of Defendants’ administrative record.” *Id.* at 8; *see id.* at 9–17.

The Court then explained why the Court could not rely solely on Associate Director Fontenot’s declaration, as Defendants so insisted. *Id.* at 19–21. In short, for APA claims, “the focal point for judicial review should be the administrative record.” *Id.* at 20 (quoting *Camp v. Pitts*, 411 U.S. 138, 142 (1973)). Litigation affidavits such as Associate Director Fontenot’s are thus impermissible “post hoc rationalizations” that are “manifestly inappropriate” bases for the Court’s review. *Id.* (first quoting *Overton Park, Inc. v. Volpe*, 401 U.S. 402, 419 (1972); then quoting *Cnty. for Creative Non-Violence v. Lujan*, 908 F.2d 992, 998 (D.C. Cir. 1990) (R. Ginsburg, Thomas, Sentelle, JJ.)).

For all those reasons, the Court concluded that Defendants must produce the administrative record. However, because of the competing need to resolve the motion for preliminary injunction as quickly as possible, the Court split the production into three stages. The first two stages (the “September 13 Production” and the “September 16 Production”) would be completed before the

September 17, 2020 preliminary injunction hearing and would be limited to documents with certain subject matters, date range, and custodians. Specifically, the Court's order for the first two stages of production was:

By September 13, 2020, Defendants Bureau Director Steven Dillingham and Secretary of Commerce Wilbur Ross and all of their direct reports/subordinates shall file the following, and a privilege log for any privileged documents: All documents comprising the Replan and its various components for conducting the 2020 Census in a shortened time period, including guidance, directives, and communications regarding same. The date range of the documents is April 13, 2020 to August 3, 2020. These custodians can limit their review to documents and materials directly or indirectly considered during these four months.

By September 16, 2020, Associate Director Fontenot, his subordinates, and the individuals engaged with Fontenot to consider and prepare the Replan shall file the following, and a privilege log for any privileged documents: All documents and materials directly or indirectly considered when making the decision to replace the COVID-19 Plan with the Replan. The date range of the documents is April 13, 2020 to August 3, 2020. These custodians can limit their review to documents and materials directly or indirectly considered during these four months.

Id. at 21. As for the final stage of production, the Court specified it would consult with the parties on a schedule after the preliminary injunction ruling. *Id.* at 22. Moreover, given these production deadlines, the Court continued the deadline for Plaintiffs' reply in support of their preliminary injunction motion from September 10 to September 15, 2020. The Court incorporates the Order to Produce the Administrative Record, ECF No. 96, herein by reference.

E. Despite the Court's Order, Defendants Failed to Produce the Administrative Record.

On September 13, 2020 at 11:45 a.m. Pacific Time, twelve hours before the production deadline, Defendants filed a notice stating that they had identified more than 8,800 documents as responsive for the September 13 Production, but that Defendants had reviewed only 2,484 of those documents. ECF No. 104 at 2. Defendants stated that "[r]eview of the remaining documents remains ongoing" and that "[b]ecause review of the remaining documents remains ongoing, and due to the volume of documents involved, Defendants will be unable to produce or log any additional documents today." *Id.* Moreover, Defendants did not identify when they would

complete the September 13 Production.

At the September 14, 2020 case management conference, Defendants stated that their next production would be on September 16, 2020, but that they “d[id] not anticipate” completing the September 13, 2020 Production on September 16, 2020. ECF No. 126 at 22:6. Moreover, Defendants stated that they were still collecting documents for the September 16 Production and did not know how many documents would be responsive. *See, e.g., id.* at 20:6–10. Overall, Defendants stated that they would be unable to comply with the Court’s Order to Produce the Administrative Record because compliance would be “a physical impossibility.” *Id.* at 41:16–17.

In response to Defendants’ failure to comply with the Court’s order on September 13, 2020, Plaintiffs filed the Department of Commerce Inspector General’s August 13, 2020 Information Memorandum for Secretary of Commerce Wilbur Ross, which included the following Request for Information:

To assist the OIG [“Office of Inspector General”] in its oversight responsibilities, please provide all documents or communications, including but not limited to email, instant messages, and text messages:

1. Discussing or referring in any manner to the decision to accelerate the 2020 Census schedule as described in the August 3, 2020 press release.
2. Detailing the persons involved, and their respective involvement, in the decision to accelerate the 2020 Census schedule.
3. Detailing the reasons for the decision to accelerate the 2020 Census schedule.

Please provide all requested documents and communications by close of business Monday, August 17, 2020. You may also produce any additional documentation or information you deem relevant to this request for information.

ECF No. 111-2 at 5. Plaintiffs also noted that Associate Director Fontenot had averred that the Census Bureau had produced many documents to the OIG. ECF No. 111 at 5 (citing Fontenot Decl., ECF No. 81-1 at 36 ¶ 103). Associate Director Fontenot did not disclose the OIG’s Request for Information about the Replan, but rather spoke in more general terms: “We produce a massive amount of documents and other information to the Office of the Inspector General and the General

Accounting Office every week, and these organizations interview Census Bureau staff on almost a daily basis.” ECF No. 81-1 at 36 ¶ 103. In other words, Defendants had neither disclosed to the Court the OIG’s Request for Information nor produced the OIG documents in response to the Court’s Order to Produce the Administrative Record. *See* ECF No. 111-2 at 5.

Given that Defendants had already produced documents to the OIG—and that Defendants would fail to produce even a partial administrative record before the September 17, 2020 preliminary injunction hearing—the Court asked Defendants two questions: (1) if Defendants had “complied in whole or in part” with the OIG’s Request for Information; and (2) if Defendants would agree to producing *in camera* “the documents Defendants [had] produced to the Inspector General that would constitute the administrative record or would be included in the administrative record.” ECF No. 119 at 3. The Court further proposed that it “would treat all such documents as privileged and conduct an *in camera* review. If the Court determines that a document is not privileged, Defendants shall have an opportunity to object to the Court’s determination. The Court would not consider in its determination of Plaintiffs’ motion for stay and preliminary injunction any privileged documents.” *Id.*

Defendants’ September 14, 2020 response represented that Defendants had “complied with the OIG request at issue.” ECF No. 122 at 2. As to producing the OIG production in the instant case, Defendants’ September 14, 2020 response, ECF No. 122 at 2, agreed that Defendants “would be willing to provide to the Court all of the documents that the Census Bureau and the Department of Commerce provided to the Department of Commerce Office of Inspector General . . . on the understanding that:”

1. The Court would treat all such documents as privileged and conduct an *in camera* review. If the Court determines that a document is not privileged, Defendants shall have a reasonable opportunity to object to the Court’s determination;
2. The Court would not base its resolution of the preliminary injunction on privileged documents; and
3. The documents that the Court finds to be non-privileged, along with the nonprivileged documents that Defendants have already produced, shall be deemed by the Court to

constitute the entire record in this matter. Defendants will not be required to conduct further document searches, reviews, or productions, or respond to any discovery, to develop a record in this case.

Id.

On September 15, 2020, Plaintiffs replied with three major points. First, Plaintiffs stated that “Defendants must ultimately produce the complete AR [administrative record].” ECF No. 129 at 2. Second, to assess to what extent the OIG production comprises a complete record, Plaintiffs asked the Court to order Defendants “to file a declaration from a knowledgeable source attesting to the following:”

(1) whether the production included materials from the Secretary and his subordinates, in addition to the Census Bureau; (2) what time frame was searched for these documents; (3) what custodians were searched; (4) whether the Department complied fully with the scope of the production request; (5) the exact date on which the documents were produced to OIG; (6) whether any portion of the production to OIG is still outstanding; and (7) how many documents were produced.

Id. Third, Plaintiffs asked that within two days after the production and review of the OIG production, the parties would have the opportunity to file simultaneous briefs addressing the OIG production.

The Court inquired further into producing the OIG documents at the September 15, 2020 hearing on allegations of Defendants’ potential non-compliance with the TRO. At that hearing, Defendants at first reiterated that they were “very confident” that they had complied with the OIG request and that they had completed their production to the OIG. ECF No. 141 at 32:9. However, Defendants later clarified that Defendants had not completed their production to the OIG and that Defendants’ production was “substantially complete.” *Id.* at 35:10. “One document” remained “outstanding that is still undergoing review.” *Id.* at 34:11–14. Moreover, Defendants did not know the OIG production’s custodians (such as whether the Secretary Ross’s office was included), timeframe searched, or dates of production. *See, e.g., id.* at 29:14–15 (Defendants: “I, off the top of my head, do not know all the custodians whose files were pulled for the OIG production.”); *id.* at 30:6–7 (The Court: “What timeframe was searched for these documents?” Defendants: “So I

also don't have the precise timeframe, Your Honor."); *id.* at 31:4–9 (The Court: "So when were they produced?" Defendants: "Over the course of weeks, Your Honor." The Court: "I know. From what date to what date? From when to when?" Defendants: "I don't have the specifics, Your Honor.").

Defendants did, however, represent that the OIG production comprised of about 1,800 documents totaling about 15,000 pages. *Id.* at 26:15–16. Defendants further stated that they "would anticipate" asserting four different privileges over the OIG production, including deliberative process, attorney-client, attorney work product, and White House privileges. *Id.* at 35:25–36:18. In addition, even though Defendants did not have a confirmed method of producing the documents to the Court, Defendants continued to oppose the Court's proposed extension of the TRO. *See id.* at 51:13–25. Without an extension, the TRO would expire on September 17, 2020.

Given the exigency, both parties agreed that "in the short term, focusing on the OIG documents for purposes of getting to a PI ruling and whatever appeal follows makes sense." *Id.* at 72:19–21; *see id.* at 33:14–22, 41:6–9 (Defendants' agreement). The Court thus ordered Defendants to produce the OIG documents that would constitute the administrative record or would be included in the administrative record, stayed the Order to Produce the Administrative Record until a case management conference after the impending preliminary injunction decision, and continued the preliminary injunction hearing to Tuesday, September 22, 2020. *Id.* at 71–77; *see* ECF No. 132. As the Court found, both the parties and the Court were "running out of time." ECF No. 141 at 38:6, 71:14. The Court's Order to Produce Inspector General Document Production, ECF No. 132, is incorporated herein by reference.

II. DISCUSSION

Plaintiffs argue that "the record demonstrates good cause to extend the TRO for two independent reasons." ECF No. 111 at 4. "*First*, good cause exists because Defendants have not complied with the Court's order requiring production of the [administrative record] in this case." *Id.* "*Second*, good cause exists if the Court needs 'more time' to 'fully . . . consider the parties'

arguments and motions.” *Id.* (quoting *Costa v. Bazron*, 2020 WL 2410502, at *2 (D.D.C. May 11, 2020)). The Court agrees.

A. Defendants’ Violation of the Court’s Order to Produce the Administrative Record Has Necessitated Delay of the Preliminary Injunction Hearing and Extension of the TRO.

As detailed above, Defendants failed to complete even the first stage of ordered production of the administrative record. Nor did Defendants expect to complete the first production by the September 17, 2020 preliminary injunction hearing date and TRO expiration date. Specifically, on September 13, 2020, Defendants produced only a quarter of the September 13, 2020 Production with more than 12 hours to spare and refused to produce more that day. *See* ECF No. 104 at 2 (stating that Defendants had reviewed only 2,484 of more than 8,800 documents, but that “Defendants will be unable to produce or log any additional documents today.”) Then, at the September 14, 2020 case management conference, Defendants stated that they “d[id] not anticipate” completing the September 13, 2020 Production on September 16, 2020. ECF No. 126 at 22:6.

As for the September 16 Production, Defendants stated that they were still collecting documents for it and did not know how many documents would be responsive. *See, e.g., id.* at 20:6–10. Overall, Defendants stated that they would be unable to comply with the Court’s Order to Produce the Administrative Record because compliance would be “a physical impossibility.” *Id.* at 41:16–17. Much of this asserted “physical impossibility” the Court suspects is of Defendants’ own making. The instant case has been, from its very start on August 18, 2020, a case arising under the APA. In an APA case, it is settled that “review is to be based on the full administrative record that was before the Secretary at the time he made his decision.” *Overton Park, Inc. v. Volpe*, 401 U.S. 402, 420 (1972); *accord, e.g., Camp*, 411 U.S. at 142 (explaining that “[t]he focal point for judicial review [of APA claims] should be the administrative record”); *Creative Non-Violence v. Lujan*, 908 F.2d at 998 (holding that relying on litigation affidavits rather than the administrative record is “manifestly inappropriate”). Defendants’ repeated denial of the existence of an

administrative record and failure to make any attempt to collect the administrative record over the past month have necessitated delay of the preliminary injunction hearing and extension of the TRO.

B. The Need for Partial Production of the Administrative Record and to Preserve the Status Quo Constitutes “Good Cause” for an Extension of the TRO.

In any event, to expeditiously resolve Plaintiffs’ motion for preliminary injunction, the Court has ordered Defendants to produce a stipulated partial administrative record that Defendants already produced (or is about to produce) to the United States Department of Commerce Office of Inspector General. *See* 5 U.S.C. § 706 (providing that “the court shall review the whole record or those parts of it cited by a party”); ECF No. 141 at 33:14–22 (Defendants’ agreement), 72:19–21 (Plaintiffs’ agreement); *cf. Walter O. Boswell Mem’l Hosp. v. Heckler*, 749 F.2d 788, 793 (D.C. Cir. 1984) (holding that “in the circumstances of this case”—an appeal resolved more than a year after a district court decision that was neither expedited nor interlocutory—the district court should have considered the “whole record”).¹ Defendants must either produce or add to their privilege log about 1,800 documents. Defendants have represented that they may assert deliberative due process, attorney-client, attorney work product, and White House privileges as to these documents. Plaintiffs must review the production and file any privilege objections. Defendants must respond to the objections. United States Magistrate Judges must resolve the parties’ privilege disputes. The

¹ As the Court has repeatedly stated and the parties understand, the Court may need to review the “whole record” after deciding the motion for preliminary injunction. 5 U.S.C. § 705. “The ‘whole’ administrative record [] consists of all documents and materials directly or *indirectly* considered by agency decision-makers and includes evidence contrary to the agency’s position.” *Thompson v. U.S. Dept. of Labor*, 885 F.2d 551, 555 (9th Cir. 1989) (emphasis in original) (quoting *Exxon Corp. v. Department of Energy*, 91 F.R.D. 26, 32 (N.D. Tex. 1981)); *see also IMS, P.C. v. Alvarez*, 129 F.3d 618, 623–624 (D.C. Cir. 1997) (“It is a widely accepted principle of administrative law that the courts base their review of an agency’s actions on the materials that were before the agency at the time its decision was made.”); 33 Wright & Miller’s Federal Practice & Procedure: Judicial Review § 8391 & n.8 (2d ed. Apr. 2020 update) (“[T]he ‘record’ for informal proceedings [i]s, in essence, including all the relevant material that the decision-maker considered before taking action.”).

parties must file supplemental briefs on the motion for preliminary injunction addressing the OIG production. The Court must hold a hearing and issue a reasoned decision. Clearly, all this will not happen when the TRO expires on September 17, 2020, the day before Defendants produce the OIG production on September 18, 2020.

If the TRO expires, Plaintiffs would face hardships that tip sharply in their favor and would likely suffer irreparable harm. Moreover, Plaintiffs have shown serious questions going to the merits and that a TRO is in the public interest. *See* ECF No. 84. All told, the same conditions that warranted a TRO on September 5, 2020 still hold true today. *See* 11A Wright & Miller's Federal Practice & Procedure: Civil § 2953 (3d ed. Apr. 2020 update) ("Although there does not seem to be any case law on what constitutes 'good cause' for purposes of extending a Rule 65(b) order, a showing that the grounds for originally granting the temporary restraining order continue to exist should be sufficient.").

Even Associate Director Fontenot stated in his declaration that field staff are terminated when field operations stop, and it is difficult to bring back field staff once they are terminated. Associate Director Fontenot in effect requested that if the Court were to enjoin the Defendants, the Court should do so sooner rather than later, so that Defendants would not terminate field staff. Specifically, Associate Director Fontenot stated:

Lack of field staff would be a barrier to reverting to the COVID Schedule were the Court to rule later in September. The Census Bureau begins terminating staff as operations wind down, even prior to closeout. Based on progress to date, as is standard in prior censuses, we have already begun terminating some of our temporary field staff in areas that have completed their work. It is difficult to bring back field staff once we have terminated their employment. Were the Court to enjoin us tomorrow we would be able to keep more staff on board than were the Court to enjoin us on September 29, at which point we will have terminated many more employees.

ECF No. 81-1 at 35 ¶ 98.

Accordingly, like other courts in analogous circumstances, the Court finds good cause to extend the TRO. In fact, the Federal Rules of Civil Procedure authorize the Court to grant a TRO for 14 days without hearing from Defendants and to extend that TRO an additional 14 days for

1 good cause for a total of 28 days. *See* Fed. R. Civ. P. 65(b)(2) (“The order expires at the time after
2 entry—not to exceed 14 days—that the court sets, unless before that time the court, for good
3 cause, extends it for a like period or the adverse party consents to a longer extension.”); *see*
4 generally 11A Federal Practice & Procedure, *supra*, § 2953 (collecting cases on 28-day limit). In
5 the instant case, the duration of the Court’s TRO was 12 days, and the Court’s extension in the
6 instant case is seven days or fewer.

7 Other courts have found good cause to extend TROs on the same grounds present in the
8 instant case. *See, e.g., H-D Michigan, LLC v. Hellenic Duty Free Shops S.A.*, 694 F.3d 827, 843–
9 45 (7th Cir. 2012) (allowing TRO extensions “to give the parties sufficient time to prepare for a
10 preliminary injunction hearing” so long as the TRO does not last longer than 28 days); *Costa*,
11 2020 WL 2410502, at *2 (finding good cause “because the parties need time to brief, and the
12 Court needs time to consider, the forthcoming motion for a preliminary injunction”); *Acosta*
13 *Ginger Green, Inc.*, No. 2:18-CV-4098, 2018 WL 3361397, at *1 (C.D. Cal. May 18, 2018)
14 (extending TRO for good cause because, among other things, the restrained party failed to comply
15 with a subpoena for documents).

16 Moreover, failing to extend the TRO would fail to “preserv[e] the status quo.” *Granny*
17 *Goose Foods, Inc. v. Bhd. of Teamsters & Auto Truck Drivers Local No. 70 of Alameda Cty.*, 415
18 U.S. 423, 439 (1974); *accord, e.g., E. Bay Sanctuary Covenant v. Trump*, 932 F.3d 742, 779 (9th
19 Cir. 2018) (“a TRO ‘should be restricted to . . . preserving the status quo and preventing
20 irreparable harm just so long as is necessary to hold a hearing and no longer”) (ellipsis in original).

21 To be sure, Defendants have asserted that an extended TRO may effectively become an
22 appealable preliminary injunction. That assertion, however, is inapt here. A TRO only becomes a
23 preliminary injunction in “extraordinary circumstances.” *Washington v. Trump*, 847 F.3d 1151,
24 1158 (9th Cir. 2017) (per curiam). In *Washington*, for example, “[t]he district court’s order has no
25 expiration date, and no [preliminary injunction] hearing has been scheduled.” *Id.* The Government
26 also “argued that emergency relief is necessary to support its efforts to prevent terrorism.” *Id.*; *see*
27

1 *also Serv. Employees Int'l Union v. Nat'l Union of Healthcare Workers*, 598 F.3d 1061, 1067 (9th
2 Cir. 2010) (appealable “TRO” lasted longer than three months until preliminary injunction
3 hearing, and the district court had held two-day evidentiary hearing). Here, the TRO has an
4 expiration date. A hearing on the motion for preliminary injunction is scheduled on September 22,
5 2020. The Government does not allege that extending the TRO in the instant case puts our national
6 security at risk. Thus, extending the TRO to allow Defendants to produce a partial administrative
7 record will enable the Court to evaluate Plaintiffs’ APA claims when ruling on the motion for
8 preliminary injunction.

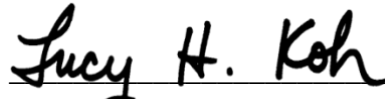
9 Thus, the Court exercises its discretion to extend the TRO up to seven days until the Court
10 issues its decision on the preliminary injunction motion or through September 24, 2020, whichever
11 is sooner. The Court understands the gravity of the situation and the parties’ need for a prompt
12 ruling on the Plaintiffs’ motion for preliminary injunction to allow for appellate review. To that
13 end, the Court has ruled expeditiously on motions thus far. The Court ruled on Plaintiffs’ motion
14 for TRO within 48 hours. The Court likewise ordered production of the administrative record at
15 2:46 a.m. on September 10, 2020—also within 48 hours after Defendants confirmed that the
16 Replan was “codified” and Plaintiffs moved for production of the administrative record. The Court
17 issued the Order to Produce Inspector General Document Production within 24 hours of Plaintiffs’
18 identification of the OIG production and Defendants’ agreement to produce it in the instant case.

19 In sum, based on Defendants’ violation of the Court’s Order to Produce the Administrative
20 Record as discussed above, an extension of the TRO is necessary for Defendants to produce the
21 OIG production and a privilege log; for the parties to litigate objections to at least four different
22 grounds of privilege; for United States Magistrate Judges to resolve the parties’ privilege disputes;
23 for the parties to file supplemental briefs on the motion for preliminary injunction addressing the
24 OIG production; and for the Court to hold a hearing on the motion for preliminary injunction and
25 to issue a reasoned decision. Accordingly, the Court extends the TRO until the Court issues its
26 decision on the preliminary injunction motion or through September 24, 2020, whichever is

1 sooner.

2 **IT IS SO ORDERED.**

3
4 Dated: September 17, 2020



LUCY H. KOH
United States District Judge

United States District Court
Northern District of California

United States District Court
Northern District of California

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

NATIONAL URBAN LEAGUE, et al.,

Plaintiffs,

v.

WILBUR L. ROSS, et al.,

Defendants.

Case No. 20-CV-05799-LHK

**ORDER GRANTING MOTION FOR
TEMPORARY RESTRAINING ORDER**

Re: Dkt. No. 66

Plaintiffs National Urban League; League of Women Voters; Black Alliance for Just Immigration; Harris County, Texas; King County, Washington; City of Los Angeles, California; City of Salinas, California; City of San Jose, California; Rodney Ellis; Adrian Garcia; National Association for the Advancement of Colored People; City of Chicago, Illinois; County of Los Angeles, California; Navajo Nation; and Gila River Indian Community (collectively, “Plaintiffs”) sue Defendants Commerce Secretary Wilbur L. Ross, Jr.; the U.S. Department of Commerce; the Director of the U.S. Census Bureau Steven Dillingham, and the U.S. Census Bureau (“Bureau”) (collectively, “Defendants”) for violations of the Enumeration Clause and Administrative Procedure Act.

Before the Court is Plaintiffs’ September 3, 2020 motion for a temporary restraining order

1 (“TRO motion”), enjoining Defendants from implementing Defendants’ August 3, 2020 Replan,
2 which shortens census data collection and processing timelines from the eight months set forth in
3 the Defendants’ April 13, 2020 COVID-19 Plan to four months. Plaintiffs claim that the Replan’s
4 shortened timelines will unlawfully harm the accuracy of crucial census data. Plaintiffs request
5 that the TRO remain in effect for twelve days, until the September 17, 2020 hearing on Plaintiffs’
6 motion for stay and preliminary injunction (“PI motion”).

7 Temporary restraining orders “serv[e] the[] underlying purpose of preserving the status quo
8 and preventing irreparable harm just so long as is necessary to hold a hearing, and no longer.”
9 *Granny Goose Foods, Inc. v. Bhd. of Teamsters & Auto Truck Drivers Local No. 70 of Alameda*
10 *Cty.*, 415 U.S. 423, 439 (1974); *accord, e.g., E. Bay Sanctuary Covenant v. Trump*, 932 F.3d 742,
11 779 (9th Cir. 2018) (“a TRO ‘should be restricted to . . . preserving the status quo and preventing
12 irreparable harm just so long as is necessary to hold a hearing and no longer”) (ellipsis in original).

13 “[S]erious questions going to the merits’ and a balance of hardships that tips sharply
14 towards the plaintiff can support issuance of a preliminary injunction [or TRO], so long as the
15 plaintiff also shows that there is a likelihood of irreparable injury and that the injunction [or TRO]
16 is in the public interest.” *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th Cir. 2011);
17 *accord Short v. Brown*, 893 F.3d 671, 675 (9th Cir. 2018) (holding that these factors are “on a
18 sliding scale”). Thus, “when the balance of hardships tips sharply in the plaintiff’s favor, the
19 plaintiff need demonstrate only ‘serious questions going to the merits.’” *hiQ Labs, Inc. v.*
20 *LinkedIn Corp.*, 938 F.3d 985, 992 (9th Cir. 2019) (quoting *All. for the Wild Rockies*, 632 F.3d at
21 1135). The issuance of a TRO is at the Court’s discretion. *See All. for the Wild Rockies*, 632 F.3d
22 at 1131.

23 The Court has considered the TRO motion, opposition, and reply; the parties’ oral
24 arguments at the September 4, 2020 TRO hearing; the PI motion and opposition; the relevant law;
25 and the record in this case. Below the Court analyzes in turn (1) the presence of serious questions
26 going to the merits; (2) irreparable harm; (3) the balance of hardships; and (4) the public interest.
27 *All. for the Wild Rockies*, 632 F.3d at 1135.

1 The Court finds that Plaintiffs have presented serious questions going to the merits at least
2 as to Plaintiffs' claims under the Administrative Procedure Act ("APA"). The Court does not
3 prejudge these claims, but merely recognizes that the Plaintiffs have presented serious questions
4 going to the merits of these claims.

5 For example, there are serious questions as to whether the Replan is reviewable by this
6 Court. There is a serious question as to whether Plaintiffs have standing to challenge the Replan.
7 *See Dep't of Commerce v. New York*, 139 S. Ct. 2551, 2565–66 (2019) (holding that Plaintiffs had
8 standing because an undercount of "as little as 2%" of noncitizen households constituted an injury
9 in fact and was traceable to the Defendants' actions). Additionally, there is a serious question as to
10 whether the Replan constitutes final agency action. Although the United States Supreme Court
11 decided in *Franklin v. Massachusetts* that the Secretary of Commerce's transmission of a final
12 Census report to the President is not final agency action, there is a serious question as to whether
13 *Franklin* governs the facts in the instant case. 505 U.S. 788, 798 (1992) (explaining that the
14 transmission was not final agency action because it "carries no direct consequences for the
15 apportionment"). Finally, there is a serious question as to whether the Replan is committed to
16 agency discretion by law. *See Dep't of Commerce v. New York*, 139 S. Ct. at 2568 (noting that
17 "census-related decisionmaking" is traditionally reviewable under the Administrative Procedure
18 Act).

19 There are also serious questions as to whether the Replan was arbitrary and capricious in
20 violation of the APA. *See* 5 U.S.C. § 706(2)(A). The APA requires that Defendants consider the
21 "important aspect[s] of the problem" before them. *Motor Vehicle Mfrs. Ass'n v. State Farm Mut.*
22 *Ins. Co.*, 463 U.S. 29, 43 (1983). Although Defendants justify the Replan based on the statutory
23 deadline, Plaintiffs suggest that Defendants have failed to consider their other statutory
24 obligations, including the statutory requirement that Defendants "conduct a census that is accurate
25 and that fairly accounts for the crucial representational rights that depend on the census and the
26 apportionment." *Dep't of Commerce v. New York*, 139 S. Ct. at 2569 (quoting *Franklin*, 505 U.S.
27 at 819–20 (Stevens, J., concurring in part and concurring in the judgment)). Thus, there are

serious questions going to the merits of the Plaintiffs' APA claims.

As to irreparable harm, Plaintiffs identify and support with affidavits four potential irreparable harms that Plaintiffs will suffer as a result of inaccurate census data. First, Plaintiffs state that an inaccurate apportionment will violate their constitutional rights to political representation. Mot. 29. Second, Plaintiffs risk losing important federal funding from undercounting. Mot. 30. Third, Plaintiffs will need to expend resources to mitigate the undercounting that will result from the Replan. Mot. 31. Lastly, local government Plaintiffs' costs will increase because those Plaintiffs rely on accurate granular census data to deploy services and allocate capital.

These harms are potentially irreparable in two ways. To start, at least part of the harms may be constitutional in nature, and "the deprivation of constitutional rights 'unquestionably constitutes irreparable injury.'" *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). Moreover, to the extent the harm involves expending money or resources, "[i]f those expenditures cannot be recouped, the resulting loss may be irreparable." *Philip Morris USA Inc. v. Scott*, 561 U.S. 1301, 1304 (2010) (Scalia, J., in chambers). Because the decennial census is at issue here, an inaccurate count would not be remedied for another decade, which would affect the distribution of federal and state funding, the deployment of services, and the allocation of local resources for a decade. Similar harms have thus justified equitable relief in previous census litigation. *See, e.g., Dep't of Commerce v. U.S. House of Representatives*, 525 U.S. 316, 328–34 (1999) (affirming injunction against the planned use of statistical sampling in census and citing apportionment harms, among others); *New York v. United States Dep't of Commerce*, 351 F. Supp. 3d 502, 675 (S.D.N.Y.) (issuing injunction and finding irreparable "the loss of political representation and the degradation of information"), *aff'd in part, rev'd in part and remanded sub nom. Dep't of Commerce v. New York*, 139 S. Ct. 2551. Plaintiffs attached to their TRO motion an internal Bureau document indicating that the Replan's compressed deadlines increase the risk of inaccuracy in the census count. ECF No. 66-3. Plaintiffs aver that each day that the Census does not conduct its field operations to reach and

count hard to reach populations increases the inaccuracy of the census count and thus increases their irreparable harm.

By contrast, a temporary restraining order would merely require Defendants to do what Defendants had planned to do and were doing since April 13, 2020, when Defendants adopted the COVID-19 Plan, through August 3, 2020, when Defendants adopted the Replan. Moreover, the sole evidence Defendants submit in opposition to the TRO motion and the PI motion is the declaration of Albert E. Fontenot, Jr., Associate Director for Decennial Census Programs at the U.S. Census Bureau (hereafter, “Fontenot”). In his September 5, 2020 declaration, Fontenot declares that:

Lack of field staff would be a barrier to reverting to the COVID Schedule were the Court to rule later in September. The Census Bureau begins terminating staff as operations wind down, even prior to closeout. Based on progress to date, as is standard in prior censuses, we have already begun terminating some of our temporary field staff in areas that have completed their work. It is difficult to bring back field staff once we have terminated their employment. Were the Court to enjoin us tomorrow we would be able to keep more staff on board than were the Court to enjoin us on September 29, at which point we will have terminated many more employees.

Font. Decl. at ¶ 98. Thus, Fontenot’s declaration underscores Plaintiffs’ claims of irreparable harm because the Bureau is terminating field staff now and will have difficulty rehiring such staff. Moreover, Fontenot’s declaration suggests that the burden of an injunction on Defendants is far less now than later in September.

Furthermore, Defendants’ stated reason for the August 3, 2020 Replan is to get the Census count to the President by December 31, 2020 instead of April 30, 2021 as scheduled in the Bureau’s COVID-19 Plan. Font. Decl. at ¶ 81. However, Defendants’ sole declarant, Fontenot, acknowledged publicly less than two months ago that the Bureau is “past the window of being able to get accurate counts to the President by December 31, 2020.” *U.S. Census Bureau, Operational Press Briefing – 2020 Census Update* at 21 (July 8, 2020), <https://www.census.gov/content/dam/Census/newsroom/press-kits/2020/news-briefing-programtranscript-july8.pdf>. Similarly, on May 27, 2020, Tim Olson, head of field operations for the 2020 Census, stated during a May 26, 2020 webinar organized by the National Congress of

1 American Indians that, “we have passed the point where we could even meet the current
2 legislative requirement of December 31st. We can’t do that anymore.” Nat’l Conf. of Am.
3 Indians, *2020 Census Webinar: American Indian/Alaska Native*, YouTube (May 26, 2020),
4 <https://www.youtube.com/watch?v=F6IyJMtDDgY&feature=youtu.be&t=4689>. These statements
5 support Plaintiffs’ claims of irreparable harm arising from an inaccurate census count. On
6 balance, the Court finds that the balance of hardships tips sharply in favor of Plaintiffs.

7 As to the public interest, when the government is a party, the analysis of the balance of the
8 hardships and the public interest merge. *See Drakes Bay Oyster Co. v. Jewell*, 747 F.3d 1073,
9 1092 (9th Cir. 2014) (citing *Nken v. Holder*, 556 U.S. 418, 435 (2009)). As the United States
10 Supreme Court recognized, Congress has codified the public’s interest in “a census that is accurate
11 and that fairly accounts for the crucial representational rights that depend on the census and the
12 apportionment.” *Dep’t of Commerce v. New York*, 139 S. Ct. at 2569 (quoting *Franklin*, 505 U.S.
13 at 819–820 (Stevens, J., concurring in part and concurring in judgment)) (discussing the Census
14 Act, 2 U.S.C. § 2a). Other courts have held that “the public interest . . . requires obedience to the
15 Constitution and to the requirement that Congress be fairly apportioned, based on accurate census
16 figures” and that “it is in the public interest that the federal government distribute its funds . . . on
17 the basis of accurate census data.” *Carey v. Klutznick*, 637 F.2d 834, 839 (2d Cir. 1980) (per
18 curiam). Thus, the balance of the hardships and public interest tip sharply in Plaintiffs’ favor.

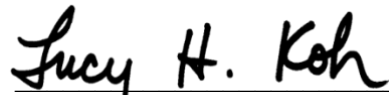
19 Accordingly, having considered the TRO motion, opposition, and reply; the parties’ oral
20 arguments at the September 4, 2020 TRO hearing; the PI motion and opposition; the relevant law;
21 and the record in this case, the Court GRANTS Plaintiffs’ motion for a temporary restraining
22 order. The Court finds that no security is necessary. *See Jorgensen v. Cassidy*, 320 F.3d 906, 919
23 (9th Cir. 2003) (“Rule 65(c) invests the district court ‘with discretion as to the amount of security
24 required, *if any*.’” (quoting *Barahona–Gomez v. Reno*, 167 F.3d 1228, 1237 (9th Cir. 1999))).

25 IT IS HEREBY ORDERED THAT, effective as of the date of this Order, Defendants
26 Commerce Secretary Wilbur L. Ross, Jr.; the U.S. Department of Commerce; the Director of the
27 U.S. Census Bureau Steven Dillingham, and the U.S. Census Bureau are enjoined from

1 implementing the August 3, 2020 Replan or allowing to be implemented any actions as a result of
2 the shortened timelines in the August 3, 2020 Replan, including but not limited to winding down
3 or altering any Census field operations, until the Court conducts its September 17, 2020 hearing on
4 Plaintiffs' PI motion.

5 **IT IS SO ORDERED.**

6
7 Dated: September 5, 2020

8 

9 LUCY H. KOH
10 United States District Judge
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United States District Court
Northern District of California

No. 20-16868

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

NATIONAL URBAN LEAGUE, et al.,

Plaintiffs-Appellees,

v.

WILBUR L. ROSS, et al.,

Defendants-Appellants.

On Appeal from the United States District Court
for the Northern District of California

EXCERPTS OF RECORD—VOLUME II

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

NATIONAL URBAN LEAGUE, *et al.*,

Plaintiff,

v.

WILBUR L. ROSS, JR., *et al.*,

Defendants.

Case No. 5:20-cv-05799-LHK

**FOURTH DECLARATION OF
ALBERT E. FONTENOT JR.**

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

- 4 1. I am making this declaration, my fourth in this case, in response to the Court's direction
 5 to, (Oct. 6, 2020 Hr'g Tr. 20:1-21:12):
 - 6 a. Explain what information is contained in the Census Bureau's completion rates
 7 for the nonresponse follow-up ("NRFU") operation published at
 8 <https://2020census.gov/en/response-rates.html>, which are referenced in
 9 paragraphs 16 and 17 of Director Dillingham's October 5, 2020 declaration,
 10 ECF No. 300-1;
 - 11 b. Explain how this information was collected; and,
 - 12 c. Explain the quality assurance processes behind this information.

13 **Census Bureau Completion Rates**

- 14 2. For the first time ever, the Census Bureau is publishing NRFU completion information
 15 online for the 2020 Census while data collection remains ongoing; historically we have
 16 made this information available only in assessments released after completion of the
 17 census. The FAQs on the Census Bureau website provide significant detail on what is
 18 included in the NRFU completion information, [https://2020census.gov/en/response-](https://2020census.gov/en/response-rates/nrfu.html)
 19 [rates/nrfu.html](https://2020census.gov/en/response-rates/nrfu.html).
- 20 3. The first set of statistics listed on the Census Bureau website at
 21 <https://2020census.gov/en/response-rates/self-response.html> is the "Self-Response
 22 Rates Map." This map lists the percentage of households that have self-responded to
 23 the 2020 Census through internet, phone, email, or Mobile Questionnaire Assistance
 24 Centers. The map reports self-response rates down to the census tract level (census
 25 tract sizes vary, but the optimal size is about 4000 people).
- 26 4. The next set of statistics listed on the Census Bureau website at
 27 <https://2020census.gov/en/response-rates/nrfu-completion.html>—and discussed in ¶ 16
 28 of Director Dillingham's declaration—is "Nonresponse Followup Completion Rates."

- 1 5. Briefly, let me reiterate that in the NRFU operation, census field staff, known as
2 enumerators, attempt to contact non-responding addresses to determine whether each
3 address in the Master Address File is vacant, occupied, or does not exist; and when
4 occupied, to collect census response data to enumerate the occupants of the housing
5 unit. Multiple contact attempts to non-responding addresses may be needed to
6 determine the housing unit status and, if occupied, to collect decennial census response
7 data for the occupants.
- 8 6. The basic structure of the 2020 NRFU operation is described in detail in paragraphs 48
9 to 58 of my first declaration in this case filed on September 4, ECF No. 81-1. I also
10 note that this information is contained in the Thirteenth Declaration of James Christy,
11 filed in this Court on October 6, 2020, ECF No. 307-1. I will not repeat this detail, but
12 rather will summarize that cases are resolved in the NRFU operation through:
 - 13 a. Enumeration of the housing unit by an enumerator making contact with a
14 resident and recording information about the individuals living there;
 - 15 b. Enumeration of the housing unit by an enumerator making contact with a proxy
16 respondent (such as a landlord or neighbor) and recording information about the
17 individuals living in the housing unit in question;
 - 18 c. Enumeration of the housing unit—after one unsuccessful in-person attempt—
19 using high-quality administrative records, where such records are available¹;
 - 20 d. Classification, based on the enumerator's observation that the housing unit is
21 vacant, non-existent, or unoccupied;
- 22 7. Other than the use of high quality administrative records where available, the use of
23 these statuses is largely consistent with how NRFU operations were conducted in prior
24 censuses, including 2000 and 2010. As indicated later, the decision to use high quality
25

26 ¹ We consider administrative records to be of high quality if they are corroborated with multiple
27 sources. Examples of high-quality administrative records include Internal Revenue Service
28 Individual Tax Returns, Internal Revenue Service Information Returns, Center for Medicare and
Medicaid Statistics Enrollment Database, Social Security Number Identification File, and 2010
Census data.

administrative records predates both the COVID-19 plan and the Replan and was based on testing conducted over the course of the last decade.

8. An address is resolved—and counted as “completed” for purposes of Director Dillingham’s declaration and the NRFU statistics on the website—if the housing unit is determined to be vacant, or, if the housing unit is occupied, information about the household is obtained through one of the NRFU methods listed above. If a housing unit is determined to be occupied but no information has been obtained, then it is *not* considered “completed” for purposes of Director Dillingham’s declaration and the website.
9. The last set of statistics listed on the Census Bureau website at <https://2020census.gov/en/response-rates/nrfu.html>—and discussed in ¶ 17 of Director Dillingham’s declaration—is “Total Response Rates by State.” These statistics convey the total enumeration percentage for each State and for the whole country. The listed “Enumerated” percentage combines the percentage of households that have self-responded and the percentage of households counted through NRFU. A housing unit is counted as “enumerated” or “completed” (for purposes of Director Dillingham’s declaration and the website) if the housing unit is determined to be vacant, or, if the housing unit is occupied, information about the household is obtained through self-response or one of the NRFU methods listed above. If a housing unit is determined to be occupied but no count information has been obtained, then it is *not* considered “enumerated” or “completed.”
10. As of October 7, 2020, the Census Bureau has enumerated 99.8% of the nation’s housing units, with 48 states and D.C. over 99%. Of the 2 remaining states, Mississippi is at 98.8%, and Louisiana at 98.1%. The 2010 Census had an enumeration rate of 99.6% while the 2000 Census had an enumeration rate of 99.45%. In the 2000 Census, 45 States reached a 99% enumeration rate. While we have not published NRFU completion rates from prior censuses, we have published information about count imputation rates. Because we rely on count imputation to account for households for

1 which we have no information, the inverse of the count imputation rate is a good
2 approximation of the NRFU completion rate.

3 11. Aside from the fact that field data collection was delayed by COVID-19, the Census
4 Bureau has no indication at this point that the data it has collected in the NRFU
5 operation is of inferior quality to prior censuses. I also note again for the Court that the
6 Census Bureau is watching quality indicators closely, and that we formed a Data
7 Quality Executive Guidance Group to provide direction and approvals about quality
8 assessments of changes to the operational plans and of the 2020 Census data during and
9 after the data collection process.

10 12. The Court has posed questions about proxy rates for the 2020 Census. The Census
11 Bureau has seen nothing in our operational data to give us concern on this point. While
12 we do not publish proxy rates prior to completion because they will decrease during
13 post processing, I will note that as of the date of this declaration the proxy rate for
14 occupied NRFU housing units in the NRFU workload is 23.9%. The equivalent proxy
15 rate for occupied NRFU housing units in the 2010 Census was 23.8% (as stated in the
16 [2010 Census Operations Follow Assessment](#)). The 2020 final proxy rate, after post
17 processing, can be expected to be lower than that observed thus far because we will
18 resolve cases where we receive duplicate responses. For example, if an apartment
19 dweller filled out the census online after her landlord had already provided a proxy
20 response for that individual's apartment unit.

21 13. As of the date of this declaration, 13.9% of the NRFU workload has been completed via
22 administrative records. As I explained in paragraphs 54-58 in my September 5
23 declaration, ECF No. 86-1, using administrative records was a central feature of the
24 2020 Census design, which long predated the Replan.

25 14. In accordance with our 2020 Census Operational Plan v.4 (Dec. 2018), we also are
26 using high quality administrative records to resolve housings units as vacants and
27 deletes. If a knowledgeable person cannot be found to confirm a status of vacant or
28 non-existent, use of administrative records may provide confirmation of the

enumerator's assessment. The Census Bureau does not rely on a single administrative records source to determine whether an address is vacant or non-existent. Rather, multiple sources are necessary in this instance to provide the confidence and corroboration before administrative records are used. When used in combination with an enumerator's assessment of vacant or non-existent, corroborated administrative records provide the second confirmation that a nonresponding address is vacant or non-existent.

15. If, after the first in-person contact attempt, the enumerator believes the address is occupied, but no knowledgeable person is available to complete the enumeration, the Census Bureau will use consistent and high-quality administrative records from trusted sources as the response for the household and no further contact will be attempted.
16. The operational design for NRFU evolved over the course of the decade. Use of administrative records, field management structures, systems, procedures, data collection tools and techniques were proven in tests occurring in 2013, 2014, 2015, 2016, and 2018.

Quality Assurance Procedures in NRFU

17. As I explained in paragraphs 59 to 65 in my first declaration in this lawsuit, filed on September 4, 2020 at ECF No. 81-1, the Census Bureau is committed to a quality NRFU operation and has in place several programs to monitor and promote quality, such as the NRFU Reinterview Program, the Decennial Field Quality Monitoring Operation, and the Coverage Improvement Operation.
18. The use of technology in the Nonresponse Followup data collection has allowed the Census Bureau to build in real-time measures to ensure data quality. Unlike a paper-form environment used in previous Decennial Censuses—which relies on enumerator compliance with instructions for proper completion—the 2020 Census incorporates a series of automated checks and confirmations directly in the data-collection process. Further, the availability of real-time information from the enumeration devices (such as the enumerator's physical location at the time of the interview, the length of the

interview, and the time spent on each question) allows us to intervene to address any data quality issues that may arise. For example, we use a series of “system alerts” where supervisors are notified and act to correct outliers on things like proxy rates, pace of work, and payroll issues. Ensuring we collect quality data on the 2020 Census is embedded directly in the field data collection process as originally planned, used in the COVID-19 plan, and used in the Replan.

19. The NRFU Reinterview Program involves contacting between 2.5% and 3% of the total households in the NRFU workload to conduct another interview to help us ensure that enumerators are conducting their jobs correctly and are not falsifying responses. Falsification of responses by enumerators occurs in relatively rare instances where an enumerator improperly attempts to report and be paid for enumerations they have not, in fact, conducted. The program as originally planned included both a randomly-selected component and an analytically-selected component. For the analytically-selected component, we use data from the enumerators’ mobile devices to tell us where the enumerators were physically located while they were conducting the interviews, how long they spent on each question in the interview, time of day of the interview, and other detail data about the interview process. Having this information—much of which is new for the 2020 Census—has provided management with information on how the census takers are doing their jobs, and allowed us to select reinterview cases in a targeted fashion. The random component involves simply sending randomly-selected cases for reinterview.
20. In developing the Replan, the Census Bureau reevaluated all of its operations, including the random component of the NRFU Reinterview Program. As a result of this reevaluation, the Replan contemplated the elimination of the random component, based on the belief that that the analytic component of the program would provide better information to help ensure that enumerators were conducting their jobs correctly. As of the date of this declaration we have conducted 605,481 random reinterviews and

923,575 analytic reinterviews. This is a substantially higher percentage of random reinterviews (38.1%) than that contemplated by the COVID-19 Plan.

21. We ceased sending random reinterview cases on September 25 because, as noted above, we determined that the analytic component of the program was more effective and, therefore, we decided to focus our resources on that aspect of the program. The Census Bureau historically has made dynamic adjustments of this type.
22. A second quality check program, new for the 2020 Census, is the Decennial Field Quality Monitoring operation which has been part of our plan prior to COVID. This operation monitors overall adherence to field procedures in order to identify unusual patterns. The goal of the program is to identify and investigate potential quality issues. In this program we examine data from individual enumerators and larger scale data, scanning for the possibility of both individual and systemic data quality problems. The program monitors outlier metrics, and produces reports that we analyze on a daily basis. Management staff use these reports to investigate anomalous activities and follow up as needed.
23. Another quality check operation, the Coverage Improvement Operation, seeks to resolve erroneous enumerations (people who were counted in the wrong place or counted more than once) and omissions (people who were missed) from all housing unit data. Coverage Improvement has helped us resolve potential coverage issues identified in responses from the Internet Self-Response, Census Questionnaire Assistance, and NRFU operations, as well as from the paper questionnaires. This operation has been part of our plan since before COVID-19 disrupted operations.
24. The Census Bureau believes that the embedded quality measures in the data collection process and these quality programs (Reinterview, Decennial Field Quality Monitoring, and Coverage Improvement), taken together, provide a robust quality check for our data collection operations. We believe that our quality program remains an effective deterrent to poor performance, and an appropriate method to identify enumerators who fail to follow procedures, superior to the quality-control measures used in prior

1 censuses. None of these programs, to date, reveals a pattern of substandard data
2 collection.

3
4 I have read the foregoing and it is all true and correct.

5 DATED this ____ day of October, 2020

6
7 _____
8 Albert E. Fontenot, Jr.

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

NATIONAL URBAN LEAGUE, *et al.*,

Plaintiff,

v.

WILBUR L. ROSS, JR., *et al.*,

Defendants.

Case No. 5:20-cv-05799-LHK

**DECLARATION OF ALBERT E.
FONTENOT, JR.**

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:

DECLARATION OF ALBERT E. FONTENOT, JR.
Case No. 5:20-cv-05799-LHK

- 1 1. I am the Associate Director for Decennial Census Programs at the U.S. Census Bureau. I
2 am submitting this declaration in support of the government's opposition to Plaintiffs'
3 motion for a temporary restraining order.
- 4 2. In this declaration I update my statements in prior declarations to explain how the Census
5 Bureau could close field data collection operations on October 5, 2020 and submit
6 apportionment counts by the statutory deadline, December 31, 2020.
- 7 3. This shift is reflected in the following updated post-processing schedule. The schedule
8 evidences how the Census Bureau might close data collection on October 5, 2020 and still
9 produce apportionment counts before the statutory deadline.
- 10 4. Incorporate address updates from the field data collection operations into MAF/TIGER.¹

11
12
13 **Original Dates: February 10 – August 10, 2020**

14 **Replan Dates: February 6– September 24, 2020**

15 **Revised Dates: February 6– September 30, 2020**

- 16
- 17 5. During the data collection operations, the census field staff can update address and
18 physical location information and add addresses. These updates are incorporated into our
19 address and geo-spatial MAF/TIGER databases. Once updated, each address must be
20 associated to the correct state, county, tract, block group and block. Since it is critical to
21 associate each address to the correct geography, we verify that the address and geo-
22 spatial updates are incorporated correctly.
- 23
24
25

26 ¹ MAF/TIGER refers to the Master Address File/Topologically Integrated Geographic Encoding
27 and Referencing (MAF/TIGER) System. The MAF/TIGER System provides the foundation for
28 the Census Bureau's data collection, tabulation, and dissemination activities. It is a national
repository of geographic data—including addresses, address point locations, streets, boundaries,
and imagery.

6. Incorporate final addresses

Original Dates: August 14 – September 1, 2020

Replan Dates: September 5 – 25, 2020

Revised Dates: September 5 – September 30, 2020

7. Please note that the timing for this step changed because of the September 5, 2020

Temporary Restraining Order (“TRO”). While we had intended under the Replan to add the last “pull” of addresses on September 4, 2020, because of the TRO, we added additional addresses on both September 17 and 27.

8. Produce the Final Collection Address Data Products from MAF/TIGER

Original Dates: September 2 – 14, 2020

Replan Dates: September 26 – Oct 14, 2020

Revised Date: October 1 – Oct 19, 2020

9. In preparation for the producing the final collection geography data files needed for producing the apportionment counts and redistricting data products, we create a benchmark of MAF/TIGER, which is a snapshot of the databases.

10. Once the benchmark has been created, the final collection geographic data files are produced and verified.

11. Produce and review the Decennial Response File 1 (“DRF1”)

Original Dates: September 15 – October 14, 2020

Replan Dates: October 14– November 8, 2020

Revised Date: October 19– November 13, 2020

1 12. The verified final collection geography data are integrated with the response data.

2 Integration of these data is also verified to ensure accuracy. The next set of activities
3 involves the standardization of the collected information.

4 13. First we determine the final classification of each address as either a housing units or a
5 group quarters facility. Addresses can change from a housing unit to group quarters and
6 vice versa. Initial status is set at the start of the data collection operations as either a
7 housing unit or group quarters. During the enumeration operations, we collect
8 information that informs us on the classification. For a small number of addresses the
9 classification may change, for example a housing unit may have been turned into a small
10 group home. Based on the information collected we determine the status of every
11 address as either a housing unit of group quarters.
12
13

14 14. Next, we identify each unique person on the housing unit returns.

15 15. As part of the Non Response Followup (“NRFU”) operation, we conduct a reinterview of
16 a sample of cases to ensure quality. We incorporate the results of the reinterview.
17

18 16. As part of the Internet self-response option and telephone operation, respondents can
19 provide their data without their Census Identification Number (“ID”). These cases are
20 assigned an ID which associates them to the final collection geography.
21

22 17. Some group quarters will provide the information electronically. These files can contain
23 duplicate records, so we need to remove the duplicates.

24 18. We also determine the population count for all group quarters.

25 19. We collect data in many ways, for example on-line, over the phone, on a paper
26 questionnaire, electronic administrative files, and in person using an electronic
27
28

questionnaire. As a result, we need to standardize the responses across the modes of collection.

20. Finally, for the operations that collect data on a paper questionnaire, some housing units have more people than can fit on one paper questionnaire. The census field staff will use multiple paper questionnaires to enumerate the house. These continuation forms are electronically linked to form one electronic form.

21. Produce and review the Decennial Response File 2 (“DRF2”)

Original Dates: October 14 – November 4, 2020

Replan Dates: November 9 – 30, 2020

Revised Dates: November 14 – December 5, 2020

22. Once the previous step has been verified, we incorporate the results from the Self-Response Quality Assurance operation. As part of the group quarters operations, we enumerate domestic violence shelters. Their locations and data are high sensitive and are handled with special procedures both in the field and in processing. Their data are incorporated at this point in the process. Finally, for a small number of addresses we receive multiple returns, for example where one person in a house completes the form online, and other completes the paper questionnaire. For these cases, we select a form that will be used as the enumeration of record.

23. Produce and review the Census Unedited File (“CUF”)

Original Dates: November 4 – 30, 2020

Replan Dates: December 1 – 14, 2020

Revised Dates: December 5 – 19, 2020

1 24. Once the previous step has been verified, we incorporate administrative records data as
2 the response data for housing units where we do not have an enumeration and have high
3 quality administrative records data. Next we determine the status for every housing unit
4 as occupied, vacant or non-existent. Non-existent units are removed from future
5 processing. For every occupied housing unit, the population count is determined. For
6 each person with write-in responses to the race and Hispanic origin questions, we merge
7 in the information from automated and clerical coding operations. The coding operations
8 assign a numerical value to the write-in responses. At this point in the post-data
9 collection activities, for every housing unit and group quarter their location (state, county,
10 tract, block group and block) is assigned, their status (occupied, vacant or non-existent) is
11 determined, and in occupied addresses the number of persons is known. In addition, at
12 the person level the demographic information (relationship, age, date of birth, sex, race
13 and Hispanic origin along with write-in code values) and at the housing unit level
14 housing information (tenure) is determined. For the majority of these items, the
15 respondent provided the information. However, for a small number of people and
16 addresses the information may be missing or inconsistent with other provided
17 information, for example the Person 1's spouse is five years old. The result of these
18 processes is a file that contains records for every housing unit and group quarters along
19 with person records for the people associated with the addresses. Note that some of the
20 demographic information and response to the tenure question may be missing.
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1 25. Produce, review and release the Apportionment Counts

2 **Original Dates: December 1 – 28, 2020**

3 **Replan Dates: Dec 15- 31, 2020**

4 **Revised Dates: Dec 20- 31, 2020**

5 26. Once the CUF has been verified, the process goes down two paths. The first path is to
6 determine the apportionment counts. Since every housing unit and group quarters has a
7 population count and linked to a state, we can tabulation the state level population counts.
8 In addition, we merge in the count of the Federally Affiliated Overseas population and
9 the results of the Enumeration of Transitory Locations for each state. To ensure accuracy
10 in the apportionment numbers, the state counts including the overseas population and
11 apportionment numbers are verified by multiple independent ways. The results of the
12 independent verifications are compared and reconciled, if necessary. The Census
13 Bureau identified a modification to the post processing schedule that would still allow the
14 steps necessary to ensure data integrity to be completed by December 31, 2020 and
15 submit the required report by that date. Certain processing steps necessary to fully
16 implement the Presidential Memorandum dated July 21, 2020 will not be completed until
17 after December 31, 2020. The Census Bureau will continue to evaluate if there are
18 methods to streamline any of these processes.
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1 I have read the foregoing and it is all true and correct.

2
3 DATED and SIGNED:

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5 _____
6 Albert E. Fontenot, Jr.
7 Associate Director for Decennial Census Programs
8 United States Bureau of the Census
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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

NATIONAL URBAN LEAGUE, *et al.*,

Plaintiff,

v.

WILBUR L. ROSS, JR., *et al.*,

Defendants.

Case No. 5:20-cv-05799-LHK

**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:

I. Executive Summary

1. I am the Associate Director for Decennial Census Programs at the U.S. Census Bureau. This supplements my prior declaration in this case. In this declaration I:

- Explain that the Census Bureau is currently required by statute to produce apportionment counts by December 31, 2020;
- Explain the steps that are necessary to conclude field operations by the December 31, 2020 deadline, and identify the ways in which the Temporary Restraining Order (TRO) in this case is interfering with these steps;
- Explain the steps in post processing that must occur on the completion of field operations and reiterate that if these steps do not begin on October 1, 2020, the Census Bureau may fail to meet its statutory deadline.

II. Statutory Deadline

2. The Census Act 13 U.S.C. Section 141 provides that “the tabulation of total population by States under subsection (a) of this section as required for the apportionment of Representatives in Congress among the several States shall be completed within 9 months after the census date and reported by the Secretary to the President of the United States.” For the 2020 Census, this means that the tabulation must be completed and reported to the President by December 31, 2020. While various bills have been introduced in Congress to extend this statutory deadline, as of today the December 31, 2020 deadline remains in effect. The Census Bureau designed the Replan schedule to allow us to meet this statutory deadline.

III. Steps to Conclude Field Operations

3. I explained in my September 5 declaration in this case that nonresponse follow-up, NRFU, is the field operation designed to complete enumeration of nonresponding housing unit addresses and that it involves census field staff (known as enumerators), attempting to contact nonresponding addresses. I will not repeat the background information about NRFU, but will

DECLARATION OF ALBERT E. FONTENOT, JR.
Case No. 5:20-cv-05799-LHK

1 attempt to further assist the court’s understanding of decennial field operations by explaining in
2 more detail the steps necessary to conclude field operations.

3 4. Concluding field operations in Area Census Offices (ACOs) as they complete their
4 workload is a normal part of the NRFU operation, and is not specific to the Replan Schedule. The
5 Census Bureau manages NRFU out of “Census Field Supervisor areas” or “CFS areas” within each
6 of the nation’s 248 ACOs. CFS areas are supervisory work assignment areas consisting of 4,000-
7 5,500 housing units. As of September 21, 2020, roughly 70.7% (9,576) of CFS areas nationwide
8 are eligible for what we call “the closeout phase,” 8,682 are actually in the closeout phase, and
9 roughly 1,578 have actually reached conclusion, meaning that we have zero unresolved addresses
10 in the CFS area.

11 5. The closeout phase refers to the process of focusing our best enumerators to resolve
12 the remaining cases in that area. At the time both the COVID-19 Plan and the Replan were decided
13 upon, CFS areas were eligible for closeout procedures when they crossed the 85% completion
14 mark, or at the passage of a particular date, whichever occurred first. We increased this percentage
15 to 90% independent of the Replan to improve accuracy¹. Under the Replan, all CFS areas would
16 have become eligible for closeout procedures on September 11. This does not mean that all CFS
17 areas would have been moved to closeout procedures on that date, only that regional directors
18 could have made this decision. Under the TRO, we have directed that no CFS area be moved into
19 closeout procedures until it reaches 90% completion. The Census Bureau is continuing to work
20 across the nation to obtain responses from all housing units, and has not begun closeout procedures
21 for any CFS area with under 90% completion.

22 6. On September 5, 2020 this Court enjoined the Census Bureau from “implementing
23 the August 3, 2020 Replan or allowing to be implemented any actions as a result of the shortened
24 timelines in the August 3, 2020 Replan, including but not limited to winding down or altering any
25 Census field operations.” This TRO is preventing the Census Bureau from taking the steps it needs
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27 ¹ In my September 5 declaration in this case I said the threshold for moving to Closeout Procedures was 85%. I was
28 incorrect. We had initially planned for an 85% threshold, but increased the threshold to 90% on August 17, 2020 as
a way to increase the quality of the data we collected. As discussed above, under the TRO, the Census Bureau has
not begun closeout procedures for any CFS area with under 90% completion.

1 to conclude data collection in an efficient and effective manner in time to meet our statutory
2 deadline, including:

3 Preventing Use of Highest Performing Enumerators. Because of the TRO restriction on
4 releasing staff, we are unable to execute our strategy of assigning the remaining work in CFS
5 Areas eligible for the Closeout Phase to our highest performing enumerators. We define our
6 highest performing enumerators as those who have high case completion rates, are good at
7 converting refusals, know where to look for proxies, have a lot of available hours to work
8 cases, and may have a special skill, like a second language, that assists them to complete
9 cases. This strategy would have ensured that the most difficult NRFU cases were handled
10 by the highest performing enumerators, which would have improved both data quality and
11 efficiency. The data quality improvements come from having enumerators who have a
12 demonstrated ability to work with respondents to get their cooperation completing interviews
13 handling the final NRFU cases (which are often the most difficult cases to complete). We
14 gain efficiency because these enumerators achieve higher rates of completion and resolve
15 cases more quickly.

16 7. The Census Bureau assigns cases using its optimization software. This software is
17 designed to assign cases, via an assigned smart phone, to all enumerators with available hours in
18 a given CFS area, based on a variety of factors – geographic proximity, number of case attempts,
19 best time to contact and other factors. For Closeout, the optimization software – in conjunction
20 with our effort to keep the highest performers - is designed to stabilize the closeout process by
21 assigning high performing enumerators a dedicated set of more permanently cases in a CFS Area.
22 By giving these enumerators more ownership of a set of cases, they can be more strategic in how
23 they attempt to contact them. For instance, if they get a lead on a proxy one day, they will be able
24 follow through on that proxy on a subsequent day.

25 Preventing the Movement of CFS Areas into Closeout Before 90%

26 8. The Census Bureau's plan has always involved making all CFS areas eligible for
27 Closeout Phase when that CFS area either reaches a percentage completion threshold, or on a date
28 certain, approximately 2 - 3 weeks prior to scheduled conclusion of field operations. The date

1 under the Replan when all CFS areas would have become eligible for Closeout Procedures was
2 September 11. Without the TRO, all CFS areas would be currently eligible for Closeout Phase.

3 9. Closeout procedures are used in every Census to finalize data collection because
4 they provide us with a consistent way to finish the census. Every CFS area is treated the same
5 way, which minimizes variability in how the data is collected. Consistency is an important element
6 of data quality. We would also be able to finish more effectively using Closeout Procedures
7 because this would allow us to accept what we call "POP count only" (population count only,
8 without associated demographic information) is the minimal acceptable data necessary to fulfil the
9 requirements for apportionment. Under the Replan, for households that have not responded to the
10 Census in the final stage of the operation, we were going to utilize arrangements we had made
11 with the Internal Revenue Service (IRS) to allow us to use IRS population count information (a
12 high quality single administrative record source) as the sole source of POP count only information.
13 We still planned to make an attempt to contact these households, and if an enumerator could obtain
14 full information we would take that as a first choice. We have used POP count only enumeration
15 in all censuses since 1990; it is an established technique to convert the final and most difficult
16 cases, to meet the requirements for apportionment and to reduce the number of cases requiring
17 imputation.

18 Ceasing Assignment of Reinterview Cases

19 10. In order to finish field operations by a given deadline, we would normally cease
20 assigning new reinterview cases two weeks prior to conclusion. (The reinterview operation
21 involves reinterviewing selected addresses for quality assurance.) Continuing to assign
22 reinterview cases beyond that point would produce and continual cycle of new cases coming into
23 the field. If we were not under the TRO, we would have ceased assigning reinterview cases, SRQA
24 (Self Response Quality Assurance) cases, and field verification cases by September 16, 2020.
25 Every day that we are forced to send these reinterview cases prevents from deploying these
26 enumerators elsewhere, hindering our ability to complete the Census.

11. The Census Bureau Detailed Operations Plan for NRFU states in chapter 2.3.5.3 (page 39)² we have 3 types of reinterviews during NRFU –

- Analytic: Based on statistical calculations, enumerators whose work differs significantly from other enumerators are flagged as outliers. Cases completed by these enumerators are chosen so that an analytic reinterview can be used to further investigate these enumerators to determine if they are following proper enumeration procedures.
- Random: Random reinterview involves reinterviewing a random sample of the eligible cases completed by every enumerator.
- Supplemental: Supplemental reinterview allows the National Processing Center (NPC) staff to select additional cases for reinterview for any enumerator at any time during NRFU, if they suspect an enumerator may not be following procedures. This can be done through manual selection, where the user selects a specific case for supplemental RI, or future selection, where the user selects an enumerator and the next two cases checked in for that enumerator are selected for supplemental RI.

12. The Census Bureau assessed whether we were getting sufficient quality control using analytic and supplemental reinterviews, and as a part of our ongoing process management, and under the Replan, we determined that we would discontinue sending random reinterview cases to the field. In prior censuses, we selected cases for the Reinterview operation primarily through random selection because the paper-based enumeration did not provide us with a method of near real-time assessment of enumerator performance. In the 2020 Census, however, we can obtain information from the handheld devices used by enumerators, such as information about where they were at the time of the interview, the length of the interview, time spent on each question, and other detailed metrics. The elimination of random reinterview was introduced at the same time as the Replan and therefore we are enjoined from making the decision to discontinue this unnecessary

² This is posted on the Census Bureau's public website at https://www2.census.gov/programs-surveys/decennial/2020/program-management/planning-docs/NRFU-detailed-operational-plan_v20.pdf
DECLARATION OF ALBERT E. FONTENOT, JR.
Case No. 5:20-cv-05799-LHK

operation. The mandatory continuation of random reinterview simply diverts enumerators who could be used to enumerate hard-to-count addresses.

Reversing Reduced Contacts for Vacant Units

13. As part of the Replan, the Census Bureau reduced the field work required to verify that a vacant housing unit is, in fact, vacant. We do some follow up with housing units that respondents report as vacant, simply to verify the information. Our original plan required us to make as many as six visits to housing units that had previously been self-reported as vacant. Under the Replan we reduced these six visits to one, and required no visit for self-reported vacant units where we had confirmation of vacancy from administrative records. The TRO's requirement that we visit housing units that respondents reported to be vacant as many as six times, even if we have confirmation of the vacancy from administrative records, also imperils our ability to complete the data collection prior to September 30, 2020. As of September 21, 2020 we are finished with 88.8% of the NRFU field work and 95.8% of the housing units in the nation have been enumerated - and those numbers increase daily. Additionally, 4 states have 99% or more of their housing unit enumeration completed. A total of 49 states, plus Washington D.C. and the Commonwealth of Puerto Rico, have completed 90% or more of the housing units.

14. In my September 5 declaration, ECF No. 81-1, I stated that as of that date, and at the completion rate we were then experiencing, we would be able to conclude data collection operations by September 30 and achieve a 99% completion rate for every state. On September 11, 2020 I revised my assessment and stated that we were facing significant risks to complete all states by September 30, due to factors beyond the Census Bureau's control, such as wildfires in the western part of our country, major storms, resurgence of COVID-19 restrictions and other similar disruptions. My concerns in this regard continue. In the midst of major West Coast fires and air quality issues that have accelerated since September 11, and the current impacts of Hurricane Sally across the states of Louisiana, Mississippi, Alabama, the Florida panhandle area, parts of Georgia, and South Carolina, I stated publicly on September 17, 2020 in the Census Scientific Advisory Committee meeting that I did not know whether Mother Nature would allow us to meet the September 30 date. Mother Nature, however, is not the only factor; every day that Court

1 injunctions preclude us from following our normal field procedures makes it more difficult for us
2 to complete a timely and complete census.

3 15. The Census is a dynamic operation, conducted across the entire nation, and the
4 situation changes rapidly. We are now dealing with the effects of wildfires, smoke, and multiple
5 hurricanes, including storms still forming that may affect the Gulf Coast area. As of today, we
6 still have 1 state with a completion rate below 90%, thus demonstrating our urgent need to revert
7 to our planned completion strategies to meet the statutory deadline.

8 9 **IV. Steps to Conclude Post-data Collection Processing**

10 16. The next major step, after the completion of data collection operations, is post
11 processing, which refers to the Census Bureau's procedures to summarize the individual and
12 household data into usable, high quality tabulated data products. Our Replan schedule was
13 premised on beginning post processing on October 1 and was designed to allow the Census Bureau
14 to finish NRFU and post processing before the statutory deadline of December 31, 2020.

15 17. Our post processing procedures and systems are meticulously designed, tested and
16 proven to achieve standardized, thoroughly vetted, high quality data products that we can stand
17 behind. The 2020 Census leveraged significant advances in computing technology that have
18 occurred since the 2010 Census. Internet data collection, use of smart-phones for field data
19 collection, digital input of phone data collection, and state-of-the-art paper data capture have
20 enabled the Census Bureau to consolidate and prepare the raw census data for processing more
21 rapidly than ever before. Additionally, our computer applications include built-in quality controls
22 that guide respondents through the data collection process and help to ensure higher data accuracy
23 at the point of data input than ever before.

24 18. The computer processing systems at Census Headquarters have also been optimized
25 in partnership with industry leaders using the latest hardware, database, and processing technology
26 available. Taking advantage of this processing power and speed, we were able to accelerate our
27 processing time to fit within the Replan schedule.

19. Nonetheless, post data collection processing is a particularly complex operation, and the steps of the operation must generally be performed consecutively. It is not possible, e.g., to establish the final collection geograph (establishing the number of housing units for all geographic boundaries in the nation) prior to processing housing units and group quarters that are added or corrected during NRFU. Similarly, it is not possible to unduplicate responses prior to processing all non-ID responses (responses submitted online or via telephone without a census ID). In this sense, the post data collection activities are like building a house – one cannot apply dry wall before erecting the walls, any more than one could lay floor tile before the floor is constructed. There is an order of steps that must be maintained.

20. As part of developing the Replan schedule, we looked at the possibility of starting the post data collection processing activities on a flow basis and reaffirmed that there is little opportunity to begin until data collection operations close everywhere. As explained above, it is generally necessary to perform processing steps consecutively, as each step depends upon completion of the prior step. The only processing step we could adjust in the schedule was initial processing of addresses, which we advanced by 26 days. It is not possible, however, to begin final census response processing in one region of the country while another region is still collecting data.

21. In my prior declaration I provided information about the various operations comprising post processing and their original and Replan dates. I will not repeat that information here.

22. Finally, we wish to be crystal clear that if the Court were to extend the data collection period past September 30, 2020, the Census Bureau's ability to meet its statutory deadlines to produce apportionment counts prior to December 31, 2020 and redistricting data prior to April 1, 2021 would be seriously jeopardized. The post processing deadlines for the Replan schedule are tight, and extending the data collection deadline would, of necessity, cause the Census Bureau would be at risk of failure of being unable to process the response data in time to meet its statutory obligations. We have already compressed the post processing schedule from 5 months to only 3 months. We previously planned and tested our post processing systems assuming that

1 we would follow a traditional, sequential processing sequence, and the 3-month schedule
2 necessary for the Replan Schedule has already increased risk. We simply cannot shorten post
3 processing beyond the already shortened 3-month period without significant risk.

4 23. The harms discussed in this declaration will be particularly severe in the states that
5 are lagging in total response, primarily those states impacted by storms and weather conditions.
6 Without full latitude to follow our standard completion procedures, these states are more likely to
7 suffer an incomplete enumeration.

8 24. Both field operations and post processing are necessary to conduct the most
9 complete and accurate Census. Spending too much time or effort on one at the expense of the other
10 can result in a less complete or accurate Census. We at the Bureau use our expertise and
11 knowledge to determine the right balance between the two in light of the applicable constraints,
12 including the December 31 statutory deadline to complete the Census and the Secretary's report
13 to the President. Were this Court's actions to compress our timeline still further, the Census Bureau
14 would be at risk of not completing post processing without eliminating critical steps that are needed
15 to insure the accuracy of the enumeration and the apportionment counts. If the court requires us
16 to extend field operations past September 30, it necessarily will come at the expense of post
17 processing, given the statutory deadline of December 31. We currently compressed post
18 enumeration processes to the extent we believe feasible. Any shortening of the allotted time would
19 force us to decide whether to delete operations that are critical and necessary to preparing the
20 apportionment count. Under the current Census Act, neither the Census Bureau nor the Secretary
21 have missed the statutory deadline.

22 23 **V. Conclusion**

24 25. The Census Bureau is doing everything it can to meet the statutory completion
25 deadline and to comply with the Court's TRO. Continued requirement to comply with the
26 restrictions of the TRO means that the Census Bureau will risk missing its statutory deadline to
27 deliver apportionment data.

26. I have read the foregoing and it is all true and correct.

DATED this ____ day of September, 2020

Albert E. Fontenot, Jr.

Associate Director for Decennial Census Programs

United States Bureau of the Census

DECLARATION OF ALBERT E. FONTENOT, JR.
Case No. 5:20-cv-05799-LHK

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

NATIONAL URBAN LEAGUE, *et al.*,

Plaintiff,

v.

WILBUR L. ROSS, JR., *et al.*,

Defendants.

Case No. 5:20-cv-05799-LHK

**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:

I. Executive Summary

1. I am the Associate Director for Decennial Census Programs at the U.S. Census Bureau, and I submit this declaration to:

- Explain the magnitude, complexity, and planning involved in the 2020 decennial census, including the tightly integrated nature of census operations and processing;
- Detail the changes made to the original design in light of the COVID-19 pandemic; and
- Discuss the impacts of extending field operations past their current end date of September 30, 2020.

II. Qualifications

2. I am the Associate Director for Decennial Census Programs, in which capacity I serve as adviser to the Director and Deputy Director of the Census Bureau on decennial programs. In this role, I provide counsel as to the scope, quality, management and methodology of the decennial census 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 that govern the diverse programs of the Census Bureau. I have served in this capacity since November 12, 2017.

3. I began my career with the Census Bureau after retiring from a successful 40-year career as a senior executive in the private sector with midsize manufacturing companies where I was responsible for providing visionary leadership, developing innovative corporate growth and development strategies. I served as Vice President of Marketing, Vice President of Research and Development, and, for the last 14 years, as President and Chief Executive Officer.

4. In addition to a successful corporate career I served as Adjunct Professor in the MBA program in the Keller Graduate School of Management from 2005–2013 where I taught Leadership and Organizational Development, Marketing Management, Corporate Finance, Statistics, and Marketing. I earned a BA in management and MBA in management and finance

1 from DePaul University and Doctor of Ministry in pastoral ministry from Bethel Theological
2 Seminary

3 5. I served as a as a commissioned officer in U. S. Army and was decorated in combat
4 in Vietnam. After leaving active service, I remained in the US Army reserve attaining the rank of
5 Major.

6 6. After retirement from private sector corporate management, I began my career with
7 the Census Bureau in 2009 as a Field Operations Supervisor in Southern California for the 2010
8 Census. I quickly rose through the ranks and managed the Non-response follow-up operations for
9 the 2010 Census as Area Manager responsible for census activities in Los Angeles County, the
10 State of Hawaii, San Bernardino County and Riverside County California. After 2010, I served in
11 positions of increasing responsibility as Survey Supervisor, Senior Supervisory Survey
12 Statistician, Assistant Regional Director for the Los Angeles Region, and Regional Director for
13 the Chicago Region. I moved from the field to the Census Bureau headquarters to assume the
14 position as Chief of the Field Division and subsequently Assistant Director of Field Operations,
15 Assistant Director for Decennial Census Operations, then Associate Director for the Decennial
16 Census.

17 7. From 2012–2016, I represented the Field Directorate on the team that developed
18 and wrote the Operations plan for the 2020 Decennial Census.

19 8. I have in-depth firsthand knowledge about the planning, management, and
20 execution of Census Bureau field operations and effective mission-oriented leadership. I serve as
21 the Chairman of the Census Crisis Management Team; I served as a member of the 2020 Census
22 Design Executive Guidance Group; I am a member of the Census Data Quality Executive
23 Guidance Group; and I chair the 2020 Census Operations Planning Group. Additionally, I
24 represent the Decennial Census Program in our engagement with two of the three committees that
25 advise the Census Bureau: the Census Scientific Advisory Committee and the National Advisory
26 Committee.

III. A Complex Design and Budget for the 2020 Census

9. The Census Bureau goes to extraordinary lengths to count everyone living in the country once, only once, and in the right place, including those in hard-to-count populations. This is the core mandate of the Census Bureau, and has been the most significant factor informing every decision made in designing, planning, testing, and executing the decennial Census.

10. The Census Bureau's mandate in conducting the decennial census is to count everyone living in the United States, including the 50 states, the District of Columbia, and the territories of Puerto Rico, American Samoa, Commonwealth of the Northern Mariana Islands, Guam, and U.S. Virgin Islands. To that end, we expend significant funds, efforts, and resources in capturing an accurate enumeration of the population, including those who are hard to count. In particular, the 2020 Census operational design considers population groups that have historically been hard to count, as well as population groups that may emerge as hard to count.

11. The planning, research, design, development, and execution of a decennial census is a massive undertaking. The 2020 decennial census consists of 35 operations utilizing 52 separate systems. Monitoring the status and progress of the 2020 Census—the operations and systems—is managed in large part using a master schedule, which has over 27,000 separate lines of census activities. Thousands of staff at Census Bureau headquarters and across the country support the development and execution of the 2020 census operational design, systems, and procedures. In addition, the 2020 Census requires the hiring and management of hundreds of thousands of field staff across the country to manage operations and collect data in support of the decennial census.

12. The 2020 Census operational design is tailored to enumerate all persons, including hard-to-count populations. Almost every major operation in the 2020 Census contains components designed to reach hard-to-count populations. This includes: census outreach, census content and forms design, finding addresses for enumeration, field infrastructure, multiple modes for self-response, Non-Response Follow-Up (NRFU) operations that enumerate households that did not self-respond to the census, and other operations designed specifically for the enumeration of population groups that have been historically hard to count. The best explanation of the many integrated operations designed to reach these populations is set forth in Appendix B to Version 4.0

of the 2020 Census Operation Plan, available at <https://www.census.gov/programs-surveys/decennial-census/2020-census/planning-management/planning-docs/operational-plan.html>. Examples include:

- Verifying address lists using address data provided by community organizations, satellite technology, and in-person address listers checking addresses in communities nationwide;
- In-person enumeration using paper questionnaires in areas such as Remote Alaska;
- Hand-delivering 2020 Census materials to areas impacted by natural disasters, such as those impacted by Hurricane Michael in Florida;
- Conducting a special operation to count persons in “Group Quarters.” Group Quarters include places such as college or university student housing, nursing homes, and corrections facilities;
- Working with local partners to identify locations, like shelters and soup kitchens, to best count people experiencing homelessness; and
- Creating culturally relevant advertisements targeting hard-to-count communities.

13. The Census Bureau obtained approval under the Paperwork Reduction Act from the Office of Management and Budget for the data collections involved in the 2020 Census. The Operational Plan is a project management document and, as in prior censuses, we did not obtain clearance for it. We presented information about our plans as we developed them in quarterly public Project Management Reviews, and we obtained input on our plans from both our Census Scientific Advisory Committee and National Advisory Committee. We consulted with other agencies throughout the decade about data security, postal delivery, acquisition of records, and the like, though we did not ask other agencies to review or approve our project management plans.

14. We allocate vast resources to ensure as complete and accurate a count as possible. Research and testing, in addition to the Census Bureau’s collective knowledge and experiences, has resulted in an effective approach to reach all population groups.

15. The complexity and inter-related nature of census operations is echoed in the budget for the 2020 Census. The overall budget estimate for the 2020 Census—covering fiscal

years 2012 to 2023—is \$15.6 billion. This represents enough funding to successfully complete the 2020 Census in virtually all possible scenarios, including the current challenging circumstances. In fact, the Government Accountability Office (GAO) recently reviewed this budget estimate¹ and determined, as of January 2020, that the estimate substantially or fully met GAO’s standards and best practices for a reliable cost estimate in terms of credibility, accuracy, completeness, and documentation quality. It is rare for civilian agencies to be so designated, and we are proud that the Census Bureau has achieved this status.

16. As of this writing, the Census Bureau has been appropriated in aggregate just under \$14 billion to use for the 2020 Census, covering fiscal years 2012 through 2020. This is \$4.4 billion greater in appropriated dollars than the \$9.6 billion actually expended from fiscal years 2002 to 2010 for the 2010 Census.

17. Combined, prior to the COVID-19 pandemic operational adjustments, there remain just over \$2 billion in contingency funds that have been appropriated, but which we have not needed to use. With only minimal exceptions, Congress appropriated these funds to allow us to flexibly and quickly respond to any and all risks to the 2020 Census that might be realized and have an impact on the operations.

18. That is exactly what the Census Bureau has done in these challenging times. We have always planned to exhaust any resources necessary to fulfill the Census Bureau’s mission in counting everyone living in the United States once, only once, and in the right place. In all scenarios, the focus of our resources includes the hard-to-count. We have designed and implemented the 2020 Census to enumerate the most willing and able to respond in our most efficient and cost effective manner, thereby freeing the majority of our resources to reach hard-to-count communities using a bevy of in-person techniques specifically tailored to reach them.

IV. Census Step 1: Locating Every Household in the United States

19. The first operational step in conducting the 2020 Census was to create a Master Address File (MAF) that represents the universe of addresses and locations to be counted in the

¹ This is known as the 2020 Census Life Cycle Cost Estimate (LCCE) Version 2.0. An executive summary of that estimate is publicly available at https://www2.census.gov/programs-surveys/decennial/2020/program-management/planning-docs/life-cycle-cost-estimate_v2.pdf.

2020 Census. This operation constitutes a significant part of the 2020 Census, and our plans to enumerate every resident once, only once, and in the right place.

20. A national repository of geographic data—including addresses, address point locations, streets, boundaries, and imagery—is stored within the Census Bureau’s Master Address File/Topologically Integrated Geographic Encoding and Referencing (MAF/TIGER) System. The MAF/TIGER System provides the foundation for the Census Bureau’s data collection, tabulation, and dissemination activities. It is used to generate the universe of addresses that will be included in a decennial census. Those addresses are then invited to respond, typically through an invitation in the mail. The MAF/TIGER System is used to control responses as they are returned to the Census Bureau and to generate a list of nonresponding addresses that will be visited in person. Finally, the MAF/TIGER System is used to ensure that each person is tabulated to the correct geographic location as the final 2020 Census population and housing counts are prepared.

21. For all of these reasons, the Census Bureau implemented a continuous process for address list development in preparation for the 2020 Census. There are two primary components to address list development—in-office development and in-field development. In-office development involves the regular, on-going acquisition and processing of address information from authoritative sources, such as the U.S. Postal Service (responsible for delivering mail to addresses on a daily basis), and tribal, state, and local governments (responsible for assignment of addresses to housing units), while in-field address list development involves individuals traversing a specified geographic area and validating or updating the address list based on their observations and, if possible, interaction with residents of the housing units visited.

22. Between 2013 and 2019, the Census Bureau accepted nearly 107 million address records from government partners. Over 99.5 percent of those records matched to addresses already contained in the MAF, many of which were obtained from the U.S. Postal Services’ Delivery Sequence File (DSF). The remaining 0.5 percent of address records from partner governments represented new addresses and were used to update the MAF. In addition, partners submitted over 75 million address points that were either new or enhanced existing address point

1 locations in TIGER. Over 257,000 miles of roads were added to TIGER using data submitted by
2 partners.

3 23. For the third decade, as mandated by the Census Address List Improvement Act of
4 1994, the Census Bureau implemented the Local Update of Census Addresses (LUCA) Program
5 to provide tribal, state, and local governments an opportunity to review and update the Census
6 Bureau's address list for their respective jurisdictions. In 2018, participants from over 8,300
7 entities provided 22 million addresses, of which 17.8 million (81 percent) matched to addresses
8 already in the MAF. The Census Bureau added 3.4 million new addresses to the MAF, nationwide,
9 as a result of LUCA.

10 24. Between September 2015 and June 2017, the Census Bureau conducted a 100
11 percent in-office review of every census block in the nation (11,155,486 blocks), using two
12 different vintages of imagery (one from 2009, which was contemporary with the timing of address
13 list development and Address Canvassing for the 2010 Census, and one concurrent with the day
14 on which in-office review occurred) and housing unit counts from the MAF. The 2009-vintage
15 imagery was acquired from a variety of sources, including the National Agricultural Imagery
16 Program as well as publicly available imagery from state and local governments. Current imagery
17 was acquired through the National Geospatial Intelligence Agency's Enhanced View Program,
18 through which federal agencies can access imagery of sufficiently high quality and resolution to
19 detect individual housing units and other structures, driveways, roads, and other features on the
20 landscape.

21 25. During the in-office review, clerical staff had access to publicly available street-
22 level images through Google Street View and Bing StreetSide, which provided the ability to see
23 the fronts of structures, as if standing on the sidewalk. The technicians categorized blocks as
24 passive, active, or on-hold. Passive blocks represented stability, meaning the technician verified
25 the currency and accuracy of housing data in the office. Active blocks represented evidence of
26 change and/or coverage issues in the MAF. On-hold blocks represented a lack of clear imagery.
27 In these latter two instances, In-Field Address Canvassing was required. At the end of the initial
28

1 review in June 2017, 71 percent of blocks were classified as passive, suggesting a need for in-field
2 review of only 29 percent of blocks.

3 26. However, since the 2020 Census was still several years away when In-Office
4 Address Canvassing completed its initial review of the nation, the Census Bureau continued the
5 in-office review to ensure the MAF was keeping up with changes on the ground. The Census
6 Bureau used information from the U.S. Postal Services' DSF and partner governments to identify
7 areas experiencing recent change and triggered these areas for re-review. Between July 2017 and
8 March 2019, the additional review resulted in the categorization of nearly 87.9 percent of the 11.1
9 million census blocks as passive, indicating a need for in-field review of only 12.1 percent of
10 census blocks.

11 27. In-Field Address Canvassing occurred between August 2019 and October 2019.
12 Of the 50,038,437 addresses in the universe, fieldwork validated 44,129,419 addresses (88.2
13 percent). The remainder were removed from the universe as deletes, duplicates, or non-residential
14 addresses. There were 2,685,190 new addresses identified during fieldwork, of which 1,553,275
15 matched addresses already in the MAF as a result of contemporaneous in-office update processes.
16 In other words, even the hardest to count areas that required fieldwork to verify the addresses,
17 resulted in only a small percentage of additions to the existing MAF.

18 28. The design for address list development in the decade leading up to the 2020 Census
19 was the most comprehensive in history. Extensive partnerships with tribal, federal, state, and local
20 governments provided multiple opportunities to validate and update the MAF using the most
21 authoritative sources available. This process of continual assessment and update using partner-
22 provided data created a strong foundation on which to implement the use of satellite imagery to
23 validate existing addresses or detect change during In-Office Address Canvassing. This suite of
24 in-office methods allowed the Census Bureau to focus In-Field Address Canvassing resources in
25 the hardest to validate census blocks.

26 29. The MAF/TIGER System created the foundation for the 2020 Census. The Census
27 Bureau believes that the Census Bureau's MAF/TIGER System is the most complete and accurate
28 in history.

V. Census Step 2: Encouraging Self-response Throughout the 2020 Census

30. In order to encourage everyone in the United States to self-respond, the Census Bureau designed, tested, and implemented and Integrated Communications Program, the IPC. The two major components of this program are the ICC, the Integrated Communications Contract, and the IPP, the Integrated Partnership Program.

A. Advertising and Media

31. The ICC is the major contract that supports all components of the communications campaign for the 2020 Census. For the 2020 Census, the push to educate people and motivate response to the 2020 Census represented the largest advertising campaign in U.S. government history.

32. The budget for the 2020 Integrated Communications Contract is currently funded at a higher level than in the 2010 Census, adjusted for both inflation and population growth. The cost of the 2010 Census Integrated Communications Contract, in 2020 constant dollars, would be \$456 million, while the Census Bureau currently plans to spend approximately \$695 million on the 2020 Census Integrated Communications Contract. The \$695 million spent on the communications program will mean an 18% increase in per-person spending over the 2010 amount.

33. To run the ICC in connection with the Census Bureau, a contract was awarded to VMLY&R, a major legacy-advertising firm with over 80 years of experience. Known as Team Y&R, or TYR, by the Census Bureau, the contracting team includes 13 subcontractors. TYR includes firms with expertise in reaching and working with the major audiences that will receive advertising through the media outlets directed toward their population groups, including the Black/African American, Hispanic/Latino, Asian, American Indian and Alaska Native, and Native Hawaiian and Other Pacific Islander populations. By relying on firms with these individual skill sets, the Census Bureau was able to better tailor the media and messaging toward individual groups and gauge the response before going live with the advertising. It also allowed for more creative risk-taking, and less of a one-size-fits-all approach.

34. Every part of the 2020 Census communications program was grounded in research. Based on the commitment to being a data driven campaign, beginning in 2018, we extensively researched how people perceived the census and what would motivate them to complete it. Models were developed to predict areas and audiences of low response across the country. These models were then translated into “low response scores” that help the Census Bureau anticipate respondent behavior so that messaging, media, and other communications activities could be deployed to maximize impact.

35. As a result of that research, we mounted a media campaign with stories in news media across the country in print, social, and digital media. The campaign was tested in over 120 focus groups across the country, and driven by efforts to reach historically undercounted audiences. More than 1,000 advertisements, in English and 43 other languages, were developed to communicate the importance of responding to the 2020 Census. This compares to roughly 400 separate creative pieces created in 2010. A sample of these creative pieces can be seen on the Census Bureau’s YouTube channel website.

36. On March 29, 2019, the Census Bureau launched 2020census.gov—a key information hub about the census, how to complete it, and how it will affect communities across the country. Three days later, on April 1, 2019, we held a press conference to unveil the campaign platform: “Shape Your Future. START HERE.” On January 14, 2020, we unveiled highlights of the public education and outreach campaign. That same day, we began airing ads to reach 99 percent of the nation’s 140 million households, including historically undercounted audiences and those that are considered hard to reach.

37. The massive multimedia campaign sought to engage stakeholders and partners, support recruitment efforts and the Statistics in Schools program, and communicate the importance of the census through paid advertising, public relations, social media content, and the new web site. This was the first census where we made a significant investment in digital advertising, and spending time and resources targeting online sites including Facebook, Instagram, paid search engines, display ads, and programmatic advertising.

38. The push to have a greater digital presence allowed the Census Bureau to reach a mobile audience, tailor messages, micro-target, and shift campaign ads and messages as needed. Online media, particularly search engines and social networking sites, made up a significant portion of digital connections. Nearly every person living in the United States was reached an average of 40 times throughout the campaign, from television, radio, newspaper and online ads, as well as outdoor locations such as billboards and bus stops.

39. The Census Bureau adapted its outreach strategies in response to delayed census operations due to COVID-19, increasing advertising and outreach to specific areas of the country with lower response rates. We quickly adjusted our messaging, pivoting from our original campaign to encourage people to respond online from the safety of their own homes. The use of micro-targeting allowed the Census Bureau to tailor its messaging, including directing appropriate messages to hard-to-reach communities and those who distrust government, both of which have been traditionally undercounted. This targeting continues through NRFU as we encourage the public to cooperate with enumerators. This targeting has allowed us to make each dollar spent on the advertising campaign more effective than in any previous census.

B. Partnerships with Community Organizations

40. The second major element of the Integrated Communications Program is partnerships. There are two prongs to the Partnership Program, the National Partnership Program that works from Census Bureau headquarters mobilizing national organizations, and the Community Partnership and Engagement Program, that works through the regions at the local level to reach organizations that directly touch their communities. The National Partnership Program and Community Partnership and Engagement Program are more integrated than ever before, and numbers involved for both programs significantly exceed the totals reached in prior censuses.

41. Census partners include national organizations like the National Urban League, the Mexican American Legal Defense Fund, the National Association of Latino Elected Officials (NALEO), the National Association for the Advancement of Colored People (NAACP), and the U.S. Chambers of Commerce. Major corporations also become census partners. At the local level,

partners can be churches, synagogues and mosques, legal aid clinics, grocery stores, universities, colleges, and schools.

42. Partners are the trusted voices in their communities; they have a profound impact on those who listen when they say the census is important and safe. We depend on our partners to seal the deal with communities that may be fearful or distrustful of the government. Even with all the Census Bureau's innovation and improvements to the self-response system, we have learned—and confirmed through research—that when communities and leaders recognize the importance of participating in the census, this message is better conveyed to households within those communities. The best, most trusted information comes from a person of trust.

VI. Census Step 3: Self-Response

43. The design of the 2020 Census depends on self-response from the American public. In an effort to ensure the most efficient process to enumerate households, the Census Bureau assigns every block in the United States to one specific type of enumeration area (TEA). The TEA reflects the methodology used to enumerate the households within the block. There are two TEAs where self-response is the primary enumeration methodology: TEA 1 (Self-Response) and TEA 6 (Update Leave).

44. TEA 1 uses a stratified self-response contact strategy to inform and invite the public to respond to the census, and to remind nonresponding housing units to respond. Invitations, reminders, and questionnaires will be delivered on a flow basis unless a household responds. These mailings are divided into two panels, Internet First and Internet Choice. Internet First emphasizes online response as the primary self-response option. Mailings to the Internet First panel begin with an invitation letter that alerts the housing unit to the beginning of the 2020 Census and provides the Census ID,² the URL for the online questionnaire, and information for responding by phone.

45. Internet Choice is targeted to areas of the nation that we believe are least likely to respond online. Historical response rates from other Census Bureau surveys, internet access and

² A Census ID is a unique identifier assigned to each address in a decennial census; the Census ID is used to track whether an address has self-responded or to track the address through nonresponse data collection and, ultimately through response processing and data tabulation.

1 penetration, and demographics are used to determine those areas least likely to respond online.
2 Mailings to the Internet Choice panel begin with an invitation letter that alerts the housing unit to
3 the beginning of the 2020 Census and provides the Census ID and the URL for the online
4 questionnaire, information for responding by phone, and also a paper questionnaire. Housing units
5 in Internet Choice areas have the *choice* to respond on paper beginning with the initial contact.
6 All nonresponding housing units, regardless of panel, receive a paper questionnaire after the initial
7 mailing and two separate reminder mailings.

8 46. Update Leave (TEA 6) is conducted in areas where the majority of the housing units
9 do not have mail delivery to the physical location of the housing unit, or the mail delivery
10 information for the housing unit cannot be verified. The purpose of Update Leave is to update the
11 address list and feature data, and to leave a 2020 Census Internet Choice package at every housing
12 unit. The major difference from TEA 1 is that a Census Bureau employee, rather than a postal
13 carrier, delivers the 2020 Census invitation to respond, along with a paper questionnaire. Housing
14 units also have the option to respond online or by phone.

15 47. Self-response began in March 2020 and will continue until the end of data
16 collection. The total self-response period for the 2020 Census will be longer than the 2010 self-
17 response period.

18 **VII. Census Step 4: Nonresponse Followup (NRFU)**

19 48. NRFU is the field operation designed to complete enumeration of nonresponding
20 housing unit addresses. The primary purpose of NRFU is to conduct in-person contact attempts at
21 each and every housing unit that did not self-respond to the decennial census questionnaire.

22 49. After giving everyone an opportunity to self-respond to the census, census field
23 staff (known as enumerators), attempt to contact nonresponding addresses to determine whether
24 each address is vacant, occupied, or does not exist, and when occupied, to collect census response
25 data. Multiple contact attempts to nonresponding addresses may be needed to determine the
26 housing unit status and to collect decennial census response data.

27 50. The 2020 Census NRFU operation is similar to the 2010 Census NRFU operation,
28 but improved. In both the 2010 Census and the 2020 Census, cases in the NRFU workload are

1 subject to six contact attempts. In both the 2010 and 2020 NRFU, the first contact attempt is
2 primarily an in-person attempt. In the 2010 Census, these six contact attempts could be conducted
3 as three in-person attempts and three attempts by telephone. By comparison, each contact attempt
4 in the 2020 Census NRFU will be either a telephone or an in-person contact attempt (however the
5 vast majority of attempts will be in-person).

6 51. In both the 2010 Census and 2020 Census NRFU, if upon the first contact attempt
7 an enumerator determines an address is occupied and the enumerator is able to obtain a response
8 for the housing unit, then the housing unit has been counted, and no follow-up is needed.

9 52. If upon the first contact attempt, the enumerator is not able to obtain a response, the
10 enumerator is trained to assess whether the location is vacant or unoccupied. Enumerators will
11 use clues such as empty buildings with no visible furnishings, or vacant lots, to identify an address
12 as vacant or non-existent.

13 53. In both the 2010 and 2020 Census, a single determination of a vacant or nonexistent
14 status was not sufficient to remove that address from the NRFU workload; a second confirmation
15 is needed. If a knowledgeable person can confirm the enumerator's assessment, the address will
16 be considered vacant or non-existent and no additional contact attempts are needed. A
17 knowledgeable person is someone who knows about the address as it existed on census day or
18 about the persons living at an address on census day. A knowledgeable person could be someone
19 such as a neighbor, a realtor, a rental agent, or a building manager. This knowledgeable person is
20 known as a proxy respondent.

21 54. If a knowledgeable person cannot be found to confirm the status of vacant or non-
22 existent, use of administrative records may provide confirmation of the enumerator's assessment.
23 The Census Bureau does not rely on a single administrative records source to determine an address
24 is vacant or non-existent. Rather, multiple sources are necessary to provide the confidence and
25 corroboration before administrative records are considered for use. When used in combination
26 with an enumerator's assessment of vacant or non-existent, corroborated administrative records
27 provide the second confirmation that a nonresponding address is vacant or non-existent.

55. If, upon the first in-person contact attempt, the enumerator believes the address is occupied, but no knowledgeable person is available to complete the enumeration, the Census Bureau will use consistent and high-quality administrative records from trusted sources as the response for the household and no further contact will be attempted. We consider administrative records to be of high quality if they are corroborated with multiple sources. Examples of high-quality administrative records include Internal Revenue Service Individual Tax Returns, Internal Revenue Service Information Returns, Center for Medicare and Medicaid Statistics Enrollment Database, Social Security Number Identification File, and 2010 Census data.

56. Regardless of whether administrative records are used as a confirmation of vacancy or non-existent status or for the purposes of enumerating an occupied housing unit, the Census Bureau will, as a final backstop, send a final mailing encouraging occupants, should there be any, to self-respond to the 2020 Census.

57. The vast majority of nonresponding addresses in the NRFU workload will require the full battery of in-person contact attempts to determine the status of the nonresponding address (vacant, occupied, does not exist) and to collect 2020 Census response data. The full battery of in-person contact attempts also includes the ability to collect information about persons living in a nonresponding housing unit from a proxy respondent. Nonresponding units become eligible for a proxy response after a pre-determined number of unsuccessful attempts to find residents of a nonresponding address.

58. The operational design for NRFU evolved over the course of the decade. Use of administrative records, field management structures, systems, procedures, data collection tools and techniques were proven in tests occurring in 2013, 2014, 2015, 2016, and 2018.

VIII. Census Step 5: Quality Control

59. The Census Bureau is committed to a quality NRFU operation and has in place several programs to monitor and promote quality, such as the NRFU Reinterview Program, the Decennial Field Quality Monitoring Operation, and the Coverage Improvement Operation.

60. The NRFU Reinterview Program involves contacting a small number of households to conduct another interview—to help us ensure that enumerators are conducting their jobs

1 correctly and are not falsifying responses. We have streamlined this operation, using information
2 collected from the mobile devices used by enumerators. The data from these mobile devices tell
3 us where the enumerators were physically located while they were conducting the interviews, how
4 long they spent on each question in the interview, time of day of the interview, and other detail
5 data about the interview process. Having this information—which is new for the 2020 Census—
6 provides management with information on how the census takers are doing their jobs, and allows
7 us to select reinterview cases in a targeted fashion.

8 61. A second quality check program, new for the 2020 Census, is the Decennial Field
9 Quality Monitoring operation. This operation monitors overall adherence to field procedures in
10 order to identify unusual patterns. We used this near real-time data analysis successfully during
11 the Address Canvassing operation in 2019, and it is currently active in the NRFU operation. The
12 goal of the program is to identify and investigate potential quality issues. In this program we
13 examine data from individual field representatives and larger scale data, scanning for the
14 possibility of both individual and systemic data quality problems. The program monitors outlier
15 metrics, and produces reports that we analyze on a daily basis. Management staff use these reports
16 to investigate suspicious activities and follow up as needed.

17 62. Another quality check operation, the Coverage Improvement Operation, seeks to
18 resolve erroneous enumerations (people who were counted in the wrong place or counted more
19 than once) and omissions (people who were missed) from all housing unit data. Coverage
20 Improvement will attempt to resolve potential coverages issues identified in responses from
21 the Internet Self-Response, Census Questionnaire Assistance, and NRFU operations, as well as
22 from the paper questionnaires.

23 63. The Census Bureau believes that these quality programs (Reinterview, Decennial
24 Field Quality Monitoring, and Coverage Improvement), taken together, provide a robust quality
25 check for our data collection operations. We believe that our quality program remains an effective
26 deterrent to poor performance, and an appropriate method to identify enumerators who fail to
27 follow procedures. None of these programs, to date, reveals a pattern of substandard data
28 collection.

64. The Census Bureau has also formed a Data Quality Executive Guidance Group that brings together the Census Bureau's experts in the fields of census operations, statistical methodology, acquisition and utilization of administrative records, and in the social, economic and housing subject areas. The group's mission is to provide direction and approvals about quality assessments of changes to the operational plans and of the 2020 Census data during and post data collection. We plan to release Demographic Analysis estimates of the population in December, prior to the release of the apportionment counts, as previously planned.

65. Finally, as noted by the Director in his August 3, 2020 statement, the Census Bureau intends to meet a similar level of household responses as in prior censuses, meaning that we will resolve 99% of the cases in each state. In short, the Census Bureau has robust programs in place to monitor data quality and has no indication that its NRFU operation is collecting "substandard" data.

IX. Census Step 6: Post-data Collection Processing

66. The next major step in the census, after the completion of data collection operations, is post processing. Post processing refers to the Census Bureau's procedures to summarize the individual and household data that we collect into usable, high quality tabulated data products. Our post processing procedures and systems are meticulously designed, tested and proven to achieve standardized, thoroughly vetted, high quality data products that we can stand behind.

67. Post data collection processing is a particularly complex operation, and the steps of the operation must generally be performed consecutively. It is not possible, e.g., to establish the final collection geography for the nation prior to processing housing units and group quarters that are added or corrected during NRFU. Similarly, it is not possible to unduplicate responses prior to processing all non-ID responses. In this sense, the post data collection activities are like building a house – one cannot apply dry wall before erecting the walls, any more than one could lay floor tile before the floor is constructed. There is an order of steps that must be maintained.

68. As part of developing the Replan Schedule, we looked at the possibility of starting the post data collection processing activities on a flow basis and reaffirmed that there is no opportunity to begin the post data collection processing until data collection operations close

everywhere. For example, we cannot begin processing in one region of the country while another region is still collecting data. This is true because the first post processing step is geographic processing, which cannot begin until the entire universe is determined. Geographic processing is key because we must tabulate census results at the block level and then build to higher levels of geography such as block groups, tracts, counties, and states.

69. The information below provides additional detail about the post data collection activities under the Replan Schedule.

A. Incorporate address updates from the field data collection operations into
MAF/TIGER

Original Dates: February 10 – August 10, 2020

Replan Dates: February 6– September 24, 2020

During the data collection operations, the census field staff can update address and physical location information and add addresses. These updates are incorporated into our address and geo-spatial MAF/TIGER databases. Once updated, each address must be associated to the correct state, county, tract, block group and block. Since it is critical to associate each address to the correct geography, we verify that the address and geo-spatial updates are incorporated correctly.

B. Produce the Final Collection Geography MAF/TIGER Benchmark

Original Dates: August 14 – September 1, 2020

Replan Dates: September 5 – 25, 2020

In preparation for the producing the final collection geography data files needed for producing the apportionment counts and redistricting data products, we create a benchmark of MAF/TIGER, which is a snapshot of the databases.

C. Produce the Final Collection Address Data Products from MAF/TIGER

Original Dates: September 2 – 14, 2020

Replan Dates: September 26 – Oct 14, 2020

1 Once the benchmark has been created, the final collection geographic data files
2 are produced and verified.

3 D. Produce and review the Decennial Response File 1 (DRF1)

4 Original Dates: September 15 – October 14, 2020

5 Replan Dates: October 14– November 8, 2020

6 The verified final collection geography data are integrated with the response data.
7 Integration of these data is also verified to ensure accuracy. The next set of
8 activities involves the standardization of the collected information.

- 9
- 10 • First we determine the final classification of each address as either a housing
11 units or a group quarters facility. Addresses can change from a housing unit
12 to group quarters and vice versa. Initial status is set at the start of the data
13 collection operations as either a housing unit or group quarters. During the
14 enumeration operations, we collect information that informs us on the
15 classification. For a small number of addresses the classification may change,
16 for example a housing unit may have been turned into a small group home.
17 Based on the information collected we determine the status of every address
18 as either a housing unit of group quarters.
 - 19 • Next, we identify each unique person on the housing unit returns.
 - 20 • As part of NRFU operation, we conduct a reinterview of a sample of cases to
21 ensure quality. We incorporate the results of the reinterview.
 - 22 • As part of the Internet self-response option and telephone operation,
23 respondents can provide their data without their Census Identification Number
24 (ID). These cases are assigned an ID which associates them to the final
25 collection geography.
 - 26 • Some group quarters will provide the information electronically. These files
27 can contain duplicate records, so we need to remove the duplicates.
 - 28 • We also determine the population count for all group quarters.

- We collect data in many ways, for example on-line, over the phone, on a paper questionnaire, electronic administrative files, and in person using an electronic questionnaire. As a result, we need to standardize the responses across the modes of collection.
- Finally, for the operations that collect data on a paper questionnaire, some housing units have more people than can fit on one paper questionnaire. The census field staff will use multiple paper questionnaires to enumerate the house. These continuation forms are electronically linked to form one electronic form.

E. Produce and review the Decennial Response File 2 (DRF2)

Original Dates: October 14 – November 4, 2020

Replan Dates: November 9 – 30, 2020

Once the previous step has been verified, we incorporate the results from the Self-Response Quality Assurance operation. As part of the group quarters operations, we enumerate domestic violence shelters. Their locations and data are high sensitive and are handled with special procedures both in the field and in processing. Their data are incorporated at this point in the process. Finally, for a small number of addresses we receive multiple returns, for example where one person in a house completes the form on-line, and other completes the paper questionnaire. For these cases, we select a form that will be used as the enumeration of record.

F. Produce and review the Census Unedited File (CUF)

Original Dates: November 4 – 30, 2020

Replan Dates: December 1 – 14, 2020

Once the previous step has been verified, we incorporate administrative records data as the response data for housing units where we do not have an enumeration and have high quality administrative records data. Next we determine the status

for every housing unit as occupied, vacant or non-existent. Non-existent units are removed from future processing. For every occupied housing unit, the population count is determined. For each person with write-in responses to the race and Hispanic origin questions, we merge in the information from automated and clerical coding operations. The coding operations assign a numerical value to the write-in responses. At this point in the post-data collection activities, for every housing unit and group quarter their location (state, county, tract, block group and block) is assigned, their status (occupied, vacant or non-existent) is determined, and in occupied addresses the number of persons is known. In addition, at the person level the demographic information (relationship, age, date of birth, sex, race and Hispanic origin along with write-in code values) and at the housing unit level housing information (tenure) is determined. For the majority of these items, the respondent provided the information. However, for a small number of people and addresses the information may be missing or inconsistent with other provided information, for example the Person 1's spouse is five years old. The result of these processes is a file that contains records for every housing unit and group quarters along with person records for the people associated with the addresses. Note that some of the demographic information and response to the tenure question may be missing.

G. Produce, review and release the Apportionment Counts

Original Dates: December 1 – 28, 2020

Replan Dates: Dec 15- 31, 2020

Once the CUF has been verified, the process goes down two paths. The first path is to determine the apportionment counts. Since every housing unit and group quarters has a population count and linked to a state, we can tabulation the state level population counts. In addition, we merge in the count of the Federally Affiliated Overseas population and the results of the Enumeration of Transitory Locations for each state. To ensure accuracy in the apportionment numbers, the

state counts including the overseas population and apportionment numbers are verified by multiple independent ways. The results of the independent verifications are compared and reconciled, if necessary.

X. Census Step 0: Research and Testing of the 2020 Census Design

70. The operational design of the 2020 Census, discussed above, has been subjected to repeated and rigorous testing. Given the immense effort required to conduct the census, the importance of the results, and the decade of work by thousands of people that goes into planning and conducting the decennial census, the Census Bureau expends a significant amount of effort to evaluate its planning and design to ensure that its operations will be effective in coming as close as possible to a complete count of everyone living in the United States. Design and testing of the 2020 Census was an iterative process: after each test, we revised our plans and assumptions as necessary.

71. Below are eight significant tests conducted prior to the 2020 Census. Seven of the tests listed below directly contributed to the support of the NRFU operational design or the infrastructure needed to support it. The eighth test pertained to In-Field Address Canvassing.

A. 2013 Census Test. The 2013 Census Test explored methods for using administrative records and third-party data to reduce the NRFU workload.

Key objectives of the 2013 Census Test included:

- i. Evaluate the use of administrative records and third-party data to identify vacant housing units and remove them from the NRFU workload;
- ii. Evaluate the use of administrative records and third-party data to enumerate nonresponding occupied housing units to reduce the NRFU workload;
- iii. Test an adaptive design approach for cases not enumerated with administrative records and third-party data; and
- iv. Test methods for reducing the number of enumeration contact attempts as compared with the 2010 Census.

1 **B. 2014 Census Test.** The 2014 Census Test built upon the results from the 2013
2 Census Test specific to administrative records and third-party data usage to
3 reduce the NRFU workload. Key objectives of the 2014 Census Test
4 included:

- 5 i. Testing various self-response modes, including the Internet,
6 telephone, and paper, and response without a preassigned census
7 identifier;
- 8 ii. Testing the use of mobile devices for NRFU enumeration in the field;
- 9 iii. Continuing to evaluate the use of administrative records and third-
10 party data to remove cases (vacant and nonresponding occupied
11 housing units) from the NRFU workload;
- 12 iv. Testing the effectiveness of applying adaptive design methodologies
13 in managing the way field enumerators are assigned their work; and
- 14 v. Examining reactions to the alternate contacts, response options,
15 administrative record use, and privacy or confidentiality concerns
16 (including how the Census Bureau might address these concerns
17 through micro- or macro-messaging) through focus groups.

18 **C. 2014 Human-in-the-Loop Simulation Experiment (SIMEX).** Key findings
19 included:

- 20 i. Determination that the field management structure could be
21 streamlined and the supervisor-to-enumerator ratios increased;
- 22 ii. Messaging and alerts within the operational control system provided
23 real-time and consistent communication; and
- 24 iii. Smartphones were usable by all people—even those with little
25 technology experience were able to adjust and adapt.

26 **D. 2015 Optimizing Self-Response Test.** The objectives of this test included:

- 27 i. Determining use of digital and target advertising, promotion, and
28 outreach to engage and motivate respondents;

- ii. Offering an opportunity to respond without a Census ID (Non-ID Processing) and determine operational feasibility and potential workloads around real-time Non-ID Processing; and
- iii. Determining self-response and Internet response rates.

E. **2015 Census Test.** The 2015 Census Test explored reengineering of the roles, responsibilities, and infrastructure for conducting field data collection. IT also tested the feasibility of fully utilizing the advantages of planned automation and available real-time data to transform the efficiency and effectiveness of data collection operations. The test continued to explore the use of administrative records and third-party data to reduce the NRFU workload. Key objectives included:

- i. Continue testing of fully utilized field operations management system that leverages planned automation and available real-time data, as well as data households have already provided to the government, to transform the efficiency and effectiveness of data collection operations;
- ii. Begin examining how regional offices can remotely manage local office operations in an automated environment, the extent to which enumerator and manager interactions can occur without daily face-to-face meetings, and revised field staffing ratios;
- iii. Reduce NRFU workload and increase productivity with the use of administrative records and third-party data, field reengineering, and adaptive design; and
- iv. Explore reactions to the NRFU contact methods, administrative records and third-party data use, and privacy or confidentiality concerns.

F. **2016 Census Test.** The 2016 Census Test tested different supervisor-to-enumerator staffing ratios and incremental improvements and updates to the

field data collection software that guided an enumerator through interviews. The 2016 Census Test also allowed the continued evaluation of the use of administrative records to reduce the NRFU workload. Key NRFU objectives included:

- i. Refining the reengineered field operations;
- ii. Refining the field management staffing structure;
- iii. Testing enhancements to the Operational Control System and field data collection application; and
- iv. Testing scalability of Internet and Non-ID Processing during self-response using enterprise solutions.

Objectives related to self-response included:

- i. Testing provision of language support to Limited English Proficient populations through partnerships and bilingual questionnaires;
- ii. Testing the ability to reach demographically diverse populations;
- iii. Testing deployment of non-English data collection instruments and contact strategies; and
- iv. Refining Real-Time Non-ID processing methods, including respondent validation.

G. 2018 End-to-End Census Test. The 2018 End-to-End Census Test focused on the system and operational integration needed to support the NRFU operation. Nearly all 2020 system solutions supporting the NRFU operation were deployed. The test also allowed continued evaluation of the NRFU contact strategy. The objectives of this test included:

- i. Testing and validating 2020 Census operations, procedures, systems, and field infrastructure together to ensure proper integration and conformance with functional and nonfunctional requirements.

H. Address Canvassing Test (conducted in the fall of 2016). The Address Canvassing Test examined the effectiveness of the In-Office Address

Canvassing through the results of the In-Field Address Canvassing. The objectives of the test included:

- i. Implementing all In-Office Address Canvassing processes;
- ii. Evaluating the effectiveness of online training for field staff;
- iii. Measuring the effectiveness of In-Office Address Canvassing through In-Field Address Canvassing; and
- iv. Integrating multiple information technology applications to create one seamless operational data collection, control, and management system.

XI. Current Status of 2020 Census Operations

72. As of September 2, 2020, over 96 million households, 65 percent of all households in the Nation, have self-responded to the 2020 Census. Combining the households that self-responded with those that field staff have enumerated under NRFU reveals that as of September 1, 2020 the Census Bureau has enumerated 84 percent of the nation's housing units.

73. The Census Bureau is now roughly 3 ½ weeks into the 7 ½ week schedule for conducting the NRFU operation. Under the Replan Schedule, NRFU is scheduled to last 7 ½ weeks, not 6 weeks as some of Plaintiffs' declarations state. As of September 1, 2020, we have completed roughly 60% of the NRFU workload. We were helped in achieving this result by the fact that we got a "head start" on data collection by beginning NRFU at select offices in July at a "soft launch." When we began NRFU in all areas on August 9 we had already enumerated over 3 million households. Additionally, over 80% of the households in 40 states have been enumerated

74. While the number of enumerators hired and deployed has not been at the level anticipated, current progress indicates that we will nonetheless be able to complete NRFU before September 30. We currently have over 235,000 enumerators actively deployed, and we are conducting continuous replacement training sessions to increase that number.

75. The productivity rate for our enumerators thus far is substantially above the planned rate. Our plans assumed a productivity rate of 1.55 cases/hour, and 19 hours/week average hours

1 worked, whereas as of September 1, 2020 we have experienced a productivity rate of
2 approximately 2.32 cases/hour, and 20.1 hours/week averaged work hours.

3 76. In sum, at our current rate we anticipate being able to conclude NRFU data
4 collection no later than September 30, 2020.

5 **XII. Replanning the Census – Multiple Times**

6 77. The Census Bureau's planning for the 2020 Census was, in my professional
7 opinion, excellent. Our plan was comprehensive and thoroughly tested. In March 2020, however,
8 it became clear that COVID-19 was a serious health issue, and we were forced to change our plans
9 around the time we began our self-response operation.

10 78. On March 18, 2020 the Census Bureau initially announced a two-week suspension
11 of field operations to protect the health and safety of our employees and the American public
12 because of the COVID-19 Pandemic. Self-response continued during this period through Internet,
13 telephone and paper questionnaires. On March 28, 2020 the Census Bureau announced an
14 additional two week suspension, until April 15, 2020.

15 79. At that time the career professional staff at the Census Bureau undertook the project
16 of replanning each of the field operations based on our best predictions of when we could safely
17 begin sending staff into the field to interact with the public. On April 13, 2020 staff finalized the
18 plan to adjust field operations, and I presented the plan to the Secretary of Commerce and
19 Department of Commerce management. The plan involved delaying our key high personal contact
20 operations by 90 days. Update Leave, which had started on March 15 and been stopped because
21 of COVID-19 on March 17, would resume pursuant to a new schedule beginning on June 13 and
22 concluding on July 9. In-person Group Quarters operations which had been scheduled from April
23 2 – June 5 would be rescheduled from July 1 – September 3, and our largest field operation, NRFU,
24 which was scheduled from May 13- July 31, would be moved to August 11- October 31. We
25 rescheduled self-response to conclude with the end of Field Operations so instead of ending on
26 July 31 as indicated in the original plan, it was extended to October 31. This schedule required
27 Congress to provide legislative relief from the statutory deadlines of December 31, 2020, for the
28 submission of the Apportionment counts to the President, and March 31, 2021, for the delivery of

1 redistricting data to the states. A request statutory relief from Congress was made for 120 days to
2 enable us to complete the field operations and post enumeration processing.

3 80. On April 13, 2020, the Secretary of Commerce and the Director jointly announced
4 the new Census Schedule and stated that they would seek statutory relief from Congress of 120
5 additional calendar days. This new schedule set a completion date for field data collection and
6 self-response of October 31, 2020. For clarity, I will refer to this as “the COVID Schedule.” The
7 COVID Schedule assumed Congressional action and called for the delivery of apportionment
8 counts to the President by April 30, 2021 (120 days after the statutory deadline) and redistricting
9 data files to the states no later than July 31, 2021.

10 81. Once it became apparent that Congress was not likely to grant the requested
11 statutory relief, in late July the career professional staff of the Census Bureau began to replan the
12 Census operations to enable Census to deliver the apportionment counts by the Statutory deadline
13 of December 31, 2020. On July 29, the Deputy Director informed us that the Secretary had directed
14 us, in light of the absence of an extension to the statutory deadline, to present a plan at our next
15 weekly meeting on Monday, August 3, 2020 to accelerate the remaining operations in order to
16 meet the statutory apportionment deadline. I gathered all the senior career Census Bureau
17 managers responsible for the 2020 Census at 8:00 a.m. on Thursday, July 30 and instructed them
18 to begin to formalize a plan to meet the statutory deadline. At that time I consulted with the
19 Associate Director of Communications and we directed that the COVID Schedule be removed
20 from our website while we replanned. We divided into various teams to brainstorm how we might
21 assemble the elements of this plan, and held a series of meetings from Thursday to Sunday. We
22 developed a proposed replan that I presented to the Secretary on Monday August 3.

23 82. In developing the proposed replan we considered a variety of options and evaluated
24 risk for each suggested time-saving measure. We evaluated the risks and quality implications of
25 each suggested time-saving measure and selected those that we believed presented the best
26 combination of changes to allow us to meet the statutory deadline without compromising quality
27 to an undue degree. The challenge was to shorten the field data collection operation by 30 days,
28 and to conclude the post processing operation in only 3 months, as opposed to 5 months in prior

1 schedules. We began with a review of the status of all field outreach operations, and assessed the
2 impacts of possible revisions on the Census Bureau's ability to complete those operations within
3 the compressed timeline. The six million housing units in the Update Leave Operation (which
4 provides Census invitations to housing units that do not receive regular US mail) had been
5 completed in early July, and we had received over two million self-responses and the remaining
6 housing units would be moved into the NRFU operation to be visited by enumerators for personal
7 interviewing. The Group Quarters enumeration operation which had begun on July 1st was on
8 track to be completed on schedule by September 3, 2020 and would not be negatively affected by
9 compressing the balance of the Field Schedule. The enumeration of persons staying in transitory
10 locations (Campgrounds, RV parks, marinas and hotels without a home elsewhere) was scheduled
11 to be conducted from September 3 – September 28. That operation could be conducted as planned
12 within the replan schedule timeline.

13 83. The COVID-19 pandemic had precluded the Census Bureau from sending staff to
14 conduct our Service Based Enumeration (SBE) operation. SBE is conducted at emergency and
15 transitional shelters, soup kitchens and regularly scheduled food vans and targeted non-sheltered
16 outdoor locations (TNSOL), and is designed to insure that people experiencing homelessness are
17 counted; it was originally scheduled to be conducted March 30-April 2. We had conducted an
18 extensive consultation in May and early June with a panel of 67 national service providers, federal
19 and state agencies to determine the best time frame to conduct this operation to best replicate the
20 weather, migratory behaviors and other factors affecting this population. The overwhelming
21 consensus of the stakeholders, and the input from Census experts, was that the best time to conduct
22 this operation would be mid-late September. Based on that stakeholder consultation we selected
23 September 22-24 to conduct the SBE and TNSOL operations with appointments made with service
24 providers in early September. A review of this operation indicated that we could conduct it in
25 the replan as currently scheduled without disruption.

26 84. We also reviewed NRFU, our largest and most critical operation. The Census
27 Bureau had conducted soft launches of all our major operations (during a soft launch a small
28 portion of the operation starts early to insure that all the planned and tested systems work as

designed under real field conditions with real respondents and actual newly hired temporary employees). The NRFU Soft Launch was planned with six offices that could be safely started based on COVID risk profiles (developed using CDC, HHS, State and Local health guidance), availability of staff, and provisioning of Personal Protective Equipment. The original plan was to begin the operation in one office from each of our six regions starting on July 16th (Cycle 1a) and to follow on July 23rd (Cycle 1b - one week later) with six additional offices picked from coastal areas that would be prone to Hurricane risk. As the plan developed we were unable to take offices from all of the areas in the original plan because of high COVID risk and state and local stay at home orders, however we were able to select 6 offices for each cycle and these offices commenced NRFU field operations without incident on the planned dates. In early to mid July, as the pandemic controls began to be lifted, and our concerns grew over lack of action on a waiver of the December 31, 2020 apportionment statutory deadline, we decided to expand NRFU operations to all offices that could meet the safety, health, and staffing requirements – to start those offices in advance of the initial planned start date of August 11, 2020. We deployed NRFU operations in 35 additional offices on July 30, 2020 and 39 additional offices on August 6, 2020. We then made the decision to pull forward all remaining offices from August 11 to August 9. All ACOs had begun NRFU operations by August 9 and we had enumerated over 7.4 million housing units before the Replan Schedule's official start date of August 11.

85. Concurrent with the early start of NRFU operations, we observed higher levels of overall staff productivity resulting from the efficiency of the Optimizer (a software program that both schedules work for our enumerators and then routes them in the most effective routing). The increased productivity that we observed during the soft launch period was a factor in our ability to design the replanned field operations to end by September 30, 2020. The bonus plan to increase hours also contributed to our ability to create a replan to meet this deadline. We presented the Replan Schedule to the Secretary on August 3, he accepted it, and the Director announced it that same afternoon. For clarity, I will refer to this schedule as “the Replan Schedule.”

86. The Replan Schedule intends to improve the speed of the NRFU operations without sacrificing completeness. Under the Replan Schedule, the Census Bureau has responded to the

1 shortened calendar period for NRFU operations by taking steps to increase the ability of its
2 employees in the field to work as efficiently as possible. This involves increased hours of work
3 per enumerator, spread across the total workforce, to get the same work hours as would have been
4 done under the original time frame. We incentivize this behavior by providing monetary bonuses
5 to enumerators in who maximize hours worked, and retention bonuses to those who continue on
6 staff for multiple successive weeks. Successful completion of NRFU is dependent on hours
7 worked, not days worked.

8 87. We have aimed to improve the effectiveness of our count by continuing to maintain
9 an optimal number of active field enumerators by conducting additional training sessions, and
10 keeping phone and tablet computer devices for enumeration in use for the maximum time possible,
11 thereby decreasing the inefficiency created by training new enumerators.

12 88. The Census Bureau was able to adopt the Replan Schedule because the design of
13 the 2020 Census allows a more efficient and accurate data collection operation in a shorter
14 timeframe than was possible in the 2010 Census. Improvements that make this possible include
15 use of our route and case optimization software, use of handheld devices, and streamlined
16 processing. Additionally, it is worth noting that largely because of the schedule delays, the self-
17 response period for the 2020 Census will be longer than the self-response period for the 2010
18 Census.

19 89. The Replan Schedule also necessitated some changes to the content and timing of
20 our post processing operation. These changes include:

- 21 • We shortened address processing from 33 to 20 days. This required eliminating 13 days
22 of processing activities that will be deferred until the creation of the redistricting data
23 products.
- 24 • We cancelled the internal independent review of the final list of addresses that will be
25 used to tabulate 2020 Census data (what we call “the MAF Extract”).
- 26 • We eliminated redundant quality control steps, and the multiple file deliveries that
27 supported those steps, in order to enable a state-by-state flow of deliveries for processing.

(Previous procedures delivered data to the next step only when the entire country had been reviewed by multiple teams).

- We optimized employee assignments to ensure maximum staff resource usage during this shortened production period – i.e., implemented a seven-day/week production schedule.
- We compressed the time allotted for subject matter expert review and software error remediation, cutting 21 days from the schedule.

90. These changes increase the risk the Census Bureau will not identify errors during post processing in time to fix them.

91. Nevertheless, the Census Bureau is confident that it can achieve a complete and accurate census and report apportionment counts by the statutory deadline following the Replan Schedule. The 2020 Census operational design is tailored to enumerate all persons, including hard-to-count populations.

92. The Census Bureau has kept the Office of Management and Budget informed about schedule developments for both the COVID Schedule and the Replan Schedule, and has filed nonsubstantive changes that have been published in the Federal Register. OMB was not required to approve the changes to the operational plan, nor did it. As with the 2018 Operational Plan, we did not ask other agencies to review or approve either the COVID Schedule or Replan Schedule.

XIII. Impacts of Granting a Preliminary Injunction

93. If the Court grants an injunction, the Census Bureau will need to replan the remaining census operations again. We cannot speculate at this point exactly how we will replan the remainder of the census, as the specific actions we take will depend on when the Court rules and the specifics of the ordered actions.

94. The timing of any Court order changing the schedule is particularly important, as stated in our filing on Wednesday, September 2, 2020, where we explained that the Census Bureau has already taken steps to conclude field operations. As I will explain further, the fact that we are concluding field operations in ACOs that have completed their workload is a normal part of the NRFU operation, and is not specific to the Replan Schedule.

1 95. The Census Bureau manages its nonresponse follow up operation (NRFU) out of
2 “Census Field Supervisor areas” or “CFS areas” within each of the nation’s 248 ACOs. As of
3 September 3, 2020, roughly 11% of CFS areas nationwide are eligible for what we call “the
4 closeout phase,” over 1,220 are actually in the closeout phase, and roughly 50 have actually
5 reached conclusion. The closeout phase refers to the process of focusing our best enumerators to
6 resolve the remaining cases in that area. CFS areas are eligible for closeout procedures when they
7 cross the 85% completion mark. All CFS areas become eligible for closeout procedures on
8 September 11. This does not mean that all CFS areas will be moved to closeout procedures on
9 that date, only that regional directors can make this decision. Prior to that date no CFS area can
10 be moved into closeout procedures until it reaches 85% completion. **The Census Bureau is**
11 **continuing to work across the nation to obtain responses from all housing units, and has not**
12 **begun closeout procedures for any CFS area with under 85% completion.**

13 96. It is a normal and planned part of the NRFU operation for an ACO to move into the
14 closeout phase and complete operations. We used closeout procedures in NRFU in the 2010
15 Census and always planned to do the same for the 2020 Census. If we have not wound down in
16 some areas, it is because we are still counting. Some ACOs have greater initial workload, and some
17 started earlier than others –therefore, moving to completion varies by ACO and is a reflection of
18 workload and local conditions and results in the allocation of enumerator resources from areas that
19 are complete to areas that require more work.

20 97. We are currently finished with over 64% of the NRFU field work and over 85% of
21 the total enumeration of all housing units in the nation and those numbers increase daily. More
22 than 13 states have over 90% of their housing unit enumeration completed, and in 18 additional
23 states we have completed over 85% of the housing units in those states. As we complete areas,
24 staff are offered an opportunity to assist by enumerating in other areas that are not yet complete.
25 Some staff elect that option, others choose not to go outside of their home area, and as their area
26 is completed, they are released. As we complete more field work, the number of staff that are still
27 active declines, and our ability to ramp up is severely hampered.

1 98. Lack of field staff would be a barrier to reverting to the COVID Schedule were the
 2 Court to rule later in September. The Census Bureau begins terminating staff as operations wind
 3 down, even prior to closeout. Based on progress to date, as is standard in prior censuses, we have
 4 already begun terminating some of our temporary field staff in areas that have completed their
 5 work. It is difficult to bring back field staff once we have terminated their employment. Were the
 6 Court to enjoin us tomorrow we would be able to keep more staff on board than were the Court to
 7 enjoin us on September 29, at which point we will have terminated many more employees.

8 99. Were the Court to enjoin us, we would evaluate all of the changes we made for the
 9 Replan Schedule and determine which to reverse or modify. For example, we notified participants
 10 of the cancellation of the Count Review 2 operation, originally scheduled for September 15. If our
 11 schedule were extended, we would evaluate whether to re-schedule this operation. We would go
 12 through each and every aspect of remaining operations and determine how best to use the
 13 remaining time to maximize the accuracy and completeness of the census results.

14 100. Finally, we wish to be crystal clear that if the Court were to extend the data
 15 collection period past September 30, 2020, the Census Bureau would be unable to meet its statutory
 16 deadlines to produce apportionment counts prior to December 31, 2020 and redistricting data prior
 17 to April 1, 2021. The post processing deadlines for the Replan Schedule are tight, and extending
 18 the data collection deadline would, of necessity, cause the Census Bureau to fail to be able to
 19 process the response data in time to meet its statutory obligations. We have already compressed
 20 the post processing schedule from 5 months to only 3 months. We previously planned and tested
 21 our post processing systems assuming that we would follow a traditional, sequential processing
 22 sequence, and the 3-month schedule necessary for the Replan Schedule has already increased risk.
 23 We simply cannot shorten post processing beyond the already shortened 3-month period.

24 101. As I have tried to make clear in this Declaration, the decennial census is a massive,
 25 complex, and interrelated endeavor. Particularly troubling is the prospect of continual, conflicting,
 26 and evolving court orders from this this and other courts, including appellate courts. While Census
 27 Bureau staff have demonstrated considerable resilience and flexibility during this difficult year,
 28

some certainty as to the amount of time available to conclude data collection and post processing will increase the likelihood of a successful outcome.

XIV. Commitment to Transparency and High Quality Enumeration

102. In my role as Associate Director, I remain committed to transparency about 2020 Census operations. The Census Bureau has been posting detailed information on its website about both self-response and NRFU completion progress:

<https://2020census.gov/en/response-rates/self-response.html>

<https://2020census.gov/en/response-rates/nrfu-completion.html>

<https://2020census.gov/en/response-rates/nrfu.html>

103. The 2020 Census is the first to post NRFU workload information, which is now available at the state and ACO level and may be seen at <https://2020census.gov/en/response-rates/nrfu-completion.html>. I have briefed staff for House and Senate leadership every Friday since April (except for August 7), and I have provided a transcribed briefing to Congress. We produce a massive amount of documents and other information to the Office of the Inspector General and the General Accounting Office every week, and these organizations interview Census Bureau staff on almost a daily basis.

104. In my role as the Associate Director, I remain committed to conducting a high-quality field data collection operation as explained above, and the ultimate goal of a complete and accurate census.

I have read the foregoing and it is all true and correct.

DATED this ____ day of September, 2020

**Albert E
Fontenot**

Digitally signed by Albert E
Fontenot
Date: 2020.09.05 00:14:42 -04'00'

Albert E. Fontenot, Jr.

Associate Director for Decennial Census Programs

DECLARATION OF ALBERT E. FONTENOT, JR.
Case No. 5:20-cv-05799-LHK

United States Bureau of the Census

DECLARATION OF ALBERT E. FONTENOT, JR.
Case No. 5:20-cv-05799-LHK

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

NATIONAL URBAN LEAGUE, ET AL.,

PLAINTIFFS,

CASE NO. CV-20-5799 LHK

VS.

SAN JOSE, CALIFORNIA

WILBUR L. ROSS, ET AL.,

SEPTEMBER 29, 2020

DEFENDANTS.

PAGES 1 - 32

TRANSCRIPT OF ZOOM PROCEEDINGS
BEFORE THE HONORABLE LUCY H. KOH
UNITED STATES DISTRICT JUDGE

A-P-P-E-A-R-A-N-C-E-S

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PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY,
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01:44PM 1 SAN JOSE, CALIFORNIA SEPTEMBER 29, 2020

01:44PM 2 P R O C E E D I N G S

02:07PM 3 (COURT CONVENED AT 3:08 P.M.)

02:07PM 4 THE CLERK: CALLING CASE 20-5799,

02:07PM 5 NATIONAL URBAN LEAGUE, ET AL., VERSUS ROSS, ET AL.

02:01PM 6 FOR PLAINTIFFS NATIONAL URBAN LEAGUE; LEAGUE OF WOMEN

02:01PM 7 VOTERS; BLACK ALLIANCE FOR JUST IMMIGRATION; HARRIS COUNTY,

02:02PM 8 TEXAS; KING COUNTY, WASHINGTON; CITY OF SAN JOSE, CALIFORNIA;

02:02PM 9 RODNEY ELLIS; ADRIAN GARCIA, AND NAACP.

03:09PM 10 MS. SHERRY: MELISSA ARBUS SHERRY OF

03:09PM 11 LATHAM & WATKINS ON BEHALF OF THOSE PLAINTIFFS.

03:09PM 12 THE CLERK: THANK YOU.

03:09PM 13 MR. HUSENY: GOOD AFTERNOON, YOUR HONOR.

03:09PM 14 SADIK HUSENY OF LATHAM & WATKINS ON BEHALF OF THOSE

03:09PM 15 PLAINTIFFS.

03:09PM 16 MR. BAUER: GOOD AFTERNOON, YOUR HONOR.

03:09PM 17 STEVE BAUER OF LATHAM & WATKINS FOR THOSE PLAINTIFFS AS

03:09PM 18 WELL.

03:09PM 19 MR. BRESS: GOOD AFTERNOON, YOUR HONOR.

03:09PM 20 RICHARD BRESS, LATHAM & WATKINS, ON BEHALF OF THOSE SAME

03:09PM 21 PLAINTIFFS.

03:09PM 22 MR. EZRA ROSENBERG: GOOD AFTERNOON, YOUR HONOR.

03:09PM 23 EZRA ROSENBERG FROM THE LAWYERS' COMMITTEE FOR CIVIL

03:09PM 24 RIGHTS UNDER LAW ON BEHALF OF THOSE PLAINTIFFS AND ALSO

03:09PM 25 NAVAJO NATION.

03:09PM 1 MS. WOLF: GOOD AFTERNOON, YOUR HONOR.

03:09PM 2 THOMAS WOLF OF BRENNAN CENTER FOR JUSTICE FOR THE SAME

03:09PM 3 PLAINTIFFS AS MR. EZRA ROSENBERG.

03:09PM 4 THE CLERK: FOR PLAINTIFF NAVAJO NATION.

03:09PM 5 MR. SEARLE: GOOD AFTERNOON, YOUR HONOR.

03:09PM 6 JASON SEARLE, NAVAJO DEPARTMENT OF JUSTICE, ON BEHALF OF

03:09PM 7 NAVAJO NATION.

03:09PM 8 THE CLERK: FOR PLAINTIFF CITY OF LOS ANGELES.

03:09PM 9 MS. GOLDSTEIN: GOOD AFTERNOON, YOUR HONOR.

03:10PM 10 DANIELLE GOLDSTEIN OF THE OFFICE OF THE CITY ATTORNEY FOR

03:10PM 11 THE CITY OF LOS ANGELES ON BEHALF OF THE CITY OF LOS ANGELES.

03:10PM 12 THE CLERK: THANK YOU.

03:10PM 13 FOR PLAINTIFF CITY OF SALINAS.

03:10PM 14 MR. MUTALIPASSI: GOOD AFTERNOON, YOUR HONOR.

03:10PM 15 MICHAEL MUTALIPASSI FOR PLAINTIFF CITY OF SALINAS.

03:10PM 16 THE CLERK: THANK YOU.

03:10PM 17 FOR PLAINTIFF CITY OF CHICAGO.

03:10PM 18 MS. HIRSCH: GOOD AFTERNOON, YOUR HONOR.

03:10PM 19 REBECCA HIRSCH FROM THE CORPORATION COUNSEL'S OFFICE ON

03:10PM 20 BEHALF OF THE CITY OF CHICAGO.

03:10PM 21 THE CLERK: THANK YOU.

03:10PM 22 FOR PLAINTIFF COUNTY OF LOS ANGELES.

03:10PM 23 MR. HOLTZMAN: GOOD AFTERNOON, YOUR HONOR.

03:10PM 24 DAVID HOLTZMAN OF HOLLAND & KNIGHT ON BEHALF OF COUNTY OF

03:10PM 25 LOS ANGELES.

03:10PM 1 THE CLERK: AND FOR PLAINTIFF GILA RIVER INDIAN
03:10PM 2 COMMUNITY.

03:10PM 3 MR. PONGRACE: GOOD AFTERNOON.

03:10PM 4 DONALD PONGRACE, AKIN GUMP, FOR GILA RIVER INDIAN
03:10PM 5 COMMUNITY.

03:10PM 6 THE CLERK: THANK YOU.

03:10PM 7 AND FOR ALL DEFENDANTS.

03:10PM 8 MR. SVERDLOV: GOOD AFTERNOON, YOUR HONOR.

03:10PM 9 ALEXANDER SVERDLOV FOR THE DEFENDANTS FROM THE
03:10PM 10 U.S. DEPARTMENT OF JUSTICE.

03:11PM 11 THE CLERK: THANK YOU.

03:11PM 12 MR. BRAD ROSENBERG: GOOD AFTERNOON, YOUR HONOR.

03:11PM 13 BRAD ROSENBERG ALSO FROM THE DEPARTMENT OF JUSTICE FOR THE
03:11PM 14 DEFENDANTS.

03:11PM 15 THE CLERK: THANK YOU.

03:11PM 16 MR. FLENTJE: GOOD AFTERNOON, YOUR HONOR.

03:11PM 17 AUGUST FLENTJE FROM THE DEPARTMENT OF JUSTICE FOR THE
03:11PM 18 DEFENDANTS.

03:11PM 19 THE CLERK: THANK YOU.

03:11PM 20 THE COURT: ALL RIGHT. GOOD AFTERNOON.

03:11PM 21 DO WE HAVE EVERYONE'S APPEARANCE NOW? IT LOOKS LIKE IT.

03:11PM 22 ALL RIGHT. WELCOME. OKAY.

03:11PM 23 LET ME JUST ASK, DID THE DEFENDANTS PRODUCE THE FULL
03:11PM 24 ADMINISTRATIVE RECORD FOR THE OCTOBER 5TH, 2020 TERMINATION
03:11PM 25 TARGETED FOR DATA COLLECTION? WAS THAT THE FULL RECORD, WHAT

03:11PM 1 YOU PRODUCED?

03:11PM 2 MR. SVERDLOV: SO, YOUR HONOR, SUBJECT TO NOT
03:11PM 3 CALLING IT A RECORD BECAUSE IN OUR VIEW IT IS NOT A RECORD, IT
03:11PM 4 IS THE FULL AND COMPLETE SET OF WHAT THE COURT ORDERED.

03:11PM 5 THE COURT: OKAY. SO THERE'S NOTHING ELSE
03:11PM 6 PENDING; CORRECT?

03:11PM 7 MR. SVERDLOV: THAT IS CORRECT, YOUR HONOR.

03:11PM 8 THE COURT: OKAY. ALL RIGHT. THANK YOU.

03:12PM 9 I DID HAVE A QUESTION ABOUT IF THE SECRETARY'S APPROVAL OF
03:12PM 10 THE DECISION IS TIME STAMPED AFTER THE TWEET WAS SENT, HOW IS
03:12PM 11 THAT POSSIBLE?

03:12PM 12 MR. SVERDLOV: WELL, YOUR HONOR, I THINK THIS SPEAKS
03:12PM 13 TO THE FACT THAT THIS IS A FLUID SITUATION AND EVEN TO CALL IT
03:12PM 14 A DECISION IS PERHAPS TO ENDOW IT WITH SIGNIFICANCE THAT IT
03:12PM 15 OTHERWISE DOES NOT HAVE.

03:12PM 16 THE E-MAIL THAT THE SECRETARY SENT APPEARS TO BE
03:12PM 17 CONFIRMATION OF HIS INSTRUCTION TO THE FIELD, BUT THIS
03:12PM 18 INSTRUCTION IS, AS WE INDICATED AT THE CONFERENCE YESTERDAY,
03:12PM 19 MERELY AN ADJUSTMENT TO A SCHEDULE. IT'S NOT A FORMAL
03:12PM 20 DECISION, AND THAT IS WHY IT DOESN'T LOOK AS SUCH.

03:12PM 21 THE COURT: SO WHO MADE THE DECISION TO EXTEND THE
03:12PM 22 FIELD OPERATION TO OCTOBER 5?

03:12PM 23 WAS THAT THE -- WHATEVER YOU WANT TO CALL IT. WE CAN CALL
03:13PM 24 IT A PICKLE. YOU KNOW, WHAT NOUN DO YOU WANT TO USE FOR THAT
03:13PM 25 IF YOU DON'T WANT TO USE DECISION.

03:13PM 1 MR. SVERDLOV: SCHEDULE ADJUSTMENT I THINK IS
03:13PM 2 ACCURATE, YOUR HONOR.

03:13PM 3 THE COURT: ALL RIGHT. OKAY.

03:13PM 4 MR. SVERDLOV: AND IT WAS MADE BY THE SECRETARY AS
03:13PM 5 THE DOCUMENT REFLECTS.

03:13PM 6 THE COURT: OH, OKAY. I JUST WASN'T SURE WHEN YOU
03:13PM 7 SAID "THANKS FOR THE CONFIRMATION," IF YOU MEANT THAT THE
03:13PM 8 SECRETARY WAS -- WHAT IS BEING CONFIRMED?

03:13PM 9 I'M SORRY. I'M JUST CONFUSED BY THAT 5:12 P.M. E-MAIL
03:13PM 10 FROM THE SECRETARY TO DEPUTY DIRECTOR JARMIN.

03:13PM 11 IS IT JUST, OH, THE EARLIER E-MAIL FROM DEPUTY DIRECTOR
03:13PM 12 JARMIN SAYS, YES, WE WILL NEED TO FINISH FIELD WORK ON 10-5.
03:13PM 13 IS THAT THE CONFIRMATION?

03:13PM 14 MR. SVERDLOV: THE CONFIRMATION THAT HE UNDERSTANDS
03:13PM 15 WHAT MR. JARMIN HAS WRITTEN HIM, YES.

03:13PM 16 THE COURT: OH, OKAY. ALL RIGHT.

03:13PM 17 BUT THAT'S THE E-MAIL IN WHICH THE SECRETARY MAKES THE
03:13PM 18 DECISION? THERE'S NO EARLIER DECISION THAT THE SECRETARY MADE
03:13PM 19 THAT THE SECRETARY IS JUST THEN CONFIRMING AT 5:12?

03:14PM 20 I THINK I MAY HAVE BEEN SLIGHTLY CONFUSED BY WHAT YOU
03:14PM 21 SAID.

03:14PM 22 MR. SVERDLOV: THERE'S NOTHING -- YOUR HONOR, THERE
03:14PM 23 IS NOTHING ELSE IN WRITING THAT WE HAVE IDENTIFIED. THIS
03:14PM 24 APPEARS TO BE THE DOCUMENTATION OF THAT ACTION.

03:14PM 25 THE COURT: OKAY. SO THIS IS THE ADOPTION OF THE

03:14PM 1 SCHEDULE ADJUSTMENT IS THIS 5:12 E-MAIL?

03:14PM 2 MR. SVERDLOV: YES.

03:14PM 3 THE COURT: OKAY. BUT HOW IS IT POSSIBLE THAT THE
03:14PM 4 ANNOUNCEMENT PUBLICLY WENT OUT BEFORE THE SECRETARY ADOPTED THE
03:14PM 5 SCHEDULE ADJUSTMENT OR APPROVED THE SCHEDULE ADJUSTMENT?
03:14PM 6 WHATEVER VERB YOU WANT TO USE.

03:14PM 7 MR. SVERDLOV: SO, YOUR HONOR, I CAN'T SPEAK TO WHAT
03:14PM 8 ISN'T IN THE DOCUMENTS. I SUSPECT A POSSIBILITY IS THAT AN
03:14PM 9 INSTRUCTION WAS GIVEN ORALLY PERHAPS, AND THIS MERELY CODIFIES
03:14PM 10 THAT INSTRUCTION.

03:14PM 11 BUT THAT'S -- I THINK THAT'S A MERE POSSIBILITY. I DON'T
03:14PM 12 HAVE AN EXPLANATION BEYOND WHAT IS IN THE DOCUMENTS.

03:14PM 13 THE COURT: ALL RIGHT. THAT IS JUST YOUR
03:14PM 14 SPECULATION; CORRECT?

03:14PM 15 MR. SVERDLOV: THAT IS CORRECT, YOUR HONOR.

03:14PM 16 THE COURT: OKAY. ALL RIGHT. ALL RIGHT. THANK YOU
03:15PM 17 FOR CLARIFYING THAT.

03:15PM 18 SO ALL OF THE DOCUMENTATION THAT WE'VE SEEN FROM THE OIG
03:15PM 19 PRODUCTION, WHAT WAS NONPRIVILEGED IN THAT PRODUCTION SAID THAT
03:15PM 20 THE DATA PROCESSING HAD TO BEGIN ON OCTOBER 1ST.

03:15PM 21 IT ALL WAS PRETTY ADAMANT THAT IT HAD TO BEGIN ON
03:15PM 22 OCTOBER 1ST. SO NOW SUDDENLY OCTOBER 6TH IS OKAY.

03:15PM 23 IS THAT NOT AN INCONSISTENCY OR A TENSION THERE?

03:15PM 24 MR. FLENTJE: YOUR HONOR, THIS IS AUGUST FLENTJE.

03:15PM 25 I THINK THAT REFLECTS EFFORTS BY THE COMMERCE DEPARTMENT

03:15PM 1 TO REFINE THEIR ASSESSMENT GIVEN THE PASSAGE OF TIME AND GIVE
03:15PM 2 THEIR BEST ASSESSMENT AT THE TIME OF THE DETERMINATION
03:15PM 3 YESTERDAY THAT FIELD OPERATIONS COULD CONTINUE AND BE EXTENDED
03:15PM 4 TO THE 5TH AND STILL HAVE A GOOD CHANCE TO MAKE THAT
03:16PM 5 CONGRESSIONAL DEADLINE ON THE ASSUMPTION THAT THAT DEADLINE
03:16PM 6 MIGHT COME INTO FORCE.

03:16PM 7 THE COURT: WHERE IN ANYTHING THAT WAS PRODUCED
03:16PM 8 TODAY DOES IT HAVE AN ANALYSIS OF THE DATA PROCESSING?

03:16PM 9 IS THERE ANYTHING THAT DISCUSSES THE DATA PROCESSING THAT
03:16PM 10 YOU JUST MENTIONED? IT ALL SEEMS TO BE ABOUT DATA COLLECTION.

03:16PM 11 MR. FLENTJE: I THINK YOU'RE CORRECT FOR THE MOST
03:16PM 12 PART THAT THE RECORD IS ABOUT ANALYZING THE LATEST INFORMATION
03:16PM 13 ON DATA COLLECTION TO SEE WHAT TIME WAS NEEDED IN THE FIELD,
03:16PM 14 AND I THINK THAT'S, YOU KNOW, HIGHLY RELEVANT OBVIOUSLY.

03:16PM 15 THERE IS SOME DISCUSSION OF THE DATA PROCESSING NEEDS THAT
03:16PM 16 IS IN THE SLIDE, AND IT'S BASICALLY AN ASSESSMENT THAT THE
03:16PM 17 FIELD WORK IS COMPLETED AFTER OCTOBER 5TH. THE COUNTS WON'T
03:17PM 18 HAPPEN BY DECEMBER 31ST.

03:17PM 19 THE COURT: I'M SORRY TO INTERRUPT YOU. I'M SORRY
03:17PM 20 TO INTERRUPT YOU.

03:17PM 21 COULD YOU PLEASE POINT ME -- NONE OF THIS IS BATES
03:17PM 22 NUMBERED SO LET'S JUST USE THE ECF PAGE NUMBER, THOSE ON THE
03:17PM 23 TOP OF THE DOCUMENT.

03:17PM 24 COULD YOU JUST GIVE ME THE PAGE NUMBER OF WHAT YOU'RE
03:17PM 25 READING SO THAT I CAN READ ALONG WITH YOU, PLEASE.

03:17PM 1 MR. FLENTJE: I'M REALLY SORRY THAT I'M NOT -- I
03:17PM 2 DON'T HAVE THE BATES -- THE ECF NUMBERED VERSION IN FRONT OF
03:17PM 3 ME. SO THE BEST I CAN TELL YOU IS THAT IT'S PAGE 2 OF -- WELL,
03:17PM 4 IT'S ACTUALLY THE FIRST SUBSTANTIVE PAGE OF THE SLIDE, WHICH
03:17PM 5 WOULD BE AFTER THE TITLE PAGE.

03:17PM 6 THE COURT: OKAY.

03:17PM 7 MR. FLENTJE: ECF 33 AT PAGE 147 THANKS TO A VERY
03:17PM 8 HELPFUL PERSON.

03:17PM 9 THE COURT: ALL RIGHT. THANK YOU FOR WHOEVER --
03:17PM 10 OKAY.

03:17PM 11 MR. FLENTJE: I'M SORRY, 233. 233.

03:17PM 12 THE COURT: OKAY. ECF 233, THAT'S THE DOCKET
03:18PM 13 NUMBER. THANK YOU.

03:18PM 14 I'M LOOKING AT PAGE 147 OF 153. I DON'T SEE ANYTHING IN
03:18PM 15 THERE ABOUT THE DATA PROCESSING. WHAT I HAVE ON --

03:18PM 16 MR. FLENTJE: IT INCLUDES AN ASSESSMENT OF THE TIME
03:18PM 17 NEEDED FOR DATA PROCESSING IN THE SLIDE. AS FOR SORT OF
03:18PM 18 UNPACKING THAT, I DON'T THINK THERE'S GOING TO BE DETAILS ON
03:18PM 19 THAT IN THE RECORD.

03:18PM 20 THE RECORD FOCUSES ON THE PROGRESS BEING MADE SINCE THE
03:18PM 21 NEW TARGET, AND I THINK THE MOST -- THE RELEVANT CONSIDERATIONS
03:18PM 22 IN CONSIDERING THAT WERE THE PROGRESS BEING MADE SINCE SORT OF
03:18PM 23 THE LAST TIME THIS WENT TO THE SECRETARY, THE GOALS OF REACHING
03:18PM 24 THE 99 PERCENT FIGURE, THE PASSAGE OF TIME.

03:18PM 25 EVERY DAY THE DATA CHANGES IN TWO WAYS. FIRST, THEY GET

03:19PM 1 MORE DATA ON HOW MUCH HAS BEEN COMPLETED; AND, SECOND, THEY GET
03:19PM 2 BETTER DATA TO ASSESS HOW MUCH MORE NEEDS TO BE DONE AND HOW
03:19PM 3 LONG THAT WILL TAKE.

03:19PM 4 I THINK A FINAL THING THAT IS REALLY IMPORTANT IS THAT A
03:19PM 5 TARGET IS REALLY IMPORTANT FOR THE ENUMERATORS TO KIND OF --
03:19PM 6 MOTIVATION TO GET THE WORK DONE.

03:19PM 7 SO I THINK ONE OF THE REASONS THAT THE TARGET IS IMPORTANT
03:19PM 8 IS TO KIND OF HAVE A GOAL THAT CAN PUSH PEOPLE TO KIND OF GET
03:19PM 9 THOSE ENUMERATIONS TO TARGETS.

03:19PM 10 THE COURT: OKAY. SO YOU'RE SAYING THAT IF I WANT
03:19PM 11 TO SEE ANYTHING ON DATA PROCESSING, I LOOK AT ECF 147.

03:19PM 12 TO ME IT'S ALL ABOUT THE COMPLETION OF DATA COLLECTION.

03:19PM 13 NOW, ALL OF THE E-MAILS THAT WE HAVE BEEN RECEIVING FROM
03:19PM 14 ENUMERATORS SAY THAT THE DEPARTMENT IS SENDING THEM THAT
03:19PM 15 OCTOBER 5TH IS THE DATE THAT IT'S GOING TO CONCLUDE.

03:19PM 16 YOU'RE SAYING IT'S NOT GOING TO CONCLUDE ON THAT DATE?

03:20PM 17 MR. FLENTJE: THAT IS THE TARGET SET BY THE
03:20PM 18 SECRETARY YESTERDAY TO FINISH FIELD OPERATIONS OCTOBER 5TH SO
03:20PM 19 THAT THE INTERNAL STUFF, THE DATA CRUNCHING, CAN GET DONE IN
03:20PM 20 ADVANCE OF THE DEADLINE IN THE EVENT THAT THAT DEADLINE IS
03:20PM 21 OPERATIVE AGAIN.

03:20PM 22 THE COURT: SO OTHER THAN 147, PAGE 147, IS THERE
03:20PM 23 ANYWHERE ELSE THAT WE SHOULD LOOK FOR ANYTHING ON DATA
03:20PM 24 PROCESSING?

03:20PM 25 MR. FLENTJE: YOUR HONOR, I DON'T WANT TO FORECLOSE

03:20PM 1 RELYING ON ANYTHING ELSE. OBVIOUSLY THE RECORD WAS PUT
03:20PM 2 TOGETHER VERY QUICKLY, AND WE'RE NOW JUST TALKING ABOUT IT
03:20PM 3 HOURS LATER. SO WE'VE GIVEN YOU THE RECORD, BUT I DON'T WANT
03:20PM 4 TO FORECLOSE ANYTHING THAT MIGHT BE IN THE RECORD THAT MIGHT
03:20PM 5 ALSO ADDRESS THAT.

03:20PM 6 THE COURT: OKAY. THANK YOU.

03:20PM 7 BUT YOU AGREE WITH ME THAT THE RECORD FOCUSES ON DATA
03:20PM 8 COMPLETION?

03:20PM 9 MR. FLENTJE: ABSOLUTELY.

03:20PM 10 THE COURT: COLLECTION. COLLECTION. DATA
03:20PM 11 COLLECTION COMPLETION. I APOLOGIZE, I MISSPOKE.

03:21PM 12 MR. FLENTJE: YES, IT REALLY FOCUSES ON THE PROGRESS
03:21PM 13 OF FIELD OPERATIONS AND SORT OF THE ONGOING -- EVERY DAY THAT
03:21PM 14 CHANGES. THERE'S A REPORT EVERY DAY THAT ASSESSES HOW FIELD
03:21PM 15 OPERATIONS HAVE PROGRESSED THAT DAY, AND THE -- IN THIS CASE I
03:21PM 16 THINK BASED ON THOSE ASSESSMENTS, AND A LOT OF THAT IS IN HERE,
03:21PM 17 THAT THE SECRETARY DETERMINED THAT OCTOBER 5TH WAS THE NEEDED
03:21PM 18 TARGET DATE.

03:21PM 19 THE COURT: OKAY. AND OCTOBER 5TH WAS CHOSEN EVEN
03:21PM 20 THOUGH UNDER THE MOST AMBITIOUS PROJECTION AT LEAST ONE STATE
03:21PM 21 WOULD NOT REACH 99 PERCENT COMPLETION.

03:21PM 22 MR. FLENTJE: AGAIN, I THINK THAT, THAT -- I THINK
03:21PM 23 THE PROJECTION THAT THEY MADE -- YES, EVERY STATE BUT ONE TO
03:21PM 24 99 PERCENT. I BELIEVE THE -- THAT STATE, ALABAMA, WAS AT
03:21PM 25 98.85 PERCENT ON OCTOBER 5TH. SO VERY CLOSE.

03:21PM 1 BUT, YES, THAT IS THE PROJECTION. IT WAS CERTAINLY PART
03:21PM 2 OF THE CALCULUS THAT WENT TO THE SECRETARY AND THAT INFORMED
03:22PM 3 HIS DECISION TO MAKE OCTOBER 5TH THE TARGET.

03:22PM 4 THE COURT: NOW, THERE'S DOCUMENTS IN THE OIG
03:22PM 5 PRODUCTION THAT SAY IN THE 2000 CENSUS AND THE 2010 CENSUS
03:22PM 6 99 PERCENT COMPLETION OF HOUSEHOLDS IN EVERY STATE WAS
03:22PM 7 REQUIRED.

03:22PM 8 SO THIS WOULD BE A VARIATION FROM PRIOR CENSUSES; CORRECT?

03:22PM 9 MR. FLENTJE: MY UNDERSTANDING IS THAT FIVE STATES
03:22PM 10 DID NOT MEET THE 99 PERCENT TARGET IN THE 2000 CENSUS.

03:22PM 11 I BELIEVE ALL STATES DID IN THE 2010 CENSUS.

03:22PM 12 I WOULDN'T CALL THAT A REQUIREMENT.

03:23PM 13 THE COURT: THERE IS A LINE IN THE -- IN THE OIG
03:23PM 14 PRODUCTION WE DIDN'T GET ANY DOCUMENTS FROM DEPUTY DIRECTOR
03:23PM 15 JARMIN, AND IT'S CLEAR FROM WHAT YOU HAVE PRODUCED TODAY THAT
03:23PM 16 HE'S KEY. HE'S THE ONE THAT IS ACTUALLY SENDING AROUND THE
03:23PM 17 SLIDE DECK TO DIRECTOR DILLINGHAM AND TO THE KEY OFFICIALS AT
03:23PM 18 THE BUREAU.

03:23PM 19 WHY WEREN'T ANY OF HIS DOCUMENTS INCLUDED IN WHAT WAS
03:23PM 20 PRODUCED TO THE INSPECTOR GENERAL?

03:23PM 21 MR. FLENTJE: I DON'T THINK I HAVE AN ANSWER TO
03:23PM 22 THAT. IF ALEKS HAS MORE INFORMATION ON THAT, HE'S FREE TO
03:23PM 23 SHARE.

03:23PM 24 MR. SVERDLOV: NO, YOUR HONOR, I DON'T HAVE AN
03:23PM 25 ANSWER TO THAT. THE PROCEDURES FOR GATHERING THE OIG DOCUMENTS

03:23PM 1 ARE LAID OUT IN A DECLARATION THAT WE SUBMITTED AND THE
03:24PM 2 DECISIONS THAT WERE MADE BY INTERNAL COMMERCE DEPARTMENT AND
03:24PM 3 CENSUS FIGURES REGARDING THEIR OIG COMPLIANCE OBLIGATIONS
03:24PM 4 WERE -- ARE NOT SOMETHING THAT I'M PRIVY TO.

03:24PM 5 THE COURT: SO THERE'S A DEPUTY DIRECTOR JARMIN
03:24PM 6 E-MAIL DATED SEPTEMBER 28TH, 2020 AT 9:08 AM, SO THAT IS
03:24PM 7 YESTERDAY. AND HE'S SAYS WE'RE SEEING SOME SLOWDOWN SINCE THE
03:24PM 8 COURT RULING.

03:24PM 9 IS THAT THE TRO RULING? THE EXTENSION OF THE TRO? THE
03:24PM 10 PRELIMINARY INJUNCTION?

03:24PM 11 AND WHAT KIND OF SLOWDOWN IS BEING REFERENCED THERE?

03:24PM 12 MR. SVERDLOV: SO, YOUR HONOR, MY UNDERSTANDING IS
03:24PM 13 THAT IT'S A SLOWDOWN RELATED TO THE COURT'S ISSUANCE OF THE
03:24PM 14 PRELIMINARY INJUNCTION, AND THE SLOWDOWN APPEARS TO BE THE RATE
03:24PM 15 OF ENUMERATION GOING ON IN THE FIELD WHICH TO MR. FLENTJE'S
03:25PM 16 POINT REFLECTS, AT LEAST IN THE CENSUS BUREAU'S VIEWS, THE FACT
03:25PM 17 THAT THE ABSENCE OF A GOAL TO HIT CAUSES PEOPLE TO WORK LESS
03:25PM 18 HARD.

03:25PM 19 THE COURT: AND WHERE ARE YOU GETTING THAT FROM?

03:25PM 20 CAN YOU POINT ME TO THE DOCUMENT NUMBER THAT SAYS THAT,
03:25PM 21 OR IS THAT YOUR GUESS?

03:25PM 22 MR. SVERDLOV: THAT IS MY UNDERSTANDING OF WHAT THAT
03:25PM 23 LINE IN THE DOCUMENT THAT THE COURT READ MEANS.

03:25PM 24 THE COURT: OKAY. AND IT'S BASED ON WHAT, A
03:25PM 25 CONVERSATION WITH SOMEBODY FROM THE CENSUS BUREAU OR IS THERE

03:25PM 1 SOMETHING IN THE RECORD THAT YOU CAN POINT ME TO?

03:25PM 2 MR. SVERDLOV: YOUR HONOR, THERE'S NOTHING IN THE
03:25PM 3 RECORD THAT I AM AWARE THAT I CAN POINT TO FOR THAT.

03:25PM 4 THE COURT: OKAY. SO THEN WHAT YOU JUST SAID IS
03:25PM 5 BASED ON WHAT?

03:25PM 6 MR. FLENTJE: I ASSUME, YOUR HONOR, IT'S BASED ON
03:25PM 7 THE NUMBERS AND THAT PERSON'S STATEMENT ABOUT WHAT THE NUMBERS
03:25PM 8 MEAN IN THAT E-MAIL.

03:25PM 9 SO THERE'S -- THE NUMBERS ARE IN THE RECORD, AND IF THAT
03:25PM 10 PERSON SAW THE NUMBERS AND IT MADE AN ASSESSMENT THAT THINGS
03:26PM 11 WERE SLOWING DOWN AND ATTRIBUTED CAUSE TO THE PI, THEN THAT,
03:26PM 12 THAT IS BASICALLY WHAT THE RECORD SHOWS.

03:26PM 13 THE COURT: ALL RIGHT. BUT YOU CAN'T POINT ME TO
03:26PM 14 ANYTHING IN THE RECORD?

03:26PM 15 MR. FLENTJE: THE NUMBERS THEMSELVES, THE NUMBERS
03:26PM 16 THEMSELVES CHANGE AFTER THE PI AND THAT WOULD BE IN THE RECORD.

03:26PM 17 AGAIN, WE'VE HAD THE RECORD FOR A FEW HOURS. THERE'S A
03:26PM 18 LOT OF DATA IN THERE, AND NORMALLY WE WOULD HAVE SORT OF --
03:26PM 19 SOME SORT OF OPPORTUNITY TO ASSESS THAT IN SORT OF A WRITTEN
03:26PM 20 FORM I THINK IF IT WAS APPROPRIATE.

03:26PM 21 BUT THAT'S OUR SORT OF, KIND OF UNDERSTANDING BASED ON A
03:26PM 22 QUICK READ OF THE RECORD.

03:26PM 23 THE COURT: OKAY. SO YOU ARE GUESSING BASED ON YOUR
03:26PM 24 READ OF THE RECORD AND I SHOULD JUST FIND AN ANSWER IN THIS
03:26PM 25 DOCUMENT?

03:26PM 1 MR. FLENTJE: YOUR HONOR, YOUR HONOR --

03:26PM 2 THE COURT: WAIT, WAIT, WAIT. I'M SORRY. I'LL LET
03:26PM 3 YOU SPEAK, BUT IF I CAN JUST FINISH WHAT I WAS GOING TO SAY.

03:27PM 4 I ASKED A LOT OF QUESTIONS OF MR. SVERDLOV AT THE PI
03:27PM 5 HEARING, AND HE SAID THE DOCUMENT SPEAKS FOR ITSELF, THE
03:27PM 6 DOCUMENT SPEAKS FOR ITSELF.

03:27PM 7 HERE TODAY I'M GETTING ALL OF THIS EXPLANATION, AND I
03:27PM 8 WOULD JUST LIKE TO KNOW WHERE IT IS IN THE RECORD.

03:27PM 9 MR. FLENTJE: I MEAN, WE'RE VERY HAPPY TO SAY THE
03:27PM 10 DOCUMENTS SPEAK FOR THEMSELVES.

03:27PM 11 ALL I'M TRYING TO SAY IS THAT MAYBE A PROCEDURAL MATTER,
03:27PM 12 NORMALLY WE WOULD HAVE -- THE PLAINTIFFS TALKED YESTERDAY ABOUT
03:27PM 13 THE NEED TO AMEND THE COMPLAINT, IDENTIFY PROBLEMS WITH THE
03:27PM 14 AGENCY DETERMINATION, WHICH AS WE SAY WE DON'T THINK IT'S A
03:27PM 15 DECISION, WE THINK IT'S AN ADJUSTMENT OF THE SCHEDULE, AND THEN
03:27PM 16 THEY MIGHT SEEK SOME SORT OF RELIEF FROM THE COURT TO ADDRESS
03:27PM 17 WHAT THE -- THE HARM THAT THEY IDENTIFY IN AN AMENDED COMPLAINT
03:27PM 18 AND THEN WE COULD FOCUS THE INQUIRY ON THE PROBLEMS IF THERE
03:27PM 19 ARE PROBLEMS ALLEGED BY THE PLAINTIFFS.

03:27PM 20 WHAT IS GOING ON NOW IS THAT WE'RE SORT OF LOOKING AT A
03:27PM 21 BUNCH OF DOCUMENTS AND SORT OF TALKING THROUGH THEM, WHICH IS
03:27PM 22 PRETTY UNUSUAL, BUT IT CERTAINLY IS NOT SORT OF THE WAY
03:27PM 23 SOMETHING LIKE THIS NORMALLY GETS RESOLVED.

03:28PM 24 SO AGAIN, WE'RE GIVING YOU THE BEST INFORMATION WE CAN
03:28PM 25 BASED ON READING THE SAME RECORD YOU READ, BUT WE'RE JUST

03:28PM 1 READING THE RECORD AS WELL.

03:28PM 2 WE DON'T HAVE A SORT OF LEGAL OR TARGETED PRESENTATION
03:28PM 3 BEFORE THE COURT THAT ANYONE HAS MADE, SO THAT'S SORT OF WHERE
03:28PM 4 WE ARE.

03:28PM 5 THE COURT: UNDERSTOOD.

03:28PM 6 IT'S ALSO UNUSUAL FOR A COURT TO ISSUE A PRELIMINARY
03:28PM 7 INJUNCTION AND THEN TWO MINUTES BEFORE A CASE MANAGEMENT
03:28PM 8 CONFERENCE AN AGENCY TO JUST TWEET ANNOUNCE A CHANGE.

03:28PM 9 BUT I AM GOING TO ISSUE HOW WE PROCEED FROM HERE. I
03:28PM 10 APPRECIATE YOUR PATIENCE WITH MY QUESTIONS. I WAS JUST
03:28PM 11 CURIOUS.

03:28PM 12 I DON'T KNOW IF YOU'VE BEEN WATCHING OUR OTHER
03:28PM 13 PROCEEDINGS, BUT I HAVE A LOT OF QUESTIONS SO I APPRECIATE YOUR
03:28PM 14 PATIENCE WITH MY QUESTIONS.

03:28PM 15 MR. FLENTJE: SURE.

03:28PM 16 THE COURT: MY NEXT SET OF QUESTIONS WAS WHERE DO WE
03:28PM 17 GO FROM HERE? DO THE PLAINTIFFS STILL WANT TO AMEND YOUR
03:28PM 18 COMPLAINT AND HOW QUICKLY CAN YOU DO THAT?

03:28PM 19 MS. SHERRY: SO, YOUR HONOR, WE FILED A DOCUMENT
03:29PM 20 WITH THIS COURT RIGHT AS THE HEARING WAS STARTING, AND I
03:29PM 21 APOLOGIZE, IT SAYS THAT WE WERE FILING IN ADVANCE OF THE
03:29PM 22 HEARING AND THAT WAS OUR INTENT.

03:29PM 23 BUT WE TRIED TO SET FORTH, BECAUSE IT'S DOCUMENT 243, AND
03:29PM 24 WE TRIED TO SET FORTH IN WRITING WHAT WE THINK THE BEST PATH
03:29PM 25 FORWARD IS.

03:29PM 1 I CAN WALK THE COURT THROUGH OUR CURRENT THINKING ON IT.

03:29PM 2 THE COURT: NO. WHY DON'T WE DO THIS, I HAVE NOT
03:29PM 3 SEEN THAT. LET'S JUST TAKE A FIVE MINUTE BREAK FOR ME TO GO
03:29PM 4 TAKE A LOOK AT IT.

03:29PM 5 IS THERE ANYTHING ELSE THAT HAS BEEN -- I'M ALMOST AFRAID
03:29PM 6 TO HAVE THESE CMC'S BECAUSE, YOU KNOW, EMERGENCY THINGS ARE
03:29PM 7 HAPPENING LIKE TWO MINUTES BEFORE.

03:29PM 8 ANYTHING ELSE THAT I SHOULD GO LOOK FOR IN THE DOCKET?

03:29PM 9 MS. SHERRY: I DON'T BELIEVE SO. I MEAN --

03:29PM 10 THE COURT: NO? OKAY. THEN CAN WE TAKE JUST A
03:29PM 11 FIVE MINUTE BREAK FOR ME TO GO GET THIS DOCUMENT AND THEN WE
03:29PM 12 CAN CONTINUE?

03:29PM 13 HAVE THE DEFENDANTS SEEN THE DOCUMENT? COULD YOU ALL
03:29PM 14 PLEASE LOOK AT IT AS WELL DURING THIS FIVE MINUTE BREAK?

03:29PM 15 HAVE YOU ALREADY SEEN IT?

03:29PM 16 MR. FLENTJE: I JUST OPENED IT UP AS SHE MENTIONED
03:30PM 17 IT.

03:30PM 18 THE COURT: OKAY. THANK YOU.

03:30PM 19 LET'S JUST TAKE FIVE MINUTES SO EVERYBODY CAN GET IT AND
03:30PM 20 DIGEST IT. OKAY? THANK YOU.

03:30PM 21 (RECESS FROM 3:30 P.M. UNTIL 4:08 P.M.)

04:08PM 22 THE COURT: SO THIS IS HOW I THINK WE SHOULD
04:08PM 23 PROCEED: MY PRELIMINARY INJUNCTION ORDER ENJOINED THE
04:08PM 24 DEFENDANTS FROM IMPLEMENTING THE DECEMBER 31ST, 2020 DEADLINE
04:09PM 25 FOR REPORTING THE TABULATION OF THE TOTAL POPULATION TO THE

04:09PM 1 PRESIDENT AND ACTUALLY STAYED THAT DEADLINE.

04:09PM 2 THIS OCTOBER 5TH DATE IS BASICALLY DOING EXACTLY WHAT I
04:09PM 3 ENJOINED THE DEFENDANTS FROM DOING. THIS WHOLE OCTOBER 5TH
04:09PM 4 SCHEDULE ADJUSTMENT, RE-REPLAN, BANANA, WHATEVER YOU WANT TO
04:09PM 5 CALL IT, IS BASICALLY EVEN IN ITS OWN WORDS IS TRYING TO
04:09PM 6 IMPLEMENT AN ENJOINED DATE. OKAY?

04:09PM 7 LET ME JUST READ IT.

04:09PM 8 IT SAYS THAT "THE DEFENDANTS ARE ENJOINED FROM
04:09PM 9 IMPLEMENTING THE DECEMBER 31ST, 2020 DEADLINE." AND THAT IS IN
04:09PM 10 FACT WHAT THEY ARE DOING AND THEIR JUSTIFICATION FOR THIS
04:09PM 11 OCTOBER 5TH DATE.

04:09PM 12 SO I THINK THE WAY WE SHOULD PROCEED IS WITH A CONTEMPT
04:09PM 13 PROCEEDING OR A MOTION FOR VIOLATION OF THE COURT'S PRELIMINARY
04:09PM 14 INJUNCTION ORDER.

04:09PM 15 AND I WOULD LIKE TO DO IT ON A VERY QUICK BASIS. I'D LIKE
04:10PM 16 IT BRIEFED QUICKLY, AND I WILL ISSUE A RULING QUICKLY. AND I
04:10PM 17 THINK IT IS BEST THAT THIS BE DONE BEFORE THE 5TH.

04:10PM 18 LET ME HEAR FROM THE PARTIES ABOUT PROCEEDING IN THIS WAY.

04:10PM 19 IT'S A VIOLATION OF THE ORDER TO PROPOSE A NEW DATA
04:10PM 20 COLLECTION SCHEDULE THAT IS PREDICATED ON AN ENJOINED
04:10PM 21 DECEMBER 31ST DATE.

04:10PM 22 I MEAN, WE COULD ALSO ANALYZE IT AS AN APA CLAIM. I DON'T
04:10PM 23 THINK IT CURES WHAT I FOUND IN MY ORDER LAST THURSDAY.

04:10PM 24 BUT LET ME HEAR FROM THE PARTIES. THAT'S HOW I THINK WE
04:10PM 25 SHOULD PROCEED, SOME TYPE OF EITHER CONTEMPT OR VIOLATION OF

04:10PM 1 THE PRELIMINARY INJUNCTION ORDER PROCEEDING AND DO IT QUICKLY
04:10PM 2 SO I CAN ISSUE A RULING BEFORE THE 5TH.

04:10PM 3 WHO WANTS TO BE HEARD?

04:11PM 4 MS. SHERRY: I'M HAPPY TO BEGIN, YOUR HONOR.

04:11PM 5 WE AGREE WITH THAT, AND I WOULD JUST MAKE TWO ADDITIONAL
04:11PM 6 POINTS. ONE IS THAT I THINK THEIR POSITION IN THE COURT TODAY
04:11PM 7 WITH RESPECT TO THIS TWEET CONFIRMS AS MUCH. THEY, YOU KNOW,
04:11PM 8 DESCRIBE IT AS A TARGET, NOT A DECISION. SO THIS IS NOT AN
04:11PM 9 EXAMPLE WHERE THE AGENCY HAS GONE BACK, ENGAGED IN APA
04:11PM 10 DECISIONMAKING AND ISSUED A NEW DECISION, WHICH IS WHY WE
04:11PM 11 SUBMITTED THE FILING EARLIER TODAY. SO THAT'S JUST POINT ONE.

04:11PM 12 I THINK THEIR POSITION IN THE COURT TODAY CONFIRMS THAT
04:11PM 13 THAT IS THE RIGHT OUTCOME HERE.

04:11PM 14 AND THEN THE SECOND POINT I WOULD MAKE IS JUST TO MAKE
04:11PM 15 SURE THAT THEY ARE NOT STARTING TO SHUT DOWN OPERATIONS TODAY.

04:11PM 16 I THINK COUNSEL FOR DEFENDANTS SAID THAT THE TARGET DATE
04:11PM 17 IS IMPORTANT, AND WHAT IS BEING TOLD TO THE FIELD IS IMPORTANT,
04:11PM 18 AND WE ABSOLUTELY AGREE WITH THAT, THE FACT IS THAT THEY ENTER
04:11PM 19 INTO CLOSEOUT PROCEEDINGS AND OTHER WIND-DOWN OPERATIONS THAT
04:12PM 20 ARE PEGGED TO WHAT THE END DATE IS.

04:12PM 21 AND SO I THINK EARLIER THERE WAS SOME CONVERSATION OF
04:12PM 22 THINGS MAY BE SLOWING DOWN IN THE FIELD IN RELATION TO THIS
04:12PM 23 COURT'S ORDER.

04:12PM 24 I MAY ALSO BE SPECULATING, BUT I THINK THERE IS REASONABLE
04:12PM 25 LIKELIHOOD THAT THAT IS BECAUSE WHEN THE FIELD OPERATIONS ARE

04:12PM 1 SHUTTING DOWN, THEY START ENGAGING IN SHORTCUT PROCEDURES, THEY
04:12PM 2 GO TO PROXIES FASTER, THEY GO TO ADMINISTRATIVE RECORDS FASTER,
04:12PM 3 THEY CLOSE OUT FASTER WHEN THERE'S AN END DATE IN SIGHT.

04:12PM 4 SO I JUST WANT TO MAKE SURE THAT FROM THIS MOMENT ON THAT
04:12PM 5 THEY'RE NOT ENGAGING IN FURTHER WIND DOWN, CLOSEOUT, WHAT HAVE
04:12PM 6 YOU, PROCEEDINGS, WHICH WOULD ALSO BE IN VIOLATION OF THIS
04:12PM 7 COURT'S ORDER.

04:12PM 8 THE COURT: SO I THINK YOUR MOTION SHOULD RAISE EVEN
04:12PM 9 THE ENUMERATOR IN DALLAS WHO SUBMITTED THAT DOCUMENT FROM THEIR
04:12PM 10 SUPERVISOR SAYING DESPITE THE COURT'S ORDERS, WE'RE SHUTTING
04:12PM 11 DOWN ON SEPTEMBER 30TH, AND ASSISTANT DIRECTOR FOR FIELD
04:13PM 12 OPERATIONS CHRISTY'S DECLARATION CONFIRMED THAT THAT WAS THE
04:13PM 13 WRONG INSTRUCTION GIVEN TO ENUMERATORS IN DALLAS, THAT SHOULD
04:13PM 14 BE PART OF YOUR MOTION AS WELL AS EVERYTHING ELSE WE'RE SEEING
04:13PM 15 THAT ENUMERATORS ARE BEING TOLD OCTOBER 5TH IS CLOSEOUT.
04:13PM 16 THAT'S WHEN IT'S ENDING. THEY'RE NOT BEING TOLD THAT THIS IS A
04:13PM 17 TARGET. THAT SHOULD BE PART OF YOUR MOTION.

04:13PM 18 SO WHEN CAN YOU FILE YOUR MOTION? DO THIS QUICKLY.

04:13PM 19 MS. SHERRY: WE CAN GET IT ON FILE TOMORROW MORNING.

04:13PM 20 THE COURT: YES. SO FILE IT TOMORROW.

04:13PM 21 AND I -- BECAUSE THE DEFENDANTS ARE EFFECTIVELY WINDING
04:13PM 22 DOWN FROM ALL OF THE E-MAILS I'M GETTING FROM ENUMERATORS AND
04:13PM 23 TEXT MESSAGES THAT THEY'RE GETTING FROM THEIR SUPERVISORS.

04:13PM 24 I WOULD LIKE THE DEFENDANTS TO RESPOND -- OKAY. HOW EARLY
04:13PM 25 CAN YOU FILE IT TOMORROW?

04:14PM 1 MR. FLENTJE: YOUR HONOR, CAN I SPEAK FOR THE
04:14PM 2 DEFENDANTS BEFORE YOU SET A SCHEDULE?

04:14PM 3 THE COURT: GO AHEAD, PLEASE.

04:14PM 4 MR. FLENTJE: YESTERDAY PLAINTIFFS TREATED THIS AS A
04:14PM 5 SIMPLE APA DECISION THAT OUGHT TO HAVE A RECORD AND OUGHT TO BE
04:14PM 6 ANALYZED UNDER A NEW COMPLAINT.

04:14PM 7 NOW WE ARE TALKING ABOUT CONTEMPT? THAT IS GOING VERY
04:14PM 8 FAR, AND WE NEED SUBSTANTIAL TIME TO ADDRESS SUCH A SIGNIFICANT
04:14PM 9 ALLEGATION.

04:14PM 10 AND I WOULD NOTE THAT IN THE THING THAT THE PLAINTIFFS
04:14PM 11 FILED MINUTES AGO, THEY DIDN'T RAISE THIS ISSUE. YOU RAISED IT
04:14PM 12 FOR THE FIRST TIME AND ARE ENCOURAGING THE PLAINTIFFS NOW TO
04:14PM 13 FILE A CONTEMPT MOTION MAKING THAT CLAIM. THAT IS NOT A NORMAL
04:14PM 14 WAY TO HANDLE THINGS.

04:14PM 15 AND WE REALLY THINK THAT WE WILL NEED SIGNIFICANT TIME TO
04:14PM 16 ADDRESS SOMETHING THAT WAY. WE DON'T THINK THAT'S THE RIGHT
04:14PM 17 COURSE. WE THINK THIS ALL COMES UP BECAUSE WE'RE DOING THINGS
04:14PM 18 LIKEN ENJOINING DEADLINES WHERE THE FACTS CHANGE EVERY DAY WITH
04:14PM 19 RESPECT TO A DEADLINE. EVERY DAY THERE'S NEW DATA THAT COMES
04:15PM 20 IN. THE COMMERCE DEPARTMENT HAS MORE ACCURATE ASSESSMENTS OF
04:15PM 21 WHEN THEY CAN GET DONE.

04:15PM 22 REMEMBER, WE WERE TALKING ABOUT AN ASSESSMENT THAT CAME IN
04:15PM 23 AUGUST. THAT'S WHAT THIS LITIGATION WAS ABOUT.

04:15PM 24 IT'S NOW LATE SEPTEMBER, THE SECOND TO THE LAST DAY OF
04:15PM 25 SEPTEMBER, AND THE DATA THAT THEY HAVE THAT IS IN THE RECORD

04:15PM 1 THAT WE SUBMITTED TODAY SHOWS MUCH MORE PRECISELY WHERE
04:15PM 2 EVERYTHING STANDS FROM THE CENSUS BUREAU'S PERSPECTIVE.
04:15PM 3 THEY ARE AT 97.9 OR 98.4 PERCENT TODAY AND YESTERDAY.
04:15PM 4 THERE'S NO WAY -- IT WOULD HAVE BEEN -- THERE WERE ESTIMATES OF
04:15PM 5 THAT BACK IN AUGUST, BUT OBVIOUSLY THAT WAS MONTHS AGO.
04:15PM 6 NOW WE'RE AT THE CERTAIN -- THE DAYS BEFORE THEY WERE
04:15PM 7 INITIALLY HOPING TO CONCLUDE, AND THEY'VE TRIED TO GET
04:15PM 8 EVERYTHING DONE, AND THAT IS TOTALLY REASONABLE. IT IS TOTALLY
04:15PM 9 REASONABLE TO TRY AND GET THOSE ENUMERATIONS DONE AND ANY OTHER
04:15PM 10 DIRECTION WOULD JUST NOT MAKE SENSE.
04:15PM 11 AND BY TRYING TO GET THOSE DONE, THEY'VE ACTUALLY GOTTEN
04:16PM 12 VERY CLOSE TO ANY -- THE KIND OF TARGETS THAT WERE, THAT
04:16PM 13 WERE -- THAT THEY HAD IN 2010. THE 99 PERCENT LEVEL IS VERY
04:16PM 14 CLOSE FOR ALMOST ALL OF THE STATES.
04:16PM 15 SO I UNDERSTAND THAT, YOU KNOW, PLAINTIFFS ARE CONCERNED
04:16PM 16 ABOUT THESE DEADLINES, AND I THINK THAT'S FINE, AND WE CAN
04:16PM 17 ASSESS THAT.
04:16PM 18 BUT TO TREAT THIS AS A MATTER OF CONTEMPT IS JUST NOT
04:16PM 19 FAIR, IT'S NOT REALISTIC, AND IT DOESN'T RECOGNIZE THE REALITY
04:16PM 20 THAT WHAT THE COURT IS DOING IS VERY UNUSUAL.
04:16PM 21 ENJOINING DEADLINES AND THEN GIVING THE COMMERCE
04:16PM 22 DEPARTMENT NO GUIDANCE ON WHAT TO DO IS UNUSUAL.
04:16PM 23 WHEN THE PLAINTIFF SAID YESTERDAY THAT YOU COULDN'T IMPOSE
04:16PM 24 THE OCTOBER 31ST DEADLINE, THEY RECOGNIZED THAT JUST YESTERDAY,
04:16PM 25 AND NOW THEY'RE ASKING FOR CONTEMPT BECAUSE WE'RE NOT UTILIZING

04:16PM 1 THE OCTOBER 31ST DEADLINE OR -- I'M NOT SURE THEY'RE ASKING FOR
04:16PM 2 IT, BUT IT DOESN'T MAKE SENSE.

04:16PM 3 NOW I WANT TO TALK BRIEFLY ABOUT DECEMBER 31ST. THIS IS
04:16PM 4 THE STATUTORY DEADLINE. THE NOTION THAT WE ARE GOING TO BE
04:17PM 5 PLACED IN CONTEMPT FOR CONTINGENCY PLANNING IN THE EVENT THAT
04:17PM 6 THAT DEADLINE COMES BACK INTO EFFECT, WHICH COULD HAPPEN ANY
04:17PM 7 DAY GIVEN THE APPEAL TO THE NINTH CIRCUIT, IT'S JUST NOT A
04:17PM 8 CONTEMPT SITUATION.

04:17PM 9 SO I THINK WE CAN ANALYZE IT, AND I THINK IF THEY WANT TO
04:17PM 10 CHALLENGE THIS NEW OCTOBER 5TH DATE, THAT'S FINE. WE'LL HAVE
04:17PM 11 OUR AGENCY ACTION ARGUMENTS.

04:17PM 12 BUT TO CALL THIS A CONTEMPT SITUATION IS JUST NOT
04:17PM 13 REASONABLE IN OUR VIEW.

04:17PM 14 WE WOULD LIKE AT LEAST A COUPLE OF DAYS TO RESPOND TO A
04:17PM 15 CONTEMPT CLAIM.

04:17PM 16 THE COURT: SO IN PARAGRAPH 5 OF ECF 243 THAT THE
04:17PM 17 PLAINTIFFS FILED TODAY, YOU SAID THAT YOU WERE GOING TO FILE A
04:17PM 18 SEPARATE MOTION ADDRESSING VIOLATIONS OF THE COURT ORDERS.

04:17PM 19 MR. FLENTJE: YES, I THINK WE --

04:17PM 20 THE COURT: I'M SORRY. THAT WAS NOT ADDRESSED TO
04:17PM 21 YOU.

04:17PM 22 MR. FLENTJE: SORRY.

04:17PM 23 THE COURT: ECF 243 WAS FILED BY THE PLAINTIFFS.

04:17PM 24 I AM ASKING THE PLAINTIFFS, WHAT DID YOU MEAN BY
04:17PM 25 PARAGRAPH 5?

04:17PM 1 MS. SHERRY: WE MEANT EXACTLY WHAT WE SAID. I MEAN,
04:17PM 2 WE INCLUDED THE PRIMARY VIOLATION THAT IS IN HERE. IT'S A
04:18PM 3 SCREEN SHOT OF THEIR OWN WEBSITE FROM SEPTEMBER 28TH. IT'S THE
04:18PM 4 ONE THAT WE TALKED ABOUT YESTERDAY.

04:18PM 5 YOU KNOW, WE TALKED ABOUT THE DOCUMENTS IN THE ABSTRACT
04:18PM 6 YESTERDAY. I THINK YOUR HONOR IS FAMILIAR WITH THIS DOCUMENT,
04:18PM 7 AND IT'S ONE THAT WE KEEP REFERRING TO WHEN WE TALK ABOUT THE
04:18PM 8 99 PERCENT.

04:18PM 9 THIS IS THE DOCUMENT THAT THEY POST ON THEIR WEBSITE.
04:18PM 10 THEY UPDATE IT EVERY SINGLE DAY SHOWING THE COMPLETION RATE IN
04:18PM 11 EVERY STATE.

04:18PM 12 AND AS OF YESTERDAY'S HEARING, WHICH, YOU KNOW, IT SAYS
04:18PM 13 THERE AT 9-28, IT SAID IN NO UNCERTAIN TERMS THAT THEY WILL
04:18PM 14 CONCLUDE DATA COLLECTION OPERATIONS ON SEPTEMBER 30, 2020. I
04:18PM 15 MEAN, THAT'S AS CLEAR A VIOLATION AS THERE COULD BE.

04:18PM 16 WE, LIKE YOU, HAVE BEEN GETTING A LOT OF PHONE CALLS AND
04:18PM 17 E-MAILS FROM ENUMERATORS, FROM SUPERVISORS, FROM PARTNERSHIP
04:18PM 18 SPECIALISTS, AND OTHERS INVOLVED IN THE EFFORT. WE'VE BEEN
04:18PM 19 TRYING TO GO THROUGH THEM.

04:18PM 20 WE ALSO HAVE BEEN GOING THROUGH THE ONES THAT HAVE COME
04:19PM 21 THROUGH THE COURT. SO WE WERE GOING TO TAKE A CLOSE LOOK AT
04:19PM 22 ALL OF THAT AND PUT IT TOGETHER IN A SEPARATE FILING.

04:19PM 23 YOU KNOW, THE OTHER VIOLATION IS THE ONE THAT WE'RE
04:19PM 24 TALKING ABOUT HERE TODAY, WHICH IS THE TWEET CHANGING OR MAKING
04:19PM 25 A TARGET DATE OF OCTOBER 5TH.

04:19PM 1 AND I KNOW, YOU KNOW, THEY SAY, OH, WELL, YESTERDAY WAS
04:19PM 2 ALL ABOUT THE ADMINISTRATIVE RECORD.

04:19PM 3 I MEAN, THEY'RE THE ONES WHO CAME IN HERE THIS MORNING AND
04:19PM 4 REITERATED THEIR POSITION THAT THIS IS JUST A TARGET, THAT
04:19PM 5 THERE IS ACTUALLY NO DECISION FROM THE AGENCY.

04:19PM 6 YOU KNOW, THEY CAN'T HAVE IT BOTH WAYS. EITHER THERE IS A
04:19PM 7 NEW FINAL AGENCY DECISION THAT IS SUBJECT TO JUDICIAL REVIEW,
04:19PM 8 OR WE'RE EXACTLY WHERE WE ARE, WHICH IS THE COURT ISSUED AN
04:19PM 9 ORDER THAT ENJOINED THEM FROM IMPLEMENTING THE TIMELINES IN THE
04:19PM 10 REPLAN, AND THAT'S EXACTLY WHAT THEY, THEY DID. THE
04:19PM 11 OCTOBER 5TH TWEET COMPLETELY GOES BACK ON THE ORDER.

04:20PM 12 AND YOUR HONOR IS RIGHT, I MEAN, BASED ON THE RECORD THAT
04:20PM 13 WE HAVE SEEN, IT IS COMPLETELY DIRECTED TOWARDS IMPLEMENTING
04:20PM 14 THE DECEMBER 31ST DATE THAT YOU SPECIFICALLY ENJOINED.

04:20PM 15 SO, YOU KNOW, IN SOME WAYS THEY HAVE TO PICK AN ARGUMENT.
04:20PM 16 EITHER IT'S FINAL AGENCY ACTION SUBJECT TO REVIEW AND WE HAVE A
04:20PM 17 NEW ADMINISTRATIVE RECORD, OR, WHICH IS EXACTLY THEIR POSITION
04:20PM 18 THIS MORNING, YOU KNOW, IT'S NOT, IT'S JUST A TARGET, IN WHICH
04:20PM 19 CASE IT'S A DIRECT VIOLATION OF THE COURT'S ORDER.

04:20PM 20 AND, YOU KNOW, WHEN WE LITIGATED THIS CASE FROM THE VERY
04:20PM 21 BEGINNING IT HAS BEEN ALL ABOUT THE TIMELINES. IT'S BEEN ALL
04:20PM 22 ABOUT THE ACCELERATED TIMELINES.

04:20PM 23 AND I WON'T GO THROUGH THE DETAIL ON THAT.

04:20PM 24 THE ONE OTHER POINT I WANT TO MAKE WHEN WE TALK ABOUT, YOU
04:20PM 25 KNOW, THINGS CHANGING ALL OF THE TIME ON THE GROUND SO THEY

04:20PM 1 NEED TO ADJUST THE DATES. THEY NEVER ADJUSTED THE END OF --
04:20PM 2 YOU KNOW, THEY'VE NEVER SHORTENED THE DATES FOR THE END OF
04:20PM 3 FIELD COLLECTION. THERE'S NO INDICATION THAT THAT'S SOMETHING
04:20PM 4 THAT THEY DO WILLY NILLY.

04:21PM 5 AND IT ALSO, AS YOUR HONOR POINTED OUT, TAKES NO ACCOUNT
04:21PM 6 OF THE DATA PROCESSING. YOU KNOW, THEY SAID IN THE
04:21PM 7 ADMINISTRATIVE RECORD AS RECENTLY AS MR. FONTENOT'S DECLARATION
04:21PM 8 LESS THAN A WEEK AGO THAT THEY CANNOT COMPRESS THE TIMELINE FOR
04:21PM 9 DATA PROCESSING ANY FURTHER AND STILL MEET THE DECEMBER DATE.
04:21PM 10 THE RECORD IS JUST REplete WITH THE STATEMENT.

04:21PM 11 SO THE NOTION THAT THINGS HAVE CHANGED ON THE GROUND, I
04:21PM 12 THINK MR. ROSENBERG -- AND I WANT TO SAY IT WAS IN THE
04:21PM 13 SEPTEMBER 14TH HEARING -- SAYS YOU GIVETH ONE, YOU TAKETH THE
04:21PM 14 OTHER. THE OVERALL TIMELINE, THE ACCELERATED TIMELINE THAT WAS
04:21PM 15 ADOPTED IN THE REPLAN WHICH WAS THE EXACT FOCUS OF THE
04:21PM 16 INJUNCTION AND IT WAS THE FOCUS OF THE HEARING AND ALL OF OUR
04:21PM 17 BRIEFING AND OUR COMPLAINT, THE ACCELERATED TIMELINE HAS NOT
04:21PM 18 CHANGED AT ALL.

04:21PM 19 THE COURT: SO WHAT IS THIS MOTION THAT YOU'RE GOING
04:21PM 20 TO FILE?

04:21PM 21 MS. SHERRY: PROBABLY, PROBABLY A MOTION TO COMPEL.
04:21PM 22 IT CAN CERTAINLY BE A MOTION FOR CONTEMPT. I THINK OUR PRIMARY
04:22PM 23 POINT --

04:22PM 24 THE COURT: IT DOESN'T HAVE TO BE CONTEMPT.

04:22PM 25 I JUST THINK THAT AN ENTIRE SCHEDULE THAT IS PREDICATED ON

04:22PM 1 AN ENJOINED DATE IS A VIOLATION OF MY PRELIMINARY INJUNCTION
04:22PM 2 ORDER. YOU DON'T HAVE TO CALL IT CONTEMPT. YOU CAN CALL IT
04:22PM 3 SOMETHING ELSE, JUST LIKE WE'RE NOT CALLING WHAT SECRETARY ROSS
04:22PM 4 DID A DECISION. SO I'M NOT INVESTED IN WHAT YOU CALL IT, BUT I
04:22PM 5 THINK IT IS INCONSISTENT WITH WHAT I ORDERED LAST THURSDAY.

04:22PM 6 MS. SHERRY: WE COMPLETELY AGREE WITH THAT.

04:22PM 7 YOU KNOW, AGAIN, JUST TO PUT A FINE POINT ON IT, WHATEVER
04:22PM 8 WE CALL IT, AND, YOU KNOW, WHATEVER THE CONSEQUENCES ARE,
04:22PM 9 CONTEMPT OR OTHERWISE FOR DEFENDANTS, THE MOST IMPORTANT THING
04:22PM 10 IS WHAT IS GOING ON, ON THE GROUND RIGHT NOW AND MAKING SURE
04:22PM 11 THAT THERE'S NOT IRREPARABLE HARM TO THE COUNT.

04:22PM 12 SO THE MOST IMPORTANT THING, YOU KNOW, LIKE YOU SAID, WE
04:23PM 13 CAN CALL IT A PICKLE OR WE CAN CALL IT ANYTHING WE WANT, BUT
04:23PM 14 THE MOST IMPORTANT THING AS A PRACTICAL MATTER IS THAT YOUR
04:23PM 15 INJUNCTION IS READ AND UNDERSTOOD BY DEFENDANTS AND THAT FROM
04:23PM 16 THIS MOMENT FORWARD THEY ARE NOT STARTING TO WIND DOWN, CLOSE
04:23PM 17 OUT OPERATIONS, AND THAT THEY ARE CONTINUING THE COUNT AS THEY
04:23PM 18 SHOULD HAVE FROM THE BEGINNING.

04:23PM 19 THE COURT: OKAY. SO WHATEVER THIS MOTION IS, TELL
04:23PM 20 ME WHEN YOU'RE GOING TO FILE IT. LET ME GET MY CALENDAR.

04:23PM 21 MS. SHERRY: WELL, WE CAN STILL FILE IT TOMORROW
04:23PM 22 MORNING, AND WE WILL PLAN TO DO THAT.

04:23PM 23 THE COURT: WHAT TIME?

04:23PM 24 MS. SHERRY: CAN WE SAY HOW ABOUT 11:00 O'CLOCK
04:23PM 25 PACIFIC TIME?

04:23PM 1 THE COURT: OKAY. AND THE -- WHAT ABOUT THURSDAY
04:24PM 2 7:00 P.M. PACIFIC TIME, WHICH WOULD BE 10:00 P.M. EAST COAST
04:24PM 3 TIME? IT WOULD GIVE YOU BASICALLY ALMOST TWO DAYS FOR THE
04:24PM 4 OPPOSITION.

04:24PM 5 I WOULD HAVE A VERY BRIEF REPLY MAYBE FRIDAY. COULD YOU
04:24PM 6 DO NOON PACIFIC TIME?

04:24PM 7 WE'LL DO A HEARING FRIDAY AT 3:00.

04:24PM 8 MS. SHERRY: YOUR HONOR, JUST TO CLARIFY.

04:24PM 9 I THINK, I THINK -- YOU KNOW, WE CAN DEFINITELY DO THAT,
04:24PM 10 AND THAT WILL ADDRESS WHAT I WOULD CONSIDER THE RETROSPECTIVE
04:24PM 11 VIOLATIONS.

04:24PM 12 BUT WITH THE COURT'S INDULGENCE, IF IT WOULD BE POSSIBLE
04:24PM 13 TO -- I MEAN, I THINK YOU HAVE ALREADY STATED IT ON THE RECORD,
04:24PM 14 BUT JUST FORMALIZE YOUR POSITION THAT -- IN TERMS OF WHAT THE
04:24PM 15 INJUNCTION ACTUALLY REQUIRES JUST TO MAKE SURE AGAIN FROM THIS
04:24PM 16 MOMENT FORWARD SO WE DON'T LOSE EVERY DAY AT THIS POINT
04:24PM 17 ESPECIALLY IF THE FIELD IS BEING TOLD THAT THEY NEED TO WIND
04:24PM 18 DOWN BY OCTOBER 5TH, THAT'S A TARGET DATE, HOWEVER YOU WANT TO
04:25PM 19 CALL IT. THAT IS A REAL PRACTICAL PROBLEM IN THE INTERIM.

04:25PM 20 THE COURT: WELL, ALL I CAN SAY IS WHAT IS IN THE
04:25PM 21 CONCLUSION OF MY ORDER. IT'S ON PAGE 76.

04:25PM 22 IT SAYS, "EFFECTIVE AS OF THE DATE OF THIS ORDER:" WHICH
04:25PM 23 WAS SEPTEMBER 24TH, "U.S. CENSUS BUREAU'S AUGUST 3RD, 2020,
04:25PM 24 REPLAN'S SEPTEMBER 30TH, 2020 DEADLINE FOR THE COMPLETION OF
04:25PM 25 DATA COLLECTION AND DECEMBER 31ST, 2020 DEADLINE FOR REPORTING

04:25PM 1 THE TABULATION OF TOTAL POPULATION TO THE PRESIDENT ARE STAYED
04:25PM 2 PURSUANT TO 5 UNITED STATES CODE SECTION 705; AND DEFENDANTS
04:25PM 3 COMMERCE SECRETARY WILBUR L. ROSS, JUNIOR; THE U.S. DEPARTMENT
04:25PM 4 OF COMMERCE; THE DIRECTOR OF THE U.S. CENSUS BUREAU
04:25PM 5 STEVEN DILLINGHAM, AND THE U.S. CENSUS BUREAU ARE ENJOINED FROM
04:25PM 6 IMPLEMENTING THESE TWO DEADLINES."

04:25PM 7 AND FROM WHAT I CAN SEE OF WHAT I'VE LOOKED AT, THE
04:25PM 8 DEFENDANTS ARE IMPLEMENTING THAT DECEMBER 31ST DEADLINE BY
04:25PM 9 CREATING THIS TARGET DATE OF OCTOBER 5TH, AND I THINK THAT'S
04:26PM 10 BEEN ENJOINED.

04:26PM 11 AND I THINK A TARGET DATE FOR DATA COLLECTION THAT IS
04:26PM 12 PREDICATED ON AN ENJOINED DATE IS A VIOLATION OF MY ORDER.

04:26PM 13 SO --

04:26PM 14 MR. FLENTJE: YOUR HONOR, WE WOULD OBVIOUSLY
04:26PM 15 DISPUTE THAT, BUT WE CAN SAY THAT IN THE PAPERS. I DON'T WANT
04:26PM 16 TO GO THROUGH IT AGAIN.

04:26PM 17 WE'D ENCOURAGE PLAINTIFFS TO SEEK CLARIFICATION ON THESE
04:26PM 18 TYPES OF ISSUES INSTEAD OF A MOTION TO COMPEL. BUT, YOU KNOW,
04:26PM 19 THEY'LL FILE WHAT THEY WANT TO FILE.

04:26PM 20 THE COURT: I THINK THEY SHOULD FILE WHAT THEY THINK
04:26PM 21 IS APPROPRIATE.

04:26PM 22 IF A VIOLATION OF THE ORDER HAS BEEN COMMITTED, THERE
04:26PM 23 SHOULD BE CONSEQUENCES.

04:26PM 24 MS. SHERRY: I UNDERSTAND.

04:26PM 25 OUR POSITION IS THAT CONTINGENCY PLANNING FOR SOMETHING

04:26PM 1 THAT MIGHT HAPPEN IN THE FUTURE IS NOT A VIOLATION OF THIS
04:26PM 2 ORDER. SO I'LL MAKE THAT PERFECTLY CLEAR. CONTINGENCY
04:26PM 3 PLANNING FOR THE REIMPOSITION OF THE DECEMBER 31ST DATE, WHICH
04:26PM 4 IS A VERY REAL POSSIBILITY AND IT'S SOMETHING THAT THE COMMERCE
04:27PM 5 DEPARTMENT HAS TO THINK ABOUT, IS NOT A VIOLATION OF THE ORDER.

04:27PM 6 THE COURT: ALL RIGHT. WHAT MORE DO WE HAVE TO SET?
04:27PM 7 SO YOU'LL FILE YOUR MOTION WEDNESDAY AT 11:00 A.M. PACIFIC
04:27PM 8 TIME, AND THE DEFENDANTS' OPPOSITION WILL BE DUE THURSDAY,
04:27PM 9 7:00 P.M. PACIFIC TIME.

04:27PM 10 NOW, THAT IS NOT GIVING YOU SO MUCH TIME BECAUSE YOU WILL
04:27PM 11 GET IT 10:00 O'CLOCK EAST COAST TIME BUT THEN THAT WILL GIVE
04:27PM 12 YOU 3:00 O'CLOCK, FRIDAY EAST COAST TIME FOR THE REPLY, AND
04:27PM 13 WE'LL HAVE A HEARING ON FRIDAY AT 3:00.

04:27PM 14 WHAT ELSE? IS THERE ANYTHING ELSE THAT WE NEED TO
04:27PM 15 SCHEDULE TODAY? NO?

04:27PM 16 ALL RIGHT. THEN THANK YOU VERY MUCH. WE'LL SEE YOU ON
04:27PM 17 FRIDAY AT 3:00. THANK YOU.

04:27PM 18 THE CLERK: WE'RE ADJOURNED.

04:27PM 19 (COURT CONCLUDED AT 4:27 P.M.)

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CERTIFICATE OF REPORTER

I, THE UNDERSIGNED OFFICIAL COURT REPORTER OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, 280 SOUTH FIRST STREET, SAN JOSE, CALIFORNIA, DO HEREBY CERTIFY:

THAT THE FOREGOING TRANSCRIPT, CERTIFICATE INCLUSIVE, IS A CORRECT TRANSCRIPT FROM THE RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

A handwritten signature in black ink that reads "Irene Rodriguez". The signature is written in a cursive, flowing style with a large, decorative flourish at the end of the last name.

IRENE RODRIGUEZ, CSR, RMR, CRR
CERTIFICATE NUMBER 8074

DATED: SEPTEMBER 29, 2020

Re: Thank you and question

Wilbur Ross PII

Mon 9/28/2020 5:12 PM

To: Ron S Jarmin (CENSUS/DEPDIR FED) <Ron.S.Jarmin@census.gov>

Cc: Albert E Fontenot (CENSUS/ADDC FED) <Albert.E.Fontenot@census.gov>; James T Christy (CENSUS/LA FED) <James.T.Christy@census.gov>; Timothy P Olson (CENSUS/ADFO FED) <Timothy.P.Olson@census.gov>; Enrique Lamas (CENSUS/DEPDIR FED) <Enrique.Lamas@census.gov>; Kelley, Karen (Federal) <KKelley@doc.gov>; Steven Dillingham (CENSUS/DEPDIR FED) <steven.dillingham@census.gov>; Walsh, Michael (Federal) <MWalsh@doc.gov>

Dear Ron, Thanks for the confirmation. Based on the staff recommendation I am extending the field operation to October 5. Best regards , Wilbur Ross

Sent from my iPhone

On Sep 28, 2020, at 4:30 PM, Ron S Jarmin (CENSUS/DEPDIR FED) <Ron.S.Jarmin@census.gov> wrote:

Yes sir, we need to finish field work on 10/5 if we are to have enough time (and assuming all goes well) to finish the processing of the resident population, federally affiliated overseas and, if requested, unlawful aliens in ICE Detention Centers by 12/31. Other PM related outputs would be pushed to 1/11/2021.

Thanks

Ron S Jarmin, PhD., Deputy Director

U.S. Census Bureau

o: 301-763-1858 | m: PII

census.gov | [@uscensusbureau](https://twitter.com/uscensusbureau)

Shape your future. START HERE > 2020census.gov

From: Wilbur Ross PII >

Sent: Monday, September 28, 2020 3:52 PM

To: Ron S Jarmin (CENSUS/DEPDIR FED) <Ron.S.Jarmin@census.gov>; Albert E Fontenot (CENSUS/ADDC FED) <Albert.E.Fontenot@census.gov>; James T Christy (CENSUS/LA FED) <James.T.Christy@census.gov>; Timothy P Olson (CENSUS/ADFO FED) <Timothy.P.Olson@census.gov>; Enrique Lamas (CENSUS/DEPDIR FED) <Enrique.Lamas@census.gov>

Cc: Kelley, Karen (Federal) <KKelley@doc.gov>; Steven Dillingham (CENSUS/DEPDIR FED)

<steven.dillingham@census.gov>; Walsh, Michael (Federal) <MWalsh@doc.gov>

Subject: Thank you and question

Thank you for the excellent briefing this afternoon. As I prepare to make the decision, I would like to make sure that I understood correctly that your team's opinion is that if we stay in the field beyond October 5, we would not be able to meet the statutory deadline of December 31. Please confirm at your earliest convenience as I understand you would like to make an announcement today. Thank you again.

Proposed Options for Completion of Enumeration

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2020

Proposed Options for Completion of Enumeration

Background:

The Office of General Counsel (OGC) **ACIAWP**

Projections for state completion rates for 9/30 and 10/5:

Projection A*		Projection B**	
September 30: 13 states below 99%		September 30: 17 states below 99%	
<ul style="list-style-type: none"> Kentucky Arizona Colorado New Mexico Florida South Dakota North Carolina 	<ul style="list-style-type: none"> Georgia Montana Mississippi South Carolina Louisiana Alabama 	<ul style="list-style-type: none"> Wyoming Iowa Delaware Colorado Oklahoma South Dakota Kentucky 	<ul style="list-style-type: none"> Florida Arizona North Carolina New Mexico Georgia Mississippi South Carolina
<ul style="list-style-type: none"> October 5: 1 state below 99% Alabama 		<ul style="list-style-type: none"> October 5: 10 states below 99% Arizona North Carolina Florida New Mexico Georgia 	<ul style="list-style-type: none"> Mississippi South Carolina Montana Louisiana Alabama

- Note: Even for states over 99% completion rates, there will be sub-state areas that are substantially below 99%, particular Tribal Areas due to COVID-19 restrictions.
- As in previous censuses, the Census Bureau will use count imputation to accurately account for households for which we have field evidence that are occupied.
- If field work is completed anytime after October 5, Census Bureau will be unable to deliver state counts for apportionment by December 31, 2020 due to necessary post processing activities. Any delay beyond October 5, 2020 would require a corresponding delay to the delivery of state counts for apportionment.

2 2020CENSUS.GOV

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*Based on one-day change as of September 26, 2020

**Based on state NRFU caseload and available enumerators as of September 26, 2020

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Census
2020

Proposed Options for Completion of Enumeration

The Census Bureau recommends closing out field operations no earlier than Monday, October 5, 2020.

Post Data Collection Processing

- Streamlined post data collection processing and focusing only on state counts for apportionment in order to complete all post data collection processing by December 19, 2020.
 - This assumes that there are no unanticipated delays in post data collection processing.
- The latest date to begin post data collection processing that allows Census Bureau to deliver state counts for apportionment to the Secretary of Commerce by December 31, 2020 is October 6, 2020.

The Census Bureau needs advanced notice before beginning “closeout” procedures.

- There are currently more than 18,000 enumerators on travel whose travel status either needs to be suspended or extended.
- Assuming field work is concluded on October 5, 2020, a decision on “closeout” processes including enumeration travel is required no later than Friday, October 2, 2020.

Option 1: Conclude field work by October 5, 2020 in order to meet apportionment delivery date of December 31, 2020.

Option 2: Continue field work beyond October 5, 2020 in order to increase state completion rates to 99% and to continue to improve enumeration of lagging sub-state areas, such as tribal areas, rural areas, and hard-to-count communities. However, this would not allow for delivery of state counts for apportionment by December 31, 2020.

Projections To Finish NRFU

Projection A – Previous Day Method

This is a simple straight-line projection of a state's progress based on previous day's rate of completion. The projected pace of work completion is constant, meaning the percentage of work completed yesterday will be the same every day until 99% is reached. It assumes no decline in productivity.

Advantages:

- Incorporates the current staffing and productivity.
- An accurate "predictor" for close-day calculations (the next day or two)

Disadvantages:

- For areas with current progress of 90-95%, it can be highly optimistic as it does not account for the slowdown that takes place with the most difficult cases as progress approaches 99%.
- It is susceptible to predictable, daily fluctuations in productivity. Sundays are less productive than Tuesdays. NRFU productivity during SBE activities was lower.
- Can be highly variable based on local conditions – weather, fires, civil unrest, etc.

Projection B – "Banded" Method

This is a projection based on the pattern of completion for previous states, based on the progress at different intervals of completion. It uses "bands" of completion rates which apply to all states within the "band". It incorporates a higher rate of productivity at lower rates of completion and assumes a significant slowing as rates approach 99%. It uses average rates of completion for states which have already passed these intervals.

Advantages:

- Reflects the decline in productivity as completion rates near 99%
- Uses "real" completion data

Disadvantages:

- Does not account for recent interventions, such as staffing, travelers and workload reconfigurations. Some of these are significant.
- Reflects work during the period when restrictions were in place as a result of the TRO.
- Includes the "learning curve" of managers figuring out the system and the finishing process. We know the first few states were very difficult to finish because of issues with systems and procedures.

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Projection A - When a State will hit 99% Enumeration Completion

State	28-Sep	29-Sep	30-Sep	1-Oct	2-Oct	3-Oct	4-Oct	5-Oct	6-Oct
Kentucky	98.00%	98.46%	98.92%	99.37%					
Arizona	97.58%	98.14%	98.71%	99.27%					
Colorado	98.09%	98.39%	98.68%	98.98%					
New Mexico	97.38%	98.03%	98.68%	99.32%					
Florida	97.67%	98.15%	98.62%	99.10%					
South Dakota	97.67%	97.97%	98.26%	98.56%	98.85%	99.15%			
North Carolina	97.21%	97.71%	98.20%	98.70%	99.19%				
Georgia	96.60%	97.12%	97.65%	98.17%	98.69%	99.22%			
Montana	96.14%	96.81%	97.49%	98.16%	98.84%	99.51%			
Mississippi	96.16%	96.72%	97.28%	97.84%	98.41%	98.97%			
South Carolina	96.05%	96.59%	97.12%	97.66%	98.19%	98.73%	99.26%		
Louisiana	95.50%	96.09%	96.67%	97.25%	97.84%	98.42%	99.00%		
Alabama	94.37%	95.01%	95.65%	96.29%	96.93%	97.57%	98.21%	98.85%	99.49%

Note: Projected based on actual progress in state as of previous day. Projection as of September 26, 2020.

Projection B - When a State will hit 99% Enumeration Completion

State	28-Sep	29-Sep	30-Sep	1-Oct	2-Oct	3-Oct	4-Oct	5-Oct	6-Oct	7-Oct	8-Oct	9-Oct	10-Oct	11-Oct
Wyoming	98.39%	98.62%	98.86%	99.10%										
Iowa	98.32%	98.56%	98.80%	99.03%										
Delaware	98.07%	98.31%	98.55%	98.79%	99.02%									
Colorado	97.92%	98.16%	98.40%	98.63%	98.87%	99.11%								
Oklahoma	97.59%	97.83%	98.08%	98.32%	98.57%	98.82%	99.06%							
South Dakota	97.52%	97.77%	98.01%	98.26%	98.51%	98.75%	99.00%							
Kentucky	97.36%	97.61%	97.85%	98.10%	98.35%	98.59%	98.84%	99.08%						
Florida	96.97%	97.22%	97.47%	97.71%	97.96%	98.20%	98.45%	98.70%	98.94%	99.19%				
Arizona	96.78%	97.08%	97.38%	97.68%	97.98%	98.28%	98.58%	98.88%	99.18%					
North Carolina	96.63%	96.93%	97.23%	97.53%	97.83%	98.13%	98.43%	98.73%	99.03%					
New Mexico	96.34%	96.64%	96.94%	97.24%	97.54%	97.84%	98.14%	98.44%	98.74%	99.04%				
Georgia	95.93%	96.23%	96.53%	96.83%	97.13%	97.43%	97.73%	98.03%	98.33%	98.63%	98.93%	99.23%		
Mississippi	95.50%	95.84%	96.18%	96.52%	96.86%	97.20%	97.54%	97.88%	98.22%	98.56%	98.90%	99.25%		
South Carolina	95.47%	95.81%	96.15%	96.49%	96.83%	97.17%	97.51%	97.86%	98.20%	98.54%	98.88%	99.22%		
Montana	95.14%	95.48%	95.82%	96.16%	96.50%	96.84%	97.18%	97.52%	97.87%	98.21%	98.55%	98.89%	99.23%	
Louisiana	94.89%	95.26%	95.64%	96.02%	96.39%	96.77%	97.15%	97.52%	97.90%	98.28%	98.66%	99.03%		
Alabama	93.76%	94.19%	94.63%	95.06%	95.50%	95.93%	96.37%	96.80%	97.24%	97.67%	98.11%	98.54%	98.98%	99.41%

Note: Projected based on progress curve of previous states. Does not fully account for additional enumerators sent to finish these areas. Projection based on progress through September 26, 2020.

EXHIBIT 1

Statement from U.S. Census Bureau Director Steven Dillingham: Delivering a Complete and Accurate 2020 Census Count

AUGUST 03, 2020

RELEASE NUMBER CB20-RTQ.23

August 3, 2020 — The U.S. Census Bureau continues to evaluate its operational plans to collect and process 2020 Census data. Today, we are announcing updates to our plan that will include enumerator awards and the hiring of more employees to accelerate the completion of data collection and apportionment counts by our statutory deadline of December 31, 2020, as required by law and directed by the Secretary of Commerce. The Census Bureau's new plan reflects our continued commitment to conduct a complete count, provide accurate apportionment data, and protect the health and safety of the public and our workforce.

- **Complete Count:** A robust field data collection operation will ensure we receive responses from households that have not yet self-responded to the 2020 Census.
 - We will improve the speed of our count without sacrificing completeness. As part of our revised plan, we will conduct additional training sessions and provide awards to enumerators in recognition of those who maximize hours worked. We will also keep phone and tablet computer devices for enumeration in use for the maximum time possible.
 - We will end field data collection by September 30, 2020. Self-response options will also close on that date to permit the commencement of data processing. Under this plan, the Census Bureau intends to meet a similar level of household responses as collected in prior censuses, including outreach to hard-to-count communities.

- **Accurate Data and Efficient Processing:** Once we have the data from self-response and field data collection in our secure systems, we plan to review it for completeness and accuracy, streamline its processing, and prioritize apportionment counts to meet the statutory deadline. In addition, we plan to increase our staff to ensure operations are running at full capacity.
- **Flexible Design:** Our operation remains adaptable and additional resources will help speed our work. The Census Bureau will continue to analyze data and key metrics from its field work to ensure that our operations are agile and on target for meeting our statutory delivery dates. Of course, we recognize that events can still occur that no one can control, such as additional complications from severe weather or other natural disasters.
- **Health and Safety:** We will continue to prioritize the health and safety of our workforce and the public. Our staff will continue to follow Federal, state, and local guidance, including providing appropriate safety trainings and personal protective equipment to field staff.

The Census Bureau continues its work on meeting the requirements of Executive Order 13880 - issued July 11, 2019 and the Presidential Memorandum - issued July 21, 2020. A team of experts are examining methodologies and options to be employed for this purpose. The collection and use of pertinent administrative data continues.

We are committed to a complete and accurate 2020 Census. To date, 93 million households, nearly 63 percent of all households in the Nation, have responded to the 2020 Census. 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 upcoming weeks, will work diligently to achieve an accurate count.

We appreciate the support of our hundreds of thousands of community-based, business, state, local and tribal partners contributing to these efforts across our Nation. The 2020 Census belongs to us all. If you know someone who has not yet responded, please encourage them to do so today online at 2020census.gov, over the phone, or by mail.

###

Contact

Public Information Office

301-763-3030

pio@census.gov

EXHIBIT 3

U.S. Department of Commerce Secretary Wilbur Ross and U.S. Census Bureau Director Steven Dillingham Statement on 2020 Census Operational Adjustments Due to COVID-19

In light of the COVID-19 outbreak, the U.S. Census Bureau is adjusting 2020 Census operations.

APRIL 13, 2020
RELEASE NUMBER CB20-RTQ.16

APRIL 13, 2020 — The 2020 Census is underway and more households across America are responding every day. Over 70 million households have responded to date, representing over 48% of all households in America. In light of the COVID-19 outbreak, the U.S. Census Bureau is adjusting 2020 Census operations in order to:

- Protect the health and safety of the American public and Census Bureau employees.
- Implement guidance from federal, state and local authorities.
- Ensure a complete and accurate count of all communities.

The Census Bureau temporarily suspended 2020 Census field data collection activities in March. Steps are already being taken to reactivate field offices beginning June 1, 2020, in preparation for the resumption of field data collection operations as quickly as possible following June 1.

In-person activities, including all interaction with the public, enumeration, office work and processing activities, will incorporate the most current guidance to promote the health and safety of staff and the public. This will include recommended personal protective equipment (PPE) and social distancing practices.

Once 2020 Census data collection is complete, the Census Bureau begins a lengthy, thorough and scientifically rigorous process to produce the apportionment counts, redistricting information and other statistical data products that help guide hundreds of billions of dollars in public and private sector spending per year.

In order to ensure the completeness and accuracy of the 2020 Census, the Census Bureau is seeking statutory relief from Congress of 120 additional calendar days to deliver final apportionment counts.

Under this plan, the Census Bureau would extend the window for field data collection and self-response to October 31, 2020, which will allow for apportionment counts to be delivered to the President by April 30, 2021, and redistricting data to be delivered to the states no later than July 31, 2021.

###

Contact

Public Information Office

[301-763-3030](tel:301-763-3030)

pio@census.gov

Related Information

PRESS RELEASE

2020 Census Operational Adjustments Due to COVID-19

We're adapting or delaying some of our operations to protect the health and safety of our staff and the public and make sure we get the same population counted.

JEFFREY BOSSERT CLARK
Acting Assistant Attorney General
ALEXANDER K. HAAS
Branch Director
DIANE KELLEHER
BRAD P. ROSENBERG
Assistant Branch Directors
M. ANDREW ZEE
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Attorneys for Defendants

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

NATIONAL URBAN LEAGUE, *et al.*,

Plaintiff,

v.

WILBUR L. ROSS, JR., *et al.*,

Defendants.

Case No. 5:20-cv-05799-LHK

**FIFTEENTH DECLARATION OF
JAMES T. CHRISTY**

1 I, James T. Christy, make the following Declaration pursuant to 28 U.S.C. § 1746, and state
2 that under penalty of perjury the following is true and correct to the best of my knowledge and
3 belief:

- 4 1. This is my fifteenth declaration in this lawsuit. I am making this declaration in
5 response to Plaintiffs' Declaration of Sheila Valenzuela, ECF No. 330, filed late Friday,
6 October 9, 2020. I note that the declaration contained within ECF No. 330 was
7 apparently signed and dated two days earlier on October 7, 2020.
- 8 2. In reviewing the declaration, there is no violation of the court's order.
- 9 3. The Declarant, Ms. Sheila Valenzuela, states that her office receives daily reports from
10 the Tucson Census Area Office, and that on October 6, 2020, she was given the
11 following information which, although Ms. Valenzuela does not expressly say, is
12 apparently for the Gila River Indian Community:

13 Self Response Rate: 14%

14 NFRU Percent Complete: 87.31

15 Cases not started: 33

16 Open cases: 401

17 Based on this information, the declarant then states that the completion rate adds up to
18 101.31 %.

- 19 4. Ms. Valenzuela appears to misunderstand how NRFU rates and public self-response
20 rates are calculated, and what each of the numbers represents.
- 21 5. The percentage in the Self-Response Rate represents the percentage of the entire
22 housing unit universe that self-responded online, by phone, or by returning a completed
23 paper questionnaire. By contrast, the completion rate for the Nonresponse Followup
24 workload is based on only those households which are assigned in the Nonresponse
25 Followup workload. The NRFU completion rate includes households that have
26 provided a response to the enumerator, households that have self-responded since the
27 start of Nonresponse Followup, households for which there is no response, households
28 which during the NRFU process the Census Bureau has confirmed are vacant, and a

1 series of addresses included as part of our various quality control programs which are
2 used to improve the accuracy of the census.

- 3 6. NRFU rates and public self-response rates are thus calculated using different
4 denominators and cannot be added together to get an overall rate of enumeration. We
5 expressly explain this at our website in the Frequently Asked Questions section of
6 <https://2020census.gov/en/response-rates/nrfu-completion.html>. It moreover appears
7 that Ms. Valenzuela was herself already told the same thing—that “NRFU household
8 responses do not add to the self-response rate”—by the Census Bureau’s Tribal
9 Partnership Specialist. ECF No. 330-1 at ¶ 3.
- 10 7. I have no insight into the direct dialogue between Census staff and Ms. Valenzuela.
11 My understanding, based on subsequent conversation with Census staff, is that our staff
12 attempted to explain to Ms. Valenzuela what the different rates signify and how they
13 should be understood. We have been providing regular updates to Ms. Valenzuela on
14 the progress of NRFU production work via email.
- 15 8. As of 4:14pm Eastern on October 14, 2020, there are 36 addresses left to complete on
16 the Gila River Indian Community. The current NRFU completion rate for the Gila
17 River Indian Community is 99.0%.
- 18 9. As for the staffing issue complained about by the declarant, we have not reduced the
19 working staff on the Gila River Indian Community. On October 1, 2020, there were 20
20 tribal enumerators active on the Gila River Indian Community and thus eligible to
21 work, but not all of them work on any given day. For example, our records indicate
22 that 15 enumerators were working on October 1. On October 9th, 13 Enumerators were
23 working.
- 24 10. Ms. Valenzuela’s reference to the number of enumerators working on the reservation
25 appears to be erroneous. In a prior communication to Ms. Valenzuela, sent Friday,
26 October 9 at 1:40pm Mountain, we stated that the Census Bureau “will have ~14 Gila
27 River, ~10 Tohono O’odham, and 8 La Paz Enumerators working this weekend.” The
28

1 sum of those numbers is 32, to which Ms. Valenzuela responded “Great news!” at
2 1:41pm Mountain on the same day.

3 11. I have engaged substantial resources, including staff time from numerous areas, to
4 research issues raised by communications sent to the Court in order to provide
5 researched and thorough responses to the Court’s orders. I believe it is important to
6 provide accurate and well-considered responses to these concerns, which is what I have
7 done. According to my best estimates, we have devoted over 145 total staff hours in
8 response to the court’s orders, including verifying procedures, pulling schedules,
9 reconciling inconsistent information, interviewing staff throughout the Nation and
10 reviewing documentation.

11 12. Attending to these matters has detracted significantly from my duties as the Assistant
12 Director for Field Operations at the U.S. Census Bureau, and has impaired my ability to
13 monitor key operations such as our data quality programs and efforts to ensure fiscal
14 and administrative compliance. These are critical tasks for this phase of the Census.

15
16
17
18 I have read the foregoing and it is all true and correct.

19 DATED this 14th day of October, 2020
20

21 _____
22 James T. Christy
23 Assistant Director for Field Operations
24 United States Bureau of the Census
25
26
27
28

JEFFREY BOSSERT CLARK
Acting Assistant Attorney General
ALEXANDER K. HAAS
Branch Director
DIANE KELLEHER
BRAD P. ROSENBERG
Assistant Branch Directors
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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

NATIONAL URBAN LEAGUE, *et al.*,

Plaintiff,

v.

WILBUR L. ROSS, JR., *et al.*,

Defendants.

Case No. 5:20-cv-05799-LHK

**FOURTEENTH DECLARATION OF
JAMES T. CHRISTY**

1 I, James T. Christy, make the following Declaration pursuant to 28 U.S.C. § 1746, and state
2 that under penalty of perjury the following is true and correct to the best of my knowledge and
3 belief:

- 4 1. This is my fourteenth declaration in this lawsuit. I am making this declaration in
5 response to Court Order ECF No. 322, which requests a response to ECF Nos. 315–19.

6 **ECF Nos. 315 & 319 Investigation**

- 7 2. The email attached to ECF No. 319 is an addendum to ECF No. 315 and includes the
8 same information. Both are emails to the court from an anonymous enumerator in
9 Portland, Oregon. In the original email submitted as ECF No. 315, the enumerator
10 indicates she or he was “being separated, and that my Census gear was to be collected
11 immediately. This separation seems premature with a temporary layoff being a more
12 reasoned approach, as well as being one consistent with your previous order.” The
13 enumerator notes “Parts of Oregon (and probably of Washington) have relatively poor
14 response rates and may need more effort than personnel locally available can provide.”
15 In the subsequent submission, provided in ECF No. 319, the enumerator quotes a text
16 message from a supervisor noting that “there will be no further travel opportunities
17 from the Portland ACO. None.” The message adds: “So the time frame is quite short
18 before the remaining Census count is the final count.”
- 19 3. There is no apparent violation of the Court’s order. There are more workers than
20 needed to complete the remaining NRFU production workload. Through October 9,
21 2020, 99.94% of residential addresses in the State of Oregon have been enumerated.
22 There are fewer than 1,300 addresses to resolve and 977 active enumerators in Oregon.
23 Releasing staff at this point in the Census process is consistent with the 2020 Census
24 Operational Plan v.4 (Dec. 2018) and the COVID-19 Plan. Specifically, Chapter 8,
25 Phase 2 & Closeout of the D-1220A, Nonresponse Followup Census Field Manager Job
26 Aid (February 2020), page 101, explains the procedures for areas in the Closeout Phase.
27 It states: “During closeout, CFMs will begin releasing employees from census duty
28 after they have determined staff are not needed for Closeout.”

1 4. As for the reference to no further travel opportunities, there is no longer a need to have
2 enumerators travel outside of their local area, as there is sufficient staff throughout the
3 region to complete the outstanding addresses which remain in the NRFU production
4 workload.

5 **ECF No. 316 Investigation**

6 5. The email attached at ECF No. 316 is an email from an enumerator titled “Interview
7 from Wilbur Ross was not truthful.” The enumerator states: “I just listened to an
8 interview where Wilbur Ross mischaracterized what is considered a complete
9 enumeration,” and the enumerator goes on to describe that “a case is considered closed
10 (or complete) when one attempt to enumerate and address is made as well as 3 proxy
11 attempts.” The enumerator adds, “even if the attempts are unsuccessful the case is
12 closed.”

13 6. The information provided by the enumerator is not accurate. As outlined in my prior
14 submission (ECF No. 307 ¶ 6) and further explained in Associate Director Fontenot’s
15 submissions to this Court, there are numerous paths to “close” a case and we do not
16 close a case without information after four attempts as alleged in the employee’s email.
17 When an enumerator cannot determine a status, we make numerous repeat attempts to
18 collect this information, often exceeding six attempts. This is outlined in our Closeout
19 Process, as reflected in the D-1220A, Nonresponse Followup Census Field Manager
20 Job Aid (Feb. 2020), pg 99, “If a NRFU case was closed without enough data to
21 support apportionment, it will be reopened for additional contact attempts during
22 closeout, until the end of the NRFU operation.”

23 **ECF No. 317 Investigation**

24 7. ECF No. 317 attaches an email from an enumerator which states: “The Department is
25 Committing a slow down. They are not giving us Cases to work on.” It further states:
26 “I know they thousands of Cases not accounted for [sic].”

27 8. There is no apparent violation of the Court’s order. Based on the information submitted
28 in the email, I believe the enumerator works in the Chicago Central Area Census Office

1 in Chicago, IL. As of 7:46 am Eastern on October 9, 2020, 99.88% of the production
2 NRFU addresses in this ACO have been enumerated. There are just over 300 addresses
3 left to resolve and over 1,000 active enumerators in this ACO. In other words, there are
4 more workers than needed to complete the remaining NRFU production workload.

5 **ECF No. 318 Investigation**

6 9. ECF No. 318 attaches an email from an enumerator in California that states: “THEY
7 ARE VIOLATING THE COURT ORDER BY NOT ALLOWING US TO TRAVEL
8 OR CONTINUE [sic] WORKING THE COUNT THROUGH OCT. 31.” And the email
9 includes a message from a supervisor that states: “Spread the work to your staff. Vista
10 ACO 3291 is NOT doing any travel. Also, we are starting our closeout and collecting
11 equipment due to lack of work. This is nothing against anyone, this is just the process as
12 we come to an end [sic].”

13 10. There is no apparent violation of the Court’s order. There are more workers than
14 needed to complete the remaining NRFU production workload. This enumerator works
15 in the Vista Area Census Office located in Vista, CA. As of 7:46 am Eastern on
16 October 9, 2020, 99.95% of the production NRFU addresses in this ACO have been
17 enumerated. There are fewer than 70 addresses left to resolve and there are over 200
18 active enumerators in this ACO.

19 11. As for the reference to no further travel opportunities, there is no longer a need to have
20 enumerators travel outside of their local area, as there is sufficient staff throughout the
21 region to complete the outstanding addresses which remain in the NRFU production
22 workload.

23 **Effect of Responding to Enumerator Emails per the Court’s Orders**

24 12. I have engaged substantial resources, including staff time from numerous areas, to
25 research issues raised by communications sent to the Court in order to provide
26 researched and thorough responses to the Court’s orders. I believe it is important to
27 provide accurate and well-considered responses to these concerns, which is what I have
28 done. According to my best estimates, we have devoted over 128 total staff hours in

1 response to the court's orders, including verifying procedures, pulling schedules,
2 reconciling inconsistent information, interviewing staff throughout the Nation and
3 reviewing documentation and reports.

4 13. Attending to these matters has detracted significantly from my duties as the Assistant
5 Director for Field Operations at the U.S. Census Bureau, and has impaired my ability to
6 monitor key operations such as our data quality programs and efforts to ensure fiscal
7 and administrative compliance. These are critical tasks for this phase of the Census.
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12 I have read the foregoing and it is all true and correct.

13 DATED this 9th day of October, 2020
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16 _____
James T. Christy

17 Assistant Director for Field Operations

18 United States Bureau of the Census
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JEFFREY BOSSERT CLARK
Acting Assistant Attorney General
ALEXANDER K. HAAS
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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

NATIONAL URBAN LEAGUE, *et al.*,

Plaintiff,

v.

WILBUR L. ROSS, JR., *et al.*,

Defendants.

Case No. 5:20-cv-05799-LHK

**TWELFTH DECLARATION OF
JAMES T. CHRISTY**

1 I, James T. Christy, make the following Declaration pursuant to 28 U.S.C. § 1746, and state
2 that under penalty of perjury the following is true and correct to the best of my knowledge and
3 belief:

- 4 1. This is my twelfth declaration in this lawsuit. I am making this declaration in response
5 to Court Order ECF No. 291.

6 **ECF No. 291 Investigation**

- 7 2. That order compels Defendants' response to two email submissions: one from an
8 Enumerator in Oklahoma and one from a Census Field Supervisor in Alaska.
- 9 3. In the first email from the enumerator in Oklahoma, there is no apparent violation of
10 the Preliminary Injunction order. The enumerator works in a location that is 99.09%
11 complete with the Nonresponse Followup (NRFU) production workload and in the
12 Closeout Phase under the COVID 19 Plan. (CFS Areas are eligible for the Closeout
13 Phase when 90% of the NRFU production workload has been completed.) The actions
14 described in the text messages received from the Census Field Supervisor (CFS) are
15 consistent with the guidance in place for areas in Closeout in the COVID 19 Plan.
16 Specifically, Chapter 8, Phase 2 & Closeout of the D-1220A, Nonresponse Followup
17 Census Field Manager Job Aid (February 2020) explains the procedures for areas in the
18 Closeout Phase. It states "*Outstanding work will consist of some work in areas that*
19 *have fallen behind as well as cases in supervisory review, which generally means more*
20 *challenging cases to enumerate. It is wise to keep the best staff on board to tackle these*
21 *areas. Best staff refers to employees with high productivity and ample work*
22 *availability. This can be determined by looking at reports and/or speaking to CFSs—*
23 *they should know the Enumerators on their team that are productive and available.*"
- 24 4. In the second email from a Census Field Supervisor in Alaska, there is also no apparent
25 violation of the Preliminary Injunction order. The Census Field Supervisor worked on
26 the Group Quarters operation. This operation was conducted on the COVID 19 Plan
27 schedule. In-person interviewing began on July 1. The final activities conducted on
28 this program were completed on September 24 during the Service-Based Enumeration

operation. This timeline is referenced on the Census Bureau's website at <https://2020census.gov/en/news-events/operational-adjustments-covid-19.html>. This operation is finished and all cases have been resolved. Further, the reference to shipping devices back to the Area Census Office is a request issued to CFSs who still possessed extra devices. We issued a few spare devices to each CFS in the event a device was broken, became nonfunctional, or more trainees were assigned to train than expected. The request from the Area Census Office was to mail these extra devices back that were not yet registered or no longer in use. There has been no request to return devices currently in use for ongoing enumeration activities such as NRFU.

Effect of Responding to Enumerator Emails per the Court's Orders

5. I have engaged substantial resources, including staff time from numerous areas, to research issues raised by communications sent to the Court in order to provide researched and thorough responses to the Court's orders. I believe it is important to provide accurate and well-considered responses to these concerns, which is what I have done. According to my best estimates, we have devoted over 8 total staff hours in response to this order from the Court, including verifying procedures, pulling schedules, reconciling inconsistent information, interviewing staff throughout the Nation and reviewing documentation.
6. Attending to these matters has detracted significantly from my duties as the Assistant Director for Field Operations at the U.S. Census Bureau, and has impaired my ability to monitor key operations such as our data quality programs and efforts to ensure fiscal and administrative compliance. These are critical tasks for this phase of the Census.

I have read the foregoing and it is all true and correct.

DATED this _5th_ day of October, 2020

James T. Christy

Assistant Director for Field Operations

United States Bureau of the Census

JEFFREY BOSSERT CLARK
Acting Assistant Attorney General
ALEXANDER K. HAAS
Branch Director
DIANE KELLEHER
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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

NATIONAL URBAN LEAGUE, *et al.*,

Plaintiff,

v.

WILBUR L. ROSS, JR., *et al.*,

Defendants.

Case No. 5:20-cv-05799-LHK

**DECLARATION OF
JAMES T. CHRISTY**

1 I, James T. Christy, make the following Declaration pursuant to 28 U.S.C. § 1746, and state
2 that under penalty of perjury the following is true and correct to the best of my knowledge and
3 belief:

- 4 1. This is my eleventh declaration in this lawsuit. I am making this declaration in
5 response to Court Order ECF 289.
- 6 2. Order 289 – Order Compelling Defendant’s Response is an email submission to the
7 court from an enumerator alleging he was instructed by text message to “...start
8 closing as many cases as possible. So, regardless of what happens on any of your cases
9 make one of these selections so we can get rid of cases.”
- 10 3. To investigate this issue, my staff contacted the Census Field Supervisor (CFS) and
11 several enumerators assigned to the supervisor.
- 12 4. In the course of the investigation, my staff determined that the area at issue was in the
13 Closeout phase of the Nonresponse Followup operation. As of 8:21pm Mountain on
14 10/2/2020, this Census Field Supervisor Area was 95.63% complete.
- 15 5. The CFS for this area acknowledged sending the text message to his team. In
16 conversations with my staff, he explained that he was not instructing his personnel to
17 code cases erroneously. Rather, he stated that he was conveying instructions he
18 received from a new Census Field Manager (CFM) (supervisor of the Census Field
19 Supervisors) during a call at 9:30am Mountain on October 2, where the CFM relayed
20 the correct list of “outcome codes” to resolve cases so that cases would be assigned the
21 outcome best matching their actual circumstances.
- 22 6. All three enumerators we spoke with saw the list. Two explained that they believed it
23 would be discussed on the conference call later. The other expressed confusion. None
24 of them indicated that they interpreted the message as an effort to encourage them to
25 finish cases more quickly. One enumerator (identification unknown) texted in response
26 to the group “The Census may not end yet and you’re advising us to close all cases”.
27 The CFS responded to that text by stating “Use the list above when the situation
28

warrants it. Case by case specific. Don't abuse it and get rid of cases still needing enumeration."

7. I pulled the metrics on various case completion rates to determine whether there were significant differences in the manner for which cases were completed in this CFS Area. There were not. For Completed Cases per Attempt, the rate for this CFS Area was 0.25, the rate for the Dallas Region was 0.31 and the rate for the Nation was 0.29. So the rate was actually lower overall – indicating a greater effort was made to generate a completed case, rather than less effort. Other measures yielded similar results – for example, Completed Cases per Hour, the CFS Area rate was 1.53 compared to 1.46 for the region and 1.47 for the Nation.
8. Based on our investigation, we believe this is an issue of miscommunication. Our technical experts in the Dallas region are joining a conference call this evening with the CFS Area from which the complaint originated to ensure these concepts are clearly understood.
9. In the documents attached to the filing submitted to this Court, there were images of a map from the Field Data Collection (FDC) system showing the locations of open cases to be completed in the Nonresponse Followup operation. Identifying information, including address locations (known internally as "map spots") is information which the Census Bureau does not release or publish and must keep confidential by law under 13 U.S.C. § 9. These images are not appropriate for public release.

I have read the foregoing and it is all true and correct.

DATED this 2nd day of October, 2020

James T. Christy
Assistant Director for Field Operations
United States Bureau of the Census

JEFFREY BOSSERT CLARK
Acting Assistant Attorney General
ALEXANDER K. HAAS
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DIANE KELLEHER
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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

NATIONAL URBAN LEAGUE, *et al.*,

Plaintiff,

v.

WILBUR L. ROSS, JR., *et al.*,

Defendants.

Case No. 5:20-cv-05799-LHK

**DECLARATION OF
JAMES T. CHRISTY**

1 I, James T. Christy, make the following Declaration pursuant to 28 U.S.C. § 1746, and state
2 that under penalty of perjury the following is true and correct to the best of my knowledge and
3 belief:

- 4 1. This is my ninth declaration in this lawsuit. I am making this declaration in response to
5 Court Orders ECF 270, ECF 271, ECF 272 and ECF273.

6 **ECF 270 Investigation**

- 7 2. Order 270 – Email to Court dated 9/30/2020 from an enumerator in the Oakland, CA
8 Area Census Office who states “Apparently we have completed more than 99.5% of
9 our work in Oakland but I do not know what standard they use”. He also expresses
10 concern about the homeless count, stating “we only did one night”.
11 3. The reference to completed work is correct. As of 7:18am on 9/30/2020, the Oakland
12 ACO completed 99.6% of its production workload for the Nonresponse Followup
13 operation. 128 enumerators received assignments to finish the remaining 600
14 addresses.
15 4. As to the reference to completing the homeless count in only one night, the 2020
16 Census Detailed Operational Plan for Group Quarters Operation (September 2017),
17 page 51, notes “TNSOLS will be enumerated on April 1, 2020”. This date was
18 amended to September 24 as part of the COVID-19 Plan.

19 **ECF 271 Investigation**

- 20 5. Order 271 – Email to Court dated 9/30/2020 from an enumerator who worked between
21 September 4 and September 17 and has comments on the system application used to
22 collect household data.
23 6. The complainant in Order 271 does not appear to allege a violation of the Court’s
24 Preliminary Injunction.

25 **ECF 272 Investigation**

- 26 7. Order 272 – Email to Court dated 9/30/2020 is from an enumerator who “...received a
27 message from my census supervisor instructing us that enumeration for our zone, Zone
28 6, is ending TODAY, Sept 30th, with other zones ending by October 6...”

8. Without specific information, I cannot verify the veracity of the reference to this area finishing enumeration on September 30. As I have noted in other declarations, there are Census Field Areas across the Nation which are in or have completed the Closeout Phase.

9. I am not aware of any reference to or discussion of an October 6 end date.

ECF 273 Investigation

10. Order 273 – Email to the Court dated 9/30/2020 is from an enumerator in Las Vegas, NV who alleges “...they have basically stopped enumerating households and did not enumerate the homeless population here in Nevada...”

11. These allegations are not correct. Overall, enumeration in the State of Nevada is 99.2% complete when combining both those who self-responded by internet, phone or paper and those where we collected a response via a census enumerator. For the Nonresponse Followup component of this work, 98.2% of the addresses have been resolved. We are continuing to enumerate people in Nevada. As of 7:18am Eastern on September 30, 2020, 681 enumerators received assignments and are working in State of Nevada.

12. As for the assertion that we did not enumerate the homeless population in Nevada, that is also not true. For the Service-Based Enumeration operations, we visited 592 facilities and locations to conduct enumeration efforts for persons experiencing homelessness in Nevada.

I have read the foregoing and it is all true and correct.

DATED this _30th_ day of September, 2020

James T. Christy
Assistant Director for Field Operations
United States Bureau of the Census

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JEFFREY BOSSERT CLARK
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SAN JOSE DIVISION**

NATIONAL URBAN LEAGUE, *et al.*,

Plaintiff,

v.

WILBUR L. ROSS, JR., *et al.*,

Defendants.

Case No. 5:20-cv-05799-LHK

**DECLARATION OF
JAMES T. CHRISTY**

1 I, James T. Christy, make the following Declaration pursuant to 28 U.S.C. § 1746, and state
2 that under penalty of perjury the following is true and correct to the best of my knowledge and
3 belief:

- 4 1. This is my seventh declaration in this lawsuit. I am making this declaration in response
5 to Court Orders ECF 255, ECF 258, ECF 263.

6 **ECF 248 Investigation**

- 7 2. Order 248 – Email from sent on September 29 from a person alleging that he and his
8 wife are enumerators, notes the enumerator and spouse are both being released
9 “tomorrow”. The complainant reports working in Baltimore city, Maryland and the
10 spouse works in Prince George’s County, Maryland.
- 11 3. I contacted the regional managers over the offices that cover those two locations. They
12 are not releasing staff in either location. They are asking staff to continue to enter work
13 availability and staff are receiving assignments. As of a report run at 7:18am Eastern
14 on 09/30/2020, 1,370 enumerators received work assignments in the State of Maryland,
15 so enumeration is ongoing in Maryland.

16 **ECF 249 Investigation**

- 17 4. Order 249 – “Email to court staff dated 9/29/2020” is an anonymous email sent to the
18 Court on September 29, 2020 which references the potential for missing responses if
19 the Internet Self Response website is not available after October 5.
- 20 5. It is not clear whether the complainant is an employee or a member of the public.
21 There is no allegation of a violation – rather an expression of general concern.

22 **ECF 250 Investigation**

- 23 6. Order 250 – an email sent to the Court on September 29, 2020. It is a long summary of
24 observations from a former employee whose employment was prior to August 1, 2020.
- 25 7. The complainant in ECF 250 does not appear to allege a violation of the Court's
26 Preliminary Injunction. She may or may not be alleging an employment issue, but this
27 is not the forum to resolve such as issue -- if she is, in fact, alleging one.

28 **ECF 252 Investigation**

- 1 8. Order 252 – is an email from a person claiming to be an enumerator working in
2 Nevada and sent to the Court on September 29, 2020 to express concern that the
3 “...deadline imposed by the Government is impossible to meet. Especially in the
4 minority population”.
- 5 9. Overall, enumeration in the State of Nevada is 99.2% complete when combining both
6 those who responded themselves by internet, phone or paper and those where we
7 collected a response via a census enumerator. For the Nonresponse Followup
8 component of this work, 98.2% of the addresses have been resolved. We are continuing
9 to enumerate people in Nevada. As of 7:18am Eastern on September 30, 2020, 681
10 enumerators received assignments and are working in State of Nevada.

11 **ECF 254 Investigation**

- 12 10. Order 254 – an email sent to the Court on 9/29/2020 which was submitted from an
13 individual claiming to be employed as an enumerator out of the San Francisco, CA
14 Area Census Office. The anonymous enumerator states “the Census is terminating
15 enumerators which will make adhering to your Court's orders impractical considering
16 the lengthy hiring and training process enumerators went through.”
- 17 11. As of 7:18am Eastern on September 30, 2020, 99.17% of the addresses have been
18 completed for the Nonresponse Followup operation in the San Francisco ACO. 166
19 enumerators received assignments and will continue to complete the remaining
20 workload of approximately 1,300 addresses.
- 21 12. As all 35 Census Field Supervisor Areas are in the Closeout phase, releasing
22 enumerators during this phase is part of the Closeout process as described in the July
23 12, 2019 “2020 Census Detailed Operational Plan for Nonresponse Followup”, Section
24 2.3.6 which states “Reducing staff as workload reduces, including collecting materials
25 such as devices”.

26 **ECF 257 Investigation**

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28

1 13. Order 257 – is an email submission sent to the Court on 9/29/2020, which references a
2 request to extend the Mobile Questionnaire Assistance Centers (MQAs) through
3 October 5.

4 14. As submitted in a previous declaration, the Mobile Questionnaire Assistance program
5 will continue and conclude with data collection activities, including the Internet Self-
6 Response, Census Questionnaire Assistance, and Non Response Follow Up operation.

7 **ECF 262 Investigation**

8 15. Order 262 – “ is an email to the Court sent on 9/29/2020, which states “I’m a census
9 enumerator in northern California, and have been told that our Santa Rosa regional field
10 office plans to wrap things up by Sep. 30th, not Oct. 5th,...” and continues to describe
11 the effect of fires on the 2020 Census.

12 16. Household enumeration for the Nonresponse Followup operation continues in the Santa
13 Rosa Area Census Office and will not conclude on September 30. As of 7:18am
14 Eastern, the completion rate for production work on the Nonresponse Followup
15 operation was 95.7% and 418 enumerators received work assignments.

16 17. We will continue to follow the guidance of local officials in areas affected by natural
17 disasters to ensure the safety of our enumeration staff. We are sending additional staff
18 to this Area Census office to supplement the existing workforce to ensure we have
19 resources to complete the safe areas as they open as fire conditions change frequently.
20 We use telephone calling as an option when we cannot access an area, as well as
21 information from knowledgeable persons about residents in the area. Absent these, we
22 will use high-quality administrative records or as a last resort, rely on imputation.

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27 I have read the foregoing and it is all true and correct.

28 DATED this _30th_ day of September, 2020

James T. Christy
Assistant Director for Field Operations
United States Bureau of the Census

JEFFREY BOSSERT CLARK
Acting Assistant Attorney General
ALEXANDER K. HAAS
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Attorneys for Defendants

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NATIONAL URBAN LEAGUE, *et al.*,

Plaintiff,

v.

WILBUR L. ROSS, JR., *et al.*,

Defendants.

Case No. 5:20-cv-05799-LHK

**DECLARATION OF
JAMES T. CHRISTY**

1 I, James T. Christy, make the following Declaration pursuant to 28 U.S.C. § 1746, and state
2 that under penalty of perjury the following is true and correct to the best of my knowledge and
3 belief:

- 4 1. This is my sixth declaration in this lawsuit. I am making this declaration in response to
5 yesterday's court order. *See* ECF 238.

6 **ECF 235 Investigation**

- 7 2. The author of the first email referenced in the Court's Order, ECF 235, claims to be an
8 enumerator and alleges there is no work for her in Indiana and she did not receive an
9 award for which she was entitled.
- 10 3. There are three Area Census Offices in Indiana and all are nearly complete. As of
11 9:53am Eastern, the progress on the production workload for the Nonresponse
12 Followup operation in the Indianapolis, IN ACO was 98.73% complete, the Lake
13 County, IN ACO was 98.94% complete and the Ft. Wayne, IN ACO was 99.35%
14 complete. The State of Indiana is 99.55% complete overall when including the number
15 of addresses who have self-responded and the addresses completed in other
16 enumeration efforts, including the Nonresponse Followup operation,. There are nearly
17 700 enumerators still working in Indiana to complete the remaining addresses.
- 18 4. I also verified that several award payments were processed for the complainant. I have
19 asked the administrative staff to follow-up directly with her to confirm these payments.

20 **ECF 238 Investigation**

- 21 5. The Court's Order, ECF 238, references three additional emails.
- 22 6. In the first email, the complainant states "...not only should enumerating continue past
23 October 5, but also the MQA (Mobile Questionnaire Assistance) effort".
- 24 7. The Mobile Questionnaire Assistance program will conclude with data collection
25 activities, including the Internet Self-Response, Census Questionnaire Assistance, and
26 Non Response Follow Up operation.
- 27 8. In the second email, the complainant claims to be an enumerator in Washington who
28 expresses concern about completing enumeration activities by October 5.

- 1 9. The Area Census Office where the complainant claims to work is the Spokane,
2 Washington office. As of 9:53am Eastern on September 29, the rate of completion for
3 production cases assigned to this ACO was 97.39%, with 60 of 62 Census Field
4 Supervisor Areas in the Closeout phase as described in the 2020 Census Operational
5 Plan..
- 6 10. The complainant also raises concern about sending enumerators to other cities and
7 regions nearby, stating this would “seem impossible”. We are continuing to move the
8 best enumerators to locations where there is work remaining and we expect to have
9 enumerators working in these locations until the end of data collection activities.
- 10 11. The third email is from an enumerator who has worked in various places in California
11 and Nevada. He states “I am very concerned that there will be hundreds of homes in
12 these areas alone that will go uncounted”.
- 13 12. Enumeration continues in our two ACOs in Nevada and in Chico, California. As of
14 9:53am Eastern on September 29, 2020, 850 enumerators in Nevada and 516
15 enumerators in the Chico, CA Area Census Office received work assignments for the
16 NRFU operation. The completion rate for the North Las Vegas ACO is 97.33%, for the
17 Las Vegas ACO is 97.36% and the Chico, CA ACO is 95.26%. These offices continue
18 attempts to enumerate every household assigned for the Non-Response Follow Up
19 operation.
- 20 13. To be clear, no occupied housing units will go “uncounted.” If we have not received a
21 self-response, if we have not obtained an in-person response from an enumerator, if we
22 have not received a proxy response (from someone like a neighbor or landlord), and if
23 we do not have high-quality administrative records, imputation will be used to create a
24 population count for that occupied housing unit. Imputation has been a long-standing
25 practice which has been both methodologically and legally approved.
- 26

27 **Effect of Responding to Enumerator Emails per the Court’s Orders**

28

1 14. I have engaged substantial resources, including staff time from numerous areas, to
2 research issues raised by communications sent to the Court in order to provide
3 researched and valid responses to the Court's orders. I believe it is important to
4 provide accurate and well-considered responses to these concerns, which is what I have
5 done. According to my best estimates, we have devoted over 100 staff hours to
6 research these complaints, including confirming locations, progress numbers, status of
7 employment, interviewing staff throughout the Nation and producing documentation.

8 15. Attending to these matters has detracted significantly from my duties as the Assistant
9 Director for Field Operations at the U.S. Census Bureau, and my ability to monitor key
10 operations such as our data quality programs and efforts to ensure fiscal and
11 administrative compliance. These are critical tasks for this phase of the Census.

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15 I have read the foregoing and it is all true and correct.

16 DATED this _29th_ day of September, 2020

17
18 _____
19 James T. Christy

20 Assistant Director for Field Operations

21 United States Bureau of the Census
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JEFFREY BOSSERT CLARK
Acting Assistant Attorney General
ALEXANDER K. HAAS
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Assistant Branch Directors
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Plaintiff,

v.

WILBUR L. ROSS, JR., *et al.*,

Defendants.

Case No. 5:20-cv-05799-LHK

**DECLARATION OF
JAMES T. CHRISTY**

1 I, James T. Christy, make the following Declaration pursuant to 28 U.S.C. § 1746, and state
2 that under penalty of perjury the following is true and correct to the best of my knowledge and
3 belief:

- 4 1. This is my fifth declaration in this lawsuit. I am making this declaration in response to
5 four separate orders. *See* ECF 220, 221, 222, and 229.

6 **ECF 220 Investigation**

- 7 2. In ECF 220, the complaint alleges non-compliance with the Court's order due to certain
8 identified cases being designated as completed using a "6.040 Max Attempts" code
9 after only one Non-Response Follow-Up attempt and other cases after a substantial
10 number of attempts.
- 11 3. I have investigated this issue and confirmed that the identified cases were completed
12 properly and consistent with the design for the 2020 Census.
- 13 4. These cases were completed consistent with our operational plan because the Census
14 Bureau has long planned, prior to development of the Replan, to use high-quality
15 administrative data after one (unsuccessful) visit. This is described in the 2020 Census
16 Operational Plan – Version 4.0, Section 3.3 "Utilizing Administrative Records and
17 Third-Party Data" (pages 21 and 22), which states "that high-quality administrative
18 data could be used for the enumeration. These units will be visited one time in NRFU
19 and, if not enumerated during that visit, will be mailed a postcard encouraging self-
20 response and removed from the NRFU workload for all subsequent activity."
- 21 5. I verified that administrative records were used in these specific instances by checking
22 the data for the listed Area Census Offices, which aligned the administrative record
23 checks with the number of cases reported as eligible for being resolved with only one
24 attempt.
- 25 6. For the cases which received numerous attempts – the complaint references one with 12
26 attempt days and 26 contact attempts – this also is consistent with our longstanding
27 plan for completing enumeration. During the closeout phase of the operation, cases are
28 reopened for additional attempts in an effort to garner information for the household in

1 the time allotted for the operation. The referenced case was in a CFS Area in the
2 closeout phase. This methodology is also outlined in the 2020 NRFU Detailed
3 Operational Plan, Section 2.2.2.3 – NRFU Data Collection, page 7, which states
4 “Production NRFU cases are subject to reopening for additional attempts during the
5 Closeout Phase in order to collect sufficient data to support apportionment.”

- 6 7. In the documents attached to the filing submitted to this Court, I recognized enumerator
7 notes that the Census Bureau does not release or publish and must keep confidential by
8 law. All information collected by or on behalf of a respondent is confidential under 13
9 U.S.C. § 9. The Census Bureau may not use any such information for a nonstatistical
10 purpose or make any publication whereby the collected information could be identified.
11 Only individuals sworn to uphold these confidentiality provisions may examine the
12 individual reports or any identifiable data. Enumerator notes are information collected
13 by or on behalf of a respondent under the provisions of Title 13, United States Code,
14 and handled by the Census Bureau as individual reports. Therefore, enumerator notes
15 are made confidential by 13 U.S.C. § 9. Additionally, the enumerator notes also
16 contain the Census tract and block numbers, as well as descriptive information about
17 the household, (such as the presence of gates that obscure entrances), and this
18 information is also protected from release under the provisions of 13 U.S.C. § 9.
19 These notes are not appropriate for public release, and the Department, through
20 counsel, intends to take appropriate steps to protect this information in accordance with
21 these statutory protections.

22 **ECF 221 Investigation**

- 23 8. In the second order, ECF 221, the complainant alleges two things. First, it says that
24 “[d]espite your order to continue, Pasadena office continues to push towards closure”
25 and references an email dated September 28 at 11:18am Pacific from an Area Census
26 Office manager to unknown recipients.
- 27 9. On September 28, 2020, the Pasadena, California Area Census Office had completed
28 99.67% of its production work for the NRFU operation. All 46 Census Field Supervisor

1 Areas were in the Closeout phase. As of 7:23 am Eastern on September 28, 2020, there
2 were 959 addresses remaining in the workload assigned to the Pasadena office.

3 10. Completing this remaining work with 93 enumerators is consistent with our closeout
4 strategy, which was developed prior to the implementation of the Replan. This is
5 referenced in enumerator training and in the D-1220A, Nonresponse Followup Census
6 Field Manager Job Aid, pages 100-101 which provides, “As the CFM, you determine
7 which employees you will keep to finish fieldwork. Since you have worked hand in
8 hand with your CFSs, you will know who your strongest supervisors are and who you
9 will want to keep until the end of the operation. When it is time to start terminating
10 Enumerators, you are encouraged to consult with your CFSs to identify your high
11 performing Enumerators.”

12 11. The second concern that the ECF 221 email references that “there are also 16-30,000
13 cases that were ‘closed’ administratively and in error per multiple Census Field
14 Managers.”

15 12. I reviewed the case status information for work resolved by the Pasadena Area Census
16 Office, and I found no cases that were “closed” inappropriately. It is my belief this
17 complainant may be referencing the same issue previously addressed in Paragraph 4 of
18 this Declaration. That is, the cited cases involve addresses for which high-quality
19 administrative data exists, and one NRFU attempt has already been made.

20 **ECF 222 Investigation**

21 13. The third order, ECF 222, is a 4-page note from a Census Field Supervisor working on
22 the Group Quarters operation. In this complaint, the employee alleges he was not
23 notified of the Court’s orders related to the 2020 Census. He also notes his release date
24 of September 28 was in advance of September 30.

25 14. The implementation of the Court’s Temporary Restraining Order and the Preliminary
26 Injunction involved actions by Headquarters and Regional Management staff.

27 15. As referenced in a previous declaration, Headquarters and Regional Management staff
28 were notified on several occasions of these orders.

1 16. I further confirmed that regional management in the Los Angeles Region, where this
2 employee works, were properly notified about the issuance of the Court's TRO and PI
3 Orders. The Regional Director sent emails to the Deputy Regional Directors, the
4 Assistant Regional Census Managers, the Area Managers, and the Area Census Office
5 Managers in the region which show the instructions were forwarded.

6 17. As for the employee's release prior to the September 30 date, the Group Quarters
7 operations were completed on the planned pre-Replan schedule for Group Quarters.
8 The final operation, the Service-Based Enumeration, finished on September 24, 2020.

9 **ECF 229 Investigation**

10 18. In the fourth order, ECF 229, the complainant alleges "[d]espite your order to continue,
11 LARCC and local ACOs continue to push toward closure" and forwards a September
12 28 email from a supervisor which states "LARCC is pushing to get all CFM Zones up
13 to 99.5% completed by this Wednesday, 9/30."

14 19. The Regional Director informed me that no written or verbal instructions were issued to
15 Area Census Office staff by her or her managers to complete the work by September
16 30. She did affirm the direction given to pursue at least 99.5% completion in order to
17 increase data quality levels.

18 20. The staff on the email distribution list work in the El Cajon Area Census Office in
19 California. As of September 28, the office was 98.23% complete with the production
20 NRFU workload, with 39 of the 44 Census Field Supervisor Areas in the Closeout
21 phase.

22 **Notification to the Office of Inspector General**

23 21. The Census Bureau has notified the Department of Commerce Office of Inspector
24 General that the Bureau has advised agency personnel that they may direct any
25 complaints about the 2020 Census, including complaints about compliance with the
26 Court's Orders, to the OIG. I believe that this process may help alleviate some of the
27 concerns the Court has identified regarding unsolicited communications from non-
28 parties.

1
2 I have read the foregoing and it is all true and correct.

3 DATED this _29th_ day of September, 2020
4
5

6 _____
7 James T. Christy

8 Assistant Director for Field Operations

9 United States Bureau of the Census
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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

NATIONAL URBAN LEAGUE, *et al.*,

Plaintiff,

v.

WILBUR L. ROSS, JR., *et al.*,

Defendants.

Case No. 5:20-cv-05799-LHK

**DECLARATION OF
JAMES T. CHRISTY**

1 I, James T. Christy, make the following Declaration pursuant to 28 U.S.C. § 1746, and state
2 that under penalty of perjury the following is true and correct to the best of my knowledge and
3 belief:

4 **I. Executive Summary**

5 1. I am the Assistant Director for Field Operations at the U.S. Census Bureau, and I
6 submit this declaration in response to the Court's September 14, 2020 order to "investigate all the
7 allegations of potential non-compliance with the Court's Temporary Restraining Order in the email
8 the Court filed on September 12, 2020, ECF No. 100, as well as in Plaintiff's September 14, 2020
9 response, ECF No. 108."

10 **II. Qualifications**

11 2. I have worked for the Census Bureau since April 1987, serving this entire time in
12 the Field Division. I have worked in numerous capacities on both Decennial Census (1990, 2000,
13 2010, 2020 and numerous Decennial Census Tests) and non-Decennial Census operations. This
14 includes permanent assignments at Headquarters and in regional offices in Denver, Kansas City
15 and Los Angeles. I also served in temporary roles in Detroit, New York, Dallas, Phoenix and
16 Minneapolis. I was the Regional Director in the Los Angeles Region for 16 years prior to working
17 as the Assistant Director for Field Operations.

18 3. As the Assistant Director for Field Operations, I oversee data collection activities
19 for the Field Directorate, including the six "permanent" regional offices, the National Processing
20 Center in Jeffersonville, IN and the Office of Survey and Census Analytics – based at Census HQ.
21 During the 2020 Census, I also oversee the temporary data collection organization, including the
22 6 Regional Census Centers, 248 Area Census Offices and the two Paper Data Capture Centers.

23 **III. Compliance with September 5, 2020 Temporary Restraining Order (TRO)**

24 4. The job of the Field Directorate for the 2020 Census is to collect and process data
25 directly from the American public who chooses not to self-respond or who cannot be reached via
26 a mailed invitation to respond. This is a massive task – involving recruiting millions of applicants
27 and building an infrastructure to rapidly hire, train and deploy hundreds of thousands of
28 employees, including systems, offices, and logistics. For the 2020 Census, the Census Bureau

1 currently employs over 200,000 enumerators working in 248 Area Census Offices (ACOs). These
2 enumerators are supervised by over 19,000 Crew Field Supervisors (CFSs), who in turn are
3 supervised by over 2,000 Census Field Managers (CFMs). Many of the CFSs are first-time-ever
4 federal employees; while many have supervisory experience, virtually none began with more than
5 minimal experience managing a census.

6 5. On Saturday evening, September 5, I sent notification via email that "...a federal
7 district court for the Northern District of California issued a temporary restraining order at 9:29
8 PM EDT on 9/5/2020 in the case of National Urban League v. Ross, No. 20-05799" to all field
9 data collection managers working on the 2020 Census. In this notice, I added "The Bureau and
10 the Department are also in the process of preparing additional guidance and will distribute that
11 guidance shortly."

12 6. On Monday morning (12:02am Eastern), I sent the document titled "Guidance for
13 Field Managers related to Action Required following the 9/5 Court Order" to the Associate
14 Director for Field Operations, the 6 Regional Directors, the Chief of the Field Division and the
15 Director of the National Processing Center. A copy of the document was attached to Defendants'
16 filing in this case on September 8, 2020, ECF No. 86. I instructed them not to share the document
17 until we had a chance to discuss it later that morning.

18 7. At 10am Eastern on Monday morning, I held a call with the Regional Directors, the
19 Chief of Field Division and the Director of the National Processing Center to discuss the document.
20 The Associate Director for Field Operations also joined that call.

21 8. At 10:30am Eastern on Monday (9/7/2020), I held a call with the operations staff
22 at Field Headquarters to discuss the document. I forwarded the document for them to review in
23 advance of this meeting.

24 9. At 11:00am Eastern on Monday (9/7/2020), I joined a previously scheduled call
25 with all regional data collection managers to discuss the document. The document was attached
26 to the meeting invite and distributed via email before the call.

27 10. Since delivering the document, I have had numerous conversations with various
28 field managers about aspects of the instructions in the document, both in the regions and at

1 Headquarters. This includes daily meetings with Regional Directors and key operational
2 managers.

3 11. As reflected in the guidance referenced in paragraph 6 above (and I understand was
4 previously provided to the court on 9/8/2020), we have implemented the TRO by, among other
5 things, directing that no CFS area can be moved into closeout procedures until it reaches 90%
6 completion. The Census Bureau is continuing to work across the nation to obtain responses from
7 all housing units, and has begun closeout procedures for CFS areas with at least 90% completion,
8 consistent with what we indicated to the Court.

9 **IV. Specific Complaints**

10 12. In regard to communications sent to the court, it appears there are 5 distinct
11 complaints referred by the court for review.

12 13. In the first complaint – “Austin, TX” - an enumerator alleges he was assigned to a
13 new Census Field Supervisor and was directed to artificially reduce his availability to conduct field
14 work. I instructed staff in the Dallas region to investigate the issue. Through the course of their
15 investigation, which included conversations with the Census Field Manager (CFM) and Census
16 Field Supervisors (CFS), they discovered this was a miscommunicated direction by a new CFS.
17 The CFS was not trying to limit work availability – rather to ensure enumerators entered at least
18 one hour of availability. The CFM advised the CFSs that the only way a manual assignment can
19 be made using the Census Field Operational Control System is if an Enumerator has at least one
20 hour of availability entered. During this phase of the operation, the system which issues automatic
21 assignments does not capture all work requirements, thus manual assignments are required.
22 Enumerators who desired to take a day off from work should have entered zero work availability.
23 The CFS in question, truncated these instructions to a single text message to “set your availability
24 tomorrow through Monday as either NOT AVAILABLE or 1 hour.” Fifteen enumerators received
25 this text guidance. Based on the hours of work availability entered by all 15 enumerators, it
26 appears they understood the guidance as the CFM intended – as all entered more than one hour of
27 work availability. In fact, the individual raising the concern entered 8 hours of work availability
28 and the average work availability for all 15 enumerators in this CFS area was 8 hours.

1 14. As of September 12, 2020 – the date referenced in the complaint – the Austin, TX
2 ACO was 93.05% complete with the NRFU production work.

3 15. As to the reference to “...the email raises questions about the Census Bureau’s own
4 post-TRO directive to “(c)ontinue to have staff travel...”, there are thousands of people traveling
5 to complete enumeration assignments both within state and out of state as evidenced by reports
6 from our travel systems – over 5,600 people were on overnight travel status for Decennial work in
7 the two-week period between August 27 and September 10, 2020.

8 16. In the second complaint – “New York” – an enumerator alleges “...she and other
9 enumerators in her group were told to cease counting and to relocate to unspecified southern
10 states...”. Without knowing the enumerator’s specific location, it is difficult to determine where
11 she and her group were working. However, as of September 12, 2020, the Brooklyn #4 Area
12 Census Office was 76.11% complete with the NRFU production work. Six CFS Areas had reached
13 90% completion of their cases. The reference to not being assigned work during the week of
14 September 7 may be related to the hours of work availability entered – and the available workers.
15 The use of optimized assignments on the 2020 Census matches the availability of workers to the
16 most efficient and best time to contact addresses. Early in the operation, there is generally work
17 for everyone. As the work is completed, the available cases diminish – and the remaining cases
18 are assigned to those who have work availability and a geographic location which yields the best
19 chance of completing the case. This means that some enumerators will not receive work
20 assignments in an area if they limit work availability or do not live in proximity to the remaining
21 cases. When this happens, we ask enumerators if they would like to work in other locations. We
22 do not require enumerators to work outside of their Area Census Office – we ask for volunteers to
23 do so.

24 17. In the third complaint – “Illinois” – an enumerator in the Chicago area reported that
25 the “Optimizer” software system had been down for the previous three weeks. Based on our files,
26 this is not accurate. Aside from planned maintenance windows, the “Optimizer” has been running
27 since the beginning of the 2020 Census NRFU operation. I verified this information with the staff
28 who monitor and manage this system and confirmed the logs which monitor system “up time”

1 reflect no unexpected outages. It is likely the reduced workload is the result of the circumstances
2 cited in paragraph 15, but without specific information about the enumerator or the location, I am
3 not able to confirm this. There are five Area Census Offices in the Chicago metropolitan area and
4 they range in completion from 92.11 to 83.02% complete with the NRFU production work.

5 18. In the fourth complaint – “California” – there appear to be three concerns raised.
6 First, there is a reference to a Census Field Supervisor in Southern California claiming the Census
7 Bureau was deactivating many enumerators in the weeks leading up to the TRO. While hard to
8 investigate further without specific information, this is likely true as it is consistent with the
9 operational guidance provided for the NRFU operation. Regardless of the definition of “Southern
10 California”, there are numerous CFS areas throughout the area that had met the threshold for Phase
11 2 and Closeout operations prior to the TRO. In these operations – prior to the TRO – managers
12 were instructed to keep a subset of the best performing enumerators commensurate with
13 completing the final cases and release the remaining enumerators who were either low performing
14 or did not want to work elsewhere. Since the implementation of the TRO, we are only separating
15 enumerators who voluntarily resign or those with a conduct or performance problem.

16 19. The second item referenced in “California” is the Optimizer was down for several
17 weeks. As discussed in paragraph 16, we have information to the contrary.

18 20. The third item referenced in “California” is the reference to a news story where
19 “. . . a California field manager instructed supervisors to rate enumerators with letters “A,” “B,”
20 and “C,” and to terminate those with a “C” rating. I was first made aware of this issue when the
21 reporter contacted our Public Information Office with the allegation on Wednesday, September 9,
22 2020. At that time, there was no reference to California, so I contacted all Regional Directors to
23 determine whether there was a directive to do this or whether there was evidence of this happening.
24 I did not receive any information to corroborate this allegation. Once I learned that the complaint
25 arose from an office in California, I contacted the Regional management staff in the Los Angeles
26 region who oversee California to determine again whether any specific directive or instruction had
27 been given to do this. They confirmed that there was no instruction given, nor was there evidence
28 of this taking place.

21. In the fifth complaint – “Tennessee” – “. . . An enumerator in Tennessee reported numerous problems with his Bureau issued technology, including malfunctioning GPS and being totally locked out of his device altogether. He also confirmed problems with the Optimizer software.” Again, it is difficult to investigate fully without additional information. There have been isolated reports of device problems with the iPhone used to conduct NRFU assignments. However, the vast majority of the nearly 325,000 devices registered to NRFU staff have functioned as designed. I reviewed the log of device problems reported for the Area Census Offices in Tennessee and did not notice any unusual pattern of activity. The most common problem reported was an issue related to forgotten passwords. As for the reference to the Optimizer, it is difficult to know what “confirmed problems with the Optimizer” means. There are four offices in Tennessee, with NRFU production completion rates ranging from 92.69% to 72.86%. As to the reference to the personnel issue and a complaint filed with the Office of Inspector General, I am confident that will be appropriately resolved.

22. During the hearing on September 14, 2020, the Court noted the statement from my colleague, Dr. Albert Fontenot, that we are facing significant risks to complete all states by this date, due to factors beyond the Census Bureau’s control, such as wildfires in the western part of our country, major storms, resurgence of COVID-19 restrictions and other similar disruptions, and asked for an explanation of how we are handling these situations. Each circumstance is unique and we are tailoring an approach for every situation. The safety of our field enumeration staff is critical. Since the early stages of COVID, we have worked with the Centers for Disease Control and Prevention (CDC) and others in the federal health community to ensure we are keeping our staff and the public safe. With the incorporation of personal protective equipment (PPE) for our workforce, modified procedures for training and field enumeration and public messaging about COVID and the Census, we are taking numerous steps to conduct the 2020 Census in a COVID environment. In areas where there is extreme immediate danger – most recently the areas in Oregon, for example, where wildfires have triggered hazardous air quality warnings – we suspend field visits until it is safe to resume. In others, we advise staff to follow the precautions of local officials. In lieu of making personal visits, we have developed the ability to complete telephone

1 interviews. We also continuously promote self-response – using social media and our partner
2 networks. We use Mobile Questionnaire Assistance (MQA) staff to provide self-response options
3 to people by visiting them in evacuation areas. In situations where it is warranted and allowed
4 under our procedures, we use proxy respondents and make use of high-quality administrative
5 records. We are using every authorized and tested enumeration tool at our disposal to complete
6 work in these areas.

7 23. The Census Bureau has been public about its progress toward completing the
8 enumeration. We provide information on the progress of self-response by the American public as
9 well as the status of the NRFU operation. Information on our 2020census.gov website shows, for
10 example, that we have completed 84.8% of the NRFU workload for the San Jose Area Census
11 Office and 94.5% of the households in California have been enumerated. This information is
12 updated daily and is available for all ACOs.

13
14 I have read the foregoing and it is all true and correct.

15 DATED this _15_ day of September, 2020

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17 _____
18 James T. Christy
19 Assistant Director for Field Operations
20 United States Bureau of the Census
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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

NATIONAL URBAN LEAGUE, *et al.*,

Plaintiff,

v.

WILBUR L. ROSS, JR., *et al.*,

Defendants.

Case No. 5:20-cv-05799-LHK

DEFENDANTS' NOTICE OF APPEAL

PLEASE TAKE NOTICE that Defendants, Commerce Secretary Wilbur L. Ross, Jr., the U.S. Department of Commerce, the Director of the U.S. Census Bureau Steven Dillingham, and the U.S. Census Bureau, hereby appeal to the United States Court of Appeals for the Ninth Circuit from this Court's September 24, 2020 Order Granting Plaintiffs' Motion for Stay and Preliminary Injunction, ECF No. 208.

DATED: September 25, 2020

Respectfully submitted,

JEFFREY BOSSERT CLARK
Acting Assistant Attorney General

ALEXANDER K. HAAS
Branch Director

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Assistant Branch Directors

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CERTIFICATE OF SERVICE

I hereby certify that on the 25th day of September, 2020, I electronically transmitted the foregoing document to the Clerk of Court using the ECF System for filing.

/s/ Alexander V. Sverdlov
ALEXANDER V. SVERDLOV

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UNITED STATES DISTRICT COURT
 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 SAN JOSE DIVISION

NATIONAL URBAN LEAGUE; LEAGUE OF
 WOMEN VOTERS; BLACK ALLIANCE FOR
 JUST IMMIGRATION; HARRIS COUNTY,
 TEXAS; KING COUNTY, WASHINGTON;
 CITY OF LOS ANGELES, CALIFORNIA;
 CITY OF SALINAS, CALIFORNIA; CITY OF
 SAN JOSE, CALIFORNIA; RODNEY ELLIS;
 ADRIAN GARCIA; THE NATIONAL
 ASSOCIATION FOR THE ADVANCEMENT
 OF COLORED PEOPLE; CITY OF CHICAGO,
 ILLINOIS; COUNTY OF LOS ANGELES,
 CALIFORNIA; NAVAJO NATION; and GILA
 RIVER INDIAN COMMUNITY,

Plaintiffs,

v.

CASE NO. 20-cv-5799-LHK

**FIRST AMENDED COMPLAINT
 FOR DECLARATORY AND
 INJUNCTIVE RELIEF**

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WILBUR L. ROSS, JR., in his official capacity
as Secretary of Commerce; U.S. DEPARTMENT
OF COMMERCE; STEVEN DILLINGHAM, in
his official capacity as Director of the U.S.
Census Bureau; and U.S. CENSUS BUREAU,

Defendants.

INTRODUCTION

1
2 1. This lawsuit challenges the unconstitutional and illegal decision by Secretary of
3 Commerce Wilbur Ross, and Census Bureau (the “Bureau”) Director Steven Dillingham, to
4 sacrifice the accuracy of the 2020 Census by forcing the Census Bureau to compress eight and a
5 half months of vital data-collection and data-processing into four and a half months, against the
6 judgment of the Bureau’s staff and in the midst of a once-in-a-century pandemic.

7 2. The Census Bureau’s staff spent most of the past decade developing a final
8 operational plan for the 2020 Census that reflected the Bureau’s understanding of the best
9 methods for counting everyone once and in the right place (the “Final Operational Plan”). In
10 April 2020, as the COVID-19 pandemic spread throughout the country, the Census Bureau
11 revised its plan to account for both the difficulties of census-taking during a pandemic and the
12 Bureau’s constitutional and statutory obligation to achieve a fair and accurate count (the
13 “COVID-19 Plan”). To achieve both ends, the Department of Commerce and the Census Bureau
14 delayed the counting process, shifted the timeframe for conducting and completing its data-
15 collection operation, and increased the time for conducting data-processing, while, crucially,
16 preserving the same amount of time for each step of those operations.

17 3. On August 3, 2020, the Department of Commerce and the Census Bureau
18 suddenly and without explanation reversed course and replaced the Bureau’s COVID-19 Plan
19 with a new one (the “Rush Plan”). The Bureau’s Rush Plan requires the Bureau to complete eight
20 and a half months of data-collection and data-processing in half the time. It ignores the multi-
21 month delay in census data-collection that the COVID-19 pandemic caused. It compels a final
22 date for delivering apportionment data to the President that Bureau officials have repeatedly
23 asserted they cannot meet. And it threatens a massive undercount of the country’s communities
24 of color and the municipalities, cities, counties, and states where they live. Under these
25 circumstances, the Bureau’s new plan to rush the 2020 Census violates, among other things, the
26 federal government’s legal obligations to secure an accurate count and statutory prohibitions on
27 arbitrary, capricious, and pretextual federal government action.

28 4. The federal government’s attempt to rush the census count poses a grave threat to

all the vital functions that rely on census data, from reapportioning the United States House of Representatives and redrawing state and local electoral districts, to equitably distributing over \$1.5 trillion annually in federal funds that support basic needs such as food, health care, and education. Undercounted cities, counties, and municipalities will lose representation in Congress and tens of millions of dollars in funding. And communities of color will lose core political power and vital services. In contrast to these dire stakes, the immediate solution to this problem is simple: set aside and enjoin implementation of the impossibly-shortened Rush Plan, which is based on an unexplained change of position, and allow the Census Bureau to implement the plan that it had designed to fulfill its constitutional duties during the pandemic.

5. The COVID-19 pandemic upended all 2020 Census field operations, many of which the Census Bureau designed to enumerate populations that it has long struggled to count, including racial and ethnic minorities, non-English speakers, and undocumented persons. Among the disrupted census operations was the largest, most time-consuming operation undertaken to count the country's hard-to-count communities—the "Non-Response Follow Up" operation. During Non-Response Follow Up, the Bureau sends its employees to knock on the doors of households that have not yet responded to the census and perform other vital data-collecting functions.

6. The Bureau's staff responded to the pandemic—and the impossibility of conducting house visits during widespread lockdowns—by making necessary adjustments to the timeline in the Final Operational Plan. This revised operational plan, the COVID-19 Plan issued on April 13, 2020, was intended to ensure that hard-to-count communities would be enumerated and the health and safety of Bureau employees and the public would be protected. This plan adjusted the deadlines of, but did not shorten the time for, critical operations. Under this plan—which experts and census stakeholders alike endorsed as a scientifically sound approach for minimizing the pandemic's potential damage to the accuracy of the count—the Bureau extended its data-collection deadlines to October 31, 2020 and its data-processing deadlines into the second quarter of 2021. Critically, the COVID-19 Plan delayed door-knocking by three months, pushing it from May–July 2020 to August–October 2020. But the COVID-19 Plan

1 acknowledged that the Bureau must spend the same amount of time—around eleven and a half
2 weeks—on door-knocking, just as it had planned to do before the pandemic. The COVID-19
3 Plan also incorporated the same methods and techniques contemplated in the Final Operational
4 Plan that the Bureau had spent years developing. Indeed, the only respect in which the COVID-
5 19 Plan altered the amount of time devoted to operations set out in the Final Operational Plan
6 was a requirement that the Bureau spend *more* time than originally planned *processing* the data it
7 collected—that is, performing the necessary work to transform over 100 million individual
8 census forms into high-quality, reliable, and legitimate data. This additional investment in data-
9 processing reflected daunting new challenges the COVID-19 pandemic posed to an accurate
10 count, including massive displacements of people that would introduce problems of duplicate
11 responses, responses without unique census identifiers, and other complex data issues.

12 7. The Department of Commerce and the Census Bureau also recognized that the
13 impact of COVID-19 had made it impossible to meet certain statutory deadlines for reporting
14 census results to Congress. Commerce Secretary Wilbur Ross and Census Bureau Director
15 Steven Dillingham announced that the Bureau was seeking relief from Congress to formally
16 extend two statutory deadlines: first, the deadline for reporting the state-population totals used to
17 calculate the congressional apportionment to the President, which Congress was asked to extend
18 from December 31, 2020 to April 30, 2021; and, second, the deadline for reporting redistricting
19 data to the states, which Congress was asked to extend from March 31, 2021, to July 31, 2021.
20 Commenting on the statutory-deadline extensions, President Trump publicly stated on April 13,
21 2020, “I don’t know that you even have to ask [Congress]. This is called an act of God. This is
22 called a situation that has to be. They have to give in. I think 120 days isn’t nearly enough.”
23 Hansi Lo Wang, *Trump Officials Ask to Delay Census Data for Voting Districts, House Seats*,
24 NPR (Apr. 13, 2020), [https://www.npr.org/2020/04/13/833546675/trump-officials-ask-to-delay-](https://www.npr.org/2020/04/13/833546675/trump-officials-ask-to-delay-census-data-for-voting-districts-house-seats)
25 [census-data-for-voting-districts-house-seats](https://www.npr.org/2020/04/13/833546675/trump-officials-ask-to-delay-census-data-for-voting-districts-house-seats).

26 8. Recognizing that more time was necessary to complete an accurate census, and
27 consistent with the President’s statement, the Bureau proceeded immediately under its COVID-
28 19 Plan. The Bureau delayed its door-knocking operation to late summer, with the declared

1 intention of completing it by October 31, 2020. And recognizing that a successful census is
2 dependent on all levels of government working together, the Bureau publicized this plan to the
3 public, as well as to government and non-profit partners involved in the years-long and multi-
4 million-dollar public education campaign to ensure public trust and encourage public
5 participation in the census.

6 9. Throughout the summer, Bureau officials repeatedly stated that the pandemic had
7 rendered it impossible for the Bureau to complete a reasonably accurate count by December 31,
8 2020. But to comply with its constitutional obligations, the Bureau continued collecting data on
9 the timelines set in the COVID-19 Plan, which itself extended the Bureau's data-processing
10 timelines into 2021.

11 10. On August 3, 2020—in the face of a pandemic that has only grown worse and in
12 disregard of the Census Bureau's constitutional and statutory duties to conduct an actual
13 enumeration of the entire population—Secretary Ross and Director Dillingham abruptly
14 abandoned the COVID-19 Plan. Without explanation, they announced the new Rush Plan for the
15 2020 Census, including shortening the Bureau's data-collection operation by one month to
16 September 30, 2020, and requiring the Bureau to process and report the apportionment data to
17 President Trump by December 31, 2020. The Rush Plan cuts a crucial four weeks from the data-
18 collection operation. And it disregards the Bureau's own prior conclusions that such rushed
19 processing renders it impossible to fulfil its constitutional obligation to ensure reasonable quality
20 and accuracy of 2020 Census data.

21 11. Defendants' decision to abandon the COVID-19 Plan in favor of the Rush Plan
22 does not satisfy the Supreme Court's clear command that any decision relating to the census bear
23 a "reasonable relationship" to producing an accurate count. *See Wisconsin v. City of N.Y.*, 517
24 U.S. 1, 20 (1996). As demonstrated by Defendants' own prior statements, the challenged decision
25 cannot be justified by any legitimate interest in conducting an accurate census, and in fact will
26 introduce several inaccuracies in the count, chief among them major undercounts of communities
27 of color.

28 12. The reason for this abrupt change of position is not apparent on the face of the

1 press release announcing the Rush Plan or any other subsequently issued statements or
2 publications from the federal government. The Bureau has refused requests from Congress and at
3 least one Plaintiff in this action to provide one.

4 13. The announcement of the Rush Plan did reference two developments that
5 occurred between the adoption of the COVID-19 Plan and the announcement of the Bureau's
6 intent to adopt the Rush Plan. But neither of these developments can justify Defendants' actions.
7 First, the announcement refers to the Secretary of Commerce's direction to the Bureau to comply
8 with the statutory deadline of December 31, 2020 for completing the apportionment count. But
9 this statutory deadline cannot justify an unconstitutional decision to cut short crucial operations
10 and fail to satisfy its constitutional obligation. A statutory deadline, particularly one that was set
11 without a global pandemic in mind, cannot override the federal government's constitutional duty
12 to accomplish an accurate census; there is "nothing sacred in the due date of the filing [of
13 apportionment data], especially when the work of the Census Bureau . . . is incomplete." *Carey*
14 *v. Klutznick*, 637 F. 2d 834, 837 (2d Cir. 1980). Moreover, the Bureau was cognizant of this
15 deadline even as it designed and implemented the COVID-19 Plan, including delaying crucial
16 field operations by several months. And Bureau officials have repeatedly made clear that because
17 of the impediments introduced by COVID-19, together with the multi-month delay, it is *already*
18 too late to satisfy these pre-COVID-19 deadlines.

19 14. Second, both the text of the Rush Plan announcement and the timing of the
20 decision suggest that the federal government's motivation for the Rush Plan is to facilitate
21 another illegal act: suppressing the political power of communities of color by excluding
22 undocumented people from the final apportionment count. On July 21, 2020—just a few weeks
23 earlier—President Trump issued a Presidential Order titled "Memorandum Excluding Illegal
24 Aliens From the Apportionment Base Following the 2020 Census" (the "Apportionment
25 Exclusion Order")—which expressly stated the President's determination to exclude
26 undocumented people from the population count used for apportionment. To increase the chance
27 that the President can fully effectuate the Apportionment Exclusion Order, he must receive the
28 population totals while he is still in office, and he ordered the Secretary of Commerce to provide

him with 2020 decennial census information by December 31, 2020 to carry out his objective.

15. The President's Apportionment Exclusion Order (currently being challenged as unconstitutional and unlawful in a number of lawsuits filed in jurisdictions around the country, including in this District) represents only the most recent of Defendants' serial attempts to manipulate the 2020 Census to suppress the political power of communities of color. These attempts started with a campaign to introduce a historically unprecedented and untested citizenship question onto the 2020 Census questionnaire to advantage—in the words of a deceased Republican redistricting consultant—"Republicans and non-Hispanic whites." Michael Wines, *Deceased G.O.P. Strategist's Hard Drives Reveal New Details on the Census Citizenship Question*, N.Y. Times (May 30, 2019), <https://www.nytimes.com/2019/05/30/us/census-citizenship-question-hofeller.html>. Since the Supreme Court blocked the question, Defendants have looked for other means to achieve that same end, including collecting data on citizenship from administrative records and, now, cutting the census short.

16. Plaintiffs are local governments, civil rights and civic organizations, and individuals whose communities will almost certainly be inaccurately represented and underrepresented in the final census count if the administration succeeds in truncating census data-collection and data-processing.

17. Plaintiffs seek declaratory relief affirming that Defendants' actions violate the Enumeration Clause and the Administrative Procedure Act. Plaintiffs additionally seek to set aside and enjoin implementation of the illegal Rush Plan, thereby permitting the Bureau to implement the preexisting COVID-19 Plan it carefully designed to ensure a complete and accurate count. This relief will allow the Bureau to conduct the 2020 Census on the timeline it has repeatedly asserted is necessary to complete a full, fair, and accurate count.

18. Without such relief, Plaintiffs and the communities they represent will suffer irreparable harm for at least another decade, until the next census is conducted.

JURISDICTION AND VENUE

19. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331, 1346(a), and 1361.

20. Venue is proper in this judicial district under 28 U.S.C. § 1391(b)(2) and (e)(1). Defendants are United States officers or agencies sued in their official capacities, a substantial part of the events or omissions giving rise to this action have occurred or will occur in this district, and one or more Plaintiffs reside in this district.

21. This Court may grant declaratory and injunctive relief under 28 U.S.C. §§ 2201 and 2202.

22. The proper intradistrict assignment for this action is the San Jose Division, in light of the location of Plaintiffs City of San Jose and members of the League of Women Voters.

PARTIES

I. Plaintiffs

23. The National Urban League (“Urban League”) is a civil-rights organization with over 90 affiliates serving 300 communities in 37 states and the District of Columbia. Founded in 1910, the National Urban League is headquartered in New York City. The mission of the National Urban League is to help African Americans and others in underserved communities achieve their highest human potential and secure economic self-reliance, parity, power, and civil rights.

24. For the 2020 Census, the Urban League has expended substantial resources developing programs designed to encourage self-response and cooperation with Census Bureau offices in historically undercounted communities. Specifically, the organization has engaged in efforts to educate the public about the census through various methods, including virtual town halls, production and distribution of toolkits, workshops for locally based get-out-the-count organizations, and publication and upkeep of a website, www.MakeBlackCount.org, to disseminate critical information about the census. The Urban League has also worked with Census Bureau regional offices to encourage enumerator recruitment, and the organization uses social media to encourage 2020 Census participation.

25. Plaintiff Black Alliance for Just Immigration (“BAJI”) is a nonprofit organization organized and existing under the laws of California, with offices and members across the country, including in Oakland, California, Miami, Florida, Atlanta, Georgia, and New York City.

BAJI collaborates with African Americans and Black immigrants to organize and advocate for equal and just laws in their communities. BAJI campaigns to advance racial justice and provides partner organizations with varied assistance—particularly on immigration policy—and it spends significant resources educating its partner organizations, individuals, and other constituents through presentations, workshops, publications, technical assistance, and trainings. BAJI is a membership organization, and its members either pay dues or volunteer their time to support the organization. Members also actively participate in BAJI’s self-governance and decision-making at the local level.

26. For the 2020 Census, BAJI has worked to ensure non-responsive households in Black and immigrant communities are counted. BAJI has hired additional staff dedicated to engaging local communities on the census, and has engaged in outreach using social media and mailers to bolster self-response. In addition, since the outbreak of the COVID-19 pandemic, BAJI staff regularly participate in webinars and virtual events to provide the public more information about the census, with a specific focus on encouraging participation in Black and immigrant communities.

27. The League of Women Voters is a nonprofit civic organization that encourages informed and active participation in government. Founded in 1920, the League of Women Voters is headquartered in Washington, D.C. The League of Women Voters has over 800 state and local affiliates, located in all 50 states and in 764 specific communities, including affiliates with members in San Francisco and Monterey County, California, Detroit, Michigan, Miami, Florida, Philadelphia, Pennsylvania, and New York City. The League of Women Voters seeks to empower voters and defend democracy. The League of Women Voters has over 65,000 members nationwide, and its members either pay dues or volunteer their time to support the organization.

28. The League of Women Voters has engaged in significant efforts to ensure historically undercounted communities are enumerated during the 2020 Non-Response Follow Up operation. Prior to the outbreak of COVID-19 in the United States, the League of Women Voters and its affiliates participated in public events across the country aimed at providing information about the census to undercounted communities. Since March of this year, the League

1 of Women Voters has shifted to a digital public-education campaign, encouraging education and
2 participation through social media, email listservs, webinars, and blog posts. Affiliates in
3 Kansas, South Carolina and Maine are also participating in state Complete Count Committees
4 that seek to increase awareness of the 2020 Census, improve participation, and coordinate with
5 Census Bureau officials.

6 29. Harris County, Texas is a political subdivision of the State of Texas. With over
7 4.7 million residents, Harris County is the third largest county in the United States. The county's
8 population is over 43% Latino, 20% Black, over 7% Asian, and over 28% non-Hispanic White.
9 During the 2010 Census, 65.1% of households in Harris County self-responded to the census. As
10 of August 14, 2020, 58.3% of households in Harris County had self-responded to the 2020
11 Census. This response rate in Harris County was well below the national response rate on that
12 date, 63.6%.

13 30. For the 2020 Census, officials in Harris County engaged in extensive efforts to
14 encourage participation in the County. County officials formed a Complete Count Committee
15 with city officials in Houston that engaged in public education about the census, and built
16 partnerships with local Census Bureau officials to coordinate outreach efforts. In addition, in
17 2019, the County approved a budget of nearly \$4 million dollars to conduct outreach during the
18 2020 Census. To that end, the County has contracted with vendors to conduct surveys about the
19 opinions and attitudes of non-responsive populations and develop a digital advertising campaign
20 on Facebook and Instagram to encourage 2020 Census participation. And the County receives
21 substantial federal funding tied to census data.

22 31. King County is a political subdivision of the State of Washington. Over 2.2
23 million people live in King County, making it the most populous county in Washington. As of
24 August 14, 2020, 26.1% of households in King County had not responded to the 2020 Census.
25 The county has large populations of historically undercounted communities. For instance,
26 according to the Department of Housing and Urban Development, King County had nearly
27 12,000 residents experiencing homelessness, the third highest total of any locale in the country.
28 The Seattle metro area, which includes King County, is estimated to have 140,000

1 undocumented immigrant residents.

2 32. King County worked in partnership with local cities to provide \$1.17 million to
3 community-based organizations serving historically undercounted communities. Specifically,
4 King County sought to fund organizations that work with communities that are Limited English
5 Proficient. Through this funding, these organizations produced public education materials related
6 to the 2020 Census, and developed campaigns to get-out-the-count. And King County, too,
7 receives substantial federal funding tied to census data.

8 33. The City of Los Angeles, California is a municipal corporation organized and
9 existing under the laws of the State of California, and is a charter city pursuant to Article XI of
10 the California Constitution. The City is home to roughly 4 million people, and is located in the
11 county recognized by the Census Bureau as the hardest to count in the nation. The city's
12 population is a large contributor to the County's hard-to-count status as more than half of the
13 City's residents live in census tracts that are hard to count. As of August 14, 2020, only 53.8% of
14 the City's households had responded to the 2020 Census—well below the statewide average of
15 65.1% and even further below the City's own 2010 self-response rate of 68 percent.

16 34. As a result of its hard-to-count status, Los Angeles has engaged in years of
17 planning and devoted significant resources to developing a strategy for an accurate count,
18 tailored to the unique challenges of the City's population. To fund these efforts, the City has
19 overseen distribution of roughly \$2 million dollars to community-based organizations and the
20 investment of almost \$1.5 million of both City general fund and grant money in its own efforts.
21 And the City of Los Angeles also receives substantial federal funding tied to census data.

22 35. The City of Salinas, California is a political subdivision of the State of California.
23 Salinas is the most populous city in and the government seat of the County of Monterey. The city
24 is home to more than 150,000 people, including 38.5% of the county's "hard-to-count"
25 population. As of August 14, 2020, 57.2% of all households in Salinas have responded to the
26 2020 Census, which is 422nd out of all 482 California cities. The current response rate is 7.9
27 percentage points below California's statewide average for self-responses and more than 10
28 percentage points below Salinas's self-response rate from the 2010 Census.

1 36. Salinas has dedicated significant resources to funding and staffing its “Census
2 Action Team,” which is composed of city staff and representatives from the County of
3 Monterey’s “Complete Count Committee,” as well as community-based organizations, school
4 districts, and local businesses. The city’s population is more than 75% Latino, and more than 1 in
5 5 households have limited English-language proficiency. As part of its outreach, the Salinas
6 Census Action Team engages religious and community organizations, such as local food banks,
7 to assist with enumeration efforts in the Latino community and all communities of color as these
8 organizations are able to assist with trust and communication barriers that can make these groups
9 hard to count. The City of Salinas also receives substantial federal funding tied to census data.

10 37. The City of San Jose is a political subdivision of the State of California. San Jose
11 has over 1 million residents, making it the largest city in Northern California, and the tenth
12 largest city in the United States. San Jose’s population is 32% Latino, and 35% Asian, and nearly
13 40% of residents are foreign born. As of August 14, 2020, 28% of households in San Jose had
14 not responded to the census. San Jose has large populations of historically undercounted
15 communities. For instance, according to the Department of Housing and Urban Development, in
16 2019, San Jose had over 6,000 residents experiencing homeless. In addition, the San Jose metro
17 area is estimated to have over 150,000 undocumented immigrant residents.

18 38. The City of San Jose has engaged in extensive public-education and get-out-the-
19 count efforts during the 2020 Census. San Jose has formed a Complete Count Committee with
20 Santa Clara County, and nearly 90 community-based organizations. The Committee focuses on
21 raising awareness of the census in historically undercounted communities. San Jose also
22 disseminates information about the census to the public through city departments and offices.
23 San Jose also worked closely with the Census Bureau to recruit qualified bilingual enumerators.
24 The City of San Jose receives substantial federal funding tied to census data.

25 39. Plaintiff Rodney Ellis is the Commissioner for Precinct One on the Harris County
26 Commissioners Court. He is a resident and citizen of Harris County, where he is registered to
27 vote and regularly exercises his right to vote. Commissioner Ellis regularly drives on roads and
28 highways in Harris County.

40. Plaintiff Adrian Garcia is the Commissioner for Precinct Two on the Harris County Commissioners Court. He is a life-long resident and citizen of Harris County, where he is registered to vote and regularly exercises his right to vote. Commissioner Garcia also regularly drives on roads and highways in Harris County.

41. The National Association for the Advancement of Colored People (“NAACP”) is the nation’s oldest and largest grassroots-based civil rights organization. The NAACP is headquartered in Baltimore, Maryland, and has over 2000 units across the country, including units in all 50 states and the District of Columbia. The NAACP’s units are predominantly located in states and metropolitan areas with large Black populations, and NAACP members are more likely than the average resident of the United States to reside in a hard-to-count community. The NAACP has membership and active units in cities like Detroit, Cleveland, and Newark—all places where, as of August 28, the Census Bureau reported a lower than 50 percent self-response rate to the 2020 Census.

42. The NAACP has made considerable efforts—and expended significant resources—to ensure that the 2020 Non-Response Follow Up operation successfully enumerates hard-to-count communities. Prior to the outbreak of COVID-19, the NAACP and its units launched a “Be Counted” campaign to inform NAACP membership and undercounted communities about the 2020 Census. The NAACP and its local units participated in public events around the country; the NAACP hosted townhalls and published materials and posts describing the importance of the census and the historical undercount of Black communities; and NAACP local units assumed leadership roles in a variety of Complete Count Committees. Since COVID-19, the NAACP has transitioned to online educational efforts. To get out the count in the face of COVID-19, the NAACP has published a number of posts and articles, hosted an all-online “Black Census Week,” partnered with CBS and other organizations to create 2020 Census digital “PSAs,” and built new youth programming to make use of social media.

43. The City of Chicago is a municipal corporation and home rule unit organized and existing under the constitution and laws of the State of Illinois. With over 2.7 million residents, Chicago is the third largest city in the United States. Chicago’s population is 30% Black, 29%

1 Latino, over 6.4% Asian, and over 32% non-Hispanic White. During the 2010 Census, 62.4% of
2 households in Chicago self-responded to the census. As of August 28, 58.1% of households in
3 Chicago had self-responded to the 2020 Census. This response rate was well below the national
4 response rate on that date, 64.7%.

5 44. For the 2020 Census, officials in the City of Chicago designated \$2.7 million for
6 promotion of census participation. Chicago established a complete count committee with
7 businesses and nonprofits to stimulate participation, provided grants to organizations engaging
8 with hard-to-count communities, and encouraged responses through public service
9 announcements on radio, social media, billboards and newspapers. In addition, Chicago is
10 sending paid staff into communities with low response rates to encourage participation, as well
11 as engaging in phone banking and texting campaigns. Chicago receives federal funding under
12 several federal programs that allocate resources based on census-derived information, including
13 the Community Development Block Grant program, the Low Income Home Energy Assistance
14 Program, Workforce Innovation and Opportunity Act grants and others.

15 45. The County of Los Angeles is a political subdivision of the State of California.
16 The County of Los Angeles is the largest county in the nation, with more than 10 million
17 residents. It is also one of the country's most diverse counties, with millions of immigrants
18 calling it home. According to the U.S. Census Bureau, 34.2% of Los Angeles County residents
19 are foreign-born and 48.6% are of Latino descent. Given a high concentration of hard to count
20 populations, Los Angeles is among the hardest to count counties in the United States. As of
21 August 28, 62.2% of households in the County of Los Angeles, had responded to the 2020
22 Census, well below both the California average self-response rate of 66.9% and the national self-
23 response rate of 64.7% on that date.

24 46. To ensure a more accurate count in the 2020 Census, the County of Los Angeles
25 has engaged in significant expenditures. The County of Los Angeles instigated a notice
26 campaign to all residents informing them of the previous, October 31, 2020, Self-Response
27 deadline. The County of Los Angeles will need to reprint the materials stating the date, distribute
28 them to residents, and address any confusion regarding the change in dates, to the extent

possible. The County of Los Angeles also created an extensive outreach and promotional campaign including but not limited to in-store signage at grocery stores and pharmacies, print and digital advertising, and social media editorial calendars and content. The County of Los Angeles developed these plans specifically incorporating the October 31, 2020, Self-Response deadline under the COVID-19 Plan, and would need to revise these campaigns to account for a new, shortened Self-Response deadline, as required under the Rush Plan.

47. The Navajo Nation is the largest Indian Nation in the United States with a reservation spanning 27,000 square miles across the states of Arizona, New Mexico, and Utah. The 2010 Census recorded a population of 327,726 for the Navajo Nation. During the 2010 Census, 29.4% of households in the Navajo Nation responded to the census. As of August 28, only 18% of households in the Navajo Nation had self-responded to the 2020 Census. Many households in Navajo Nation have limited access to regular mail, and internet. As a result, the primary method for enumerating households in the Navajo Nation is through census field operations.

48. For the 2020 Census, the Navajo Nation sought to ensure that every resident was counted. To that end, the Navajo Nation engaged in outreach efforts such as posting public service announcements on social media, radio, television and in newspapers. The Navajo Nation also worked with advocates to speak at community events, and provide informational flyers during food distribution events, during senior shopping hours at grocery stores, and at checkpoint stops for those entering and leaving the Nation. Outreach was conducted in both English and Diné. The Navajo Nation ultimately depends on accurate census data for a number of essential government functions, including determining the appropriate location for healthcare facilities and services on the reservation, and projecting population needs to assist in determination of water rights claims. In addition, the Navajo Nation federal funding under several programs that allocate resources on the basis of census-derived data, including the Tribal Transportation Program which provides essential resources for maintenance of roads, bridges and airports on reservations.

49. The Gila River Indian Community (“Gila River”) is a sovereign Indian nation composed of members of the Pima and Maricopa Tribes, traditionally known as the Akimel O’otham and Pee-Posh. It is organized and federally recognized pursuant to § 16 of the Indian Reorganization Act of June 18, 1934, 25 U.S.C. § 5123. The Gila River Indian Reservation, an area of over 372,000 acres, is located in south-central Arizona south of Phoenix. Most of the reservation is rural, and many households are identifiable only by a post office box. Also, many households lack access to high-speed internet. Consequently, in-person interaction with census enumerators is critical to ensuring an accurate census count of the Gila River Community. As of August 28, only 9.5% of households had self-responded to the 2020 Census.

50. The Gila River Community had planned census-response rallies and activities for 2020, as well as a door-to-door effort to make sure all individuals and households on the Reservation are counted. But for the past five months the Community has been under shelter-in-place orders, making most of those efforts impossible. Federal funding for the Community is based largely on census numbers. An undercount will result in significant underfunding of tribal programs, including Indian Health Service Funding, Indian Housing Block Grants, the Tribal Transportation Program, Violence Against Women Programs, Family Violence Prevention and Services Grants (for battered women shelters), Native American Employment and Training programs, Head Start, Temporary Assistance to Needy Families, and Special Programs for the Aging – tribal grants.

II. Defendants

51. Defendant Wilbur L. Ross is the Secretary of the U.S. Department of Commerce and is sued in his official capacity. Secretary Ross oversees the U.S. Department of Commerce and the Census Bureau. Congress has delegated the responsibility for carrying out the decennial census to the Secretary of Commerce. 13 U.S.C. § 141(a).

52. Defendant U.S. Department of Commerce is a cabinet agency within the Executive Branch responsible for administering the decennial census.

53. Defendant Steven Dillingham is the Director of the U.S. Census Bureau and is sued in his official capacity.

54. Defendant U.S. Census Bureau is an agency within the Department of Commerce responsible for planning and administering the decennial census. 13 U.S.C. § 2.

FACTUAL ALLEGATIONS

I. Defendants' Constitutional and Statutory Obligations.

55. Under the United States Constitution, the federal government must conduct an "actual Enumeration" of the population once every ten years. U.S. Const. art. I, § 2.

56. The population totals produced by the decennial enumeration are used to apportion congressional representatives to the various states. *Id.* Census figures are also used in state and local redistricting and in the distribution of federal funds to communities across the United States.

57. The Enumeration Clause requires that decisions relating to the census bear a "reasonable relationship" to the constitutional purpose of the enumeration. *Wisconsin*, 517 U.S. at 20.

58. Similarly, the Census Act imposes a mandatory duty on the Secretary of Commerce to "conduct a census that is accurate and that fairly accounts for the crucial representational rights that depend on the census and the apportionment." *Dep't of Commerce v. New York*, 139 S. Ct. 2551, 2569 (2019) (citation omitted).

59. Consequently, the Secretary of Commerce and the Census Bureau are constitutionally obligated to make decisions in conducting the census that are reasonably related to achieving a fair and accurate calculation of the population of the United States.

II. The Census Bureau's Pre-COVID-19 Operational Plans for the 2020 Census.

60. For the 2020 Census, the Census Bureau spent the better part of a decade designing operations to fulfill its constitutional and statutory mandate, including: soliciting and incorporating feedback from seasoned experts, advisors, and community groups; testing various

1 features of its data-collection and data-processing operations; and ensuring that its decisions for
2 conducting the census reflected sound, scientifically based judgment.

3 61. To this end, the Bureau created an operational plan to guide its efforts, including
4 its efforts to collect data from census respondents and to process that data into usable forms for
5 constitutionally and statutorily mandated purposes, including reapportionment and redistricting.

6 62. On December 31, 2018, the Bureau promulgated the final version of its
7 operational plan, which the Bureau called “Version 4.0” (hereinafter referred to as the “Final
8 Operational Plan”). *See* U.S. Census Bureau, Final Operational Plan (Dec. 2018),
9 [https://www2.census.gov/programs-surveys/decennial/2020/program-management/planning-](https://www2.census.gov/programs-surveys/decennial/2020/program-management/planning-docs/2020-oper-plan4.pdf)
10 [docs/2020-oper-plan4.pdf](https://www2.census.gov/programs-surveys/decennial/2020/program-management/planning-docs/2020-oper-plan4.pdf). In the Final Operational Plan, the Census Bureau stated that its goal
11 for the 2020 Census is to “count everyone once, only once, and in the right place.”

12 63. Under the Paperwork Reduction Act, the Office of Management and Budget must
13 review and approve the plans for any federal survey, including the decennial census, to ensure
14 that those surveys meet government standards, minimize respondent burden, and maximize the
15 utility of the collected information. 44 U.S.C. § 3504(c).

16 64. The Office of Management and Budget formally reviewed and approved the
17 Census Bureau’s pre-COVID-19 plans for the decennial census, including the Final Operational
18 Plan.

19 65. The Final Operational Plan includes over 200 pages of detailed and transparent
20 conclusions for achieving the 2020 Census’s objective of an accurate count.

21 66. The Final Operational Plan reflects the conclusions of various experts including
22 survey methodologists, statisticians, demographers, geographers, linguists, and mathematicians.

23 67. The Final Operational Plan states that it “reflects and supports evidence-based
24 decision-making” about the operations necessary to gather and process census responses from
25 every household in the country.

26 68. The Final Operational Plan states that it was “informed through research, testing,
27 and analysis conducted from 2012 through 2018.”

28

69. The Bureau conducted at least fifteen tests between 2012 and December 31, 2018, when it published its Final Operational Plan.

70. Career Bureau staff developed the Final Operational Plan following substantial consultation with outside experts and census stakeholders, including members of the Census Scientific Advisory Committee and the National Advisory Committee.

71. The Census Bureau also produced a series of “detailed operational plans,” which supplement the Final Operational Plan, and provide more parameters for the individual operations that, together, comprise the 2020 Census.

72. The detailed operational plans likewise reflect the conclusions of various subject-matter experts regarding how to complete an accurate count.

73. The Bureau’s Final Operational Plan contains several major categories of operations. Two of those categories are particularly important for purposes of this lawsuit: data-collection and data-processing.

74. “Data-collection” refers to operations through which the Bureau obtains information from and about all the people living in the United States.

75. “Data-processing” refers to operations through which the Bureau fills in any gaps in the personal information that it collects from people, transforms the resulting data into usable forms, checks those results for accuracy and other aspects of data quality, and publishes those results, among other things.

76. The Bureau must thoroughly, fully, and correctly perform both categories of operations—collection and processing—to achieve its stated goal of counting everyone once, only once, and in the right place.

A. Census Data Collection

77. During the census, the Bureau attempts both to determine the number of people in the country and their characteristics, such as their race and ethnicity.

78. Although the Census Bureau planned to deploy many methods during the 2020 Census to collect counts and characteristics from households around the country, the Bureau contemplated, in both the Final Operational Plan, and in the supplemental detailed operational

1 plans, that three methods would account for the overwhelming majority of census responses: the
2 “Self-Response” method; the “Update Leave” method; and the “Non-Response Follow Up”
3 method. *See* U.S. Census Bureau, *2020 Census Detailed Operational Plan for: 18. Non-*
4 *Response Follow Up Operation* (July 15, 2019), [https://www2.census.gov/programs-](https://www2.census.gov/programs-surveys/decennial/2020/program-management/planning-docs/NRFU-detailed-operational-plan_v20.pdf)
5 [surveys/decennial/2020/program-management/planning-docs/NRFU-detailed-operational-](https://www2.census.gov/programs-surveys/decennial/2020/program-management/planning-docs/NRFU-detailed-operational-plan_v20.pdf)
6 [plan_v20.pdf](https://www2.census.gov/programs-surveys/decennial/2020/program-management/planning-docs/NRFU-detailed-operational-plan_v20.pdf).

7 79. The Self-Response method was the “primary methodology for the 2020 Census.”
8 Under this method, heads of households would provide their 2020 Census responses directly to
9 the Census Bureau by mailing back a paper census form, filling out a digital form on the
10 Bureau’s online census portal, or calling into telephone hotlines to provide their responses to
11 Bureau employees operating those hotlines.

12 80. The Update Leave method was the methodology for reaching housing units that
13 could not receive physical mail or did not have verifiable mailing addresses. Under this method,
14 Bureau employees would travel throughout both rural and urban areas, leaving invitations to
15 participate and paper census questionnaires at these housing units, so that the people living in
16 those locations could respond themselves.

17 81. The Self-Response method and the Update Leave method are crucial for obtaining
18 accurate information about the number of people in the country and their characteristics, because
19 data people report about themselves and the members of their housing units is the highest quality
20 data that the census collects.

21 82. But for the tens of millions of households that do not report their personal data
22 through the Self-Response or Update Leave method, the Bureau’s next-best source of personal
23 data is data it collects directly from people through the Non-Response Follow Up method.

24 83. As part of the Non-Response Follow Up method, the Bureau sends its employee
25 enumerators directly to housing units so that they can attempt to speak with a person occupying
26 each unit and obtain information about everyone who should be counted in that unit.

27 84. The Bureau requires enumerators to record their responses for each household
28 through iPhones that the Bureau specifically contracted and customized for this purpose. The

1 enumerators' iPhones include software designed to lead enumerators consistently and reliably to
2 solicit information from people at their doors. The enumerators' iPhones also include software to
3 ensure that any data collected from housing units remains confidential as it is being transmitted
4 to the Bureau. The limited supply of these customized iPhones places a limit on the number of
5 enumerators that the Bureau can deploy in the field.

6 85. The Bureau's Detailed Operational Plan for Non-Response Follow Up, which
7 supplements the Final Operational Plan, sets out a specific protocol for conducting Non-
8 Response Follow Up.

9 86. Under the Detailed Operational Plan, each housing unit assigned for a visit from
10 an enumerator was eligible for up to six "contact days." A "contact day" could include more than
11 one attempted contact per day.

12 87. The Bureau concluded it could pursue less than six contact days only under
13 certain scenarios.

14 88. One scenario that would allow the Bureau to pursue fewer than six contact days
15 was the existence of high-quality administrative records for the housing unit. The Census Bureau
16 has collected data from federal administrative agencies, such as the Social Security
17 Administration, the Internal Revenue Service, and the Department of Housing and Urban
18 Renewal, among others, as well as data from states, which it uses to provide information about
19 the count and characteristics of non-responsive households.

20 89. If the Bureau had located administrative data from federal and/or state
21 administrative records and concluded that those records contained accurate demographic data for
22 the occupants of a housing unit, the Bureau's enumerators would attempt only one contact with
23 that unit. If—during that contact attempt—the enumerator did not succeed in finding a live
24 person at the unit, then the Bureau would use the information in the administrative records to fill
25 in the census responses for that unit during the data-processing phase of the 2020 Census.

26 90. A second scenario that would allow the Bureau to pursue less than six contact
27 days would arise if the Bureau identified a proxy—a person such as a neighbor or landlord that
28 the enumerator could ask for information about the occupants of the housing unit in question.

1 After a third failed contact attempt, a unit would become eligible for being counted through
2 proxy.

3 91. Proxies can produce many types of data. For instance, proxies are useful for
4 helping the Bureau identify whether a housing unit is vacant—and thus should be marked
5 “vacant” in the Master Address File that the Bureau uses to keep track of the overwhelming
6 majority of housing units that it must enumerate—or non-existent—and thus should be deleted
7 from the Master Address File. For the 2020 Census, the Bureau is planning to use administrative
8 records, such as the United States Postal Service’s directory of non-deliverable addresses, to
9 identify vacant housing, but proxies are generally more accurate for this purpose. Finally, proxies
10 provide vital data for other operations that the Bureau undertakes during its data-processing
11 phase, described further below.

12 92. If the Bureau is unable to enumerate a household after six contact days, in most
13 cases, it will resort to less accurate methods for determining the count and characteristics of the
14 household during its data-processing phase, described below.

15 93. The Bureau performs several other vital operations in addition to door-knocking
16 during the Non-Response Follow Up period, including a series of operations to ensure the quality
17 of the data that it collects in the field.

18 94. During the Non-Response Follow Up process, the Bureau: follows up with people
19 who self-responded to the census online but did not enter their unique census identification
20 number to ensure that they are counted in the right place (a process known as “Field
21 Verification”); and corrects information reported erroneously or omitted from previously
22 submitted census forms (a process known as “Coverage Improvement”).

23 95. In addition, the Bureau re-collects census responses in select instances to ensure
24 that the original submissions were accurate (a process known as “Self-Response Quality
25 Assurance”). This operation protects against enumerators falsifying the information that they
26 provide to the Bureau. Specifically, the Bureau conducts quality control reinterviews of a sample
27 of households. This component is designed to deter and detect cases where enumerators have
28 provided false information about the housing units they are assigned to canvass.

1 96. Quality control reinterviews are part of a broader set of protocols that the Bureau
2 has developed to guard against factors that endanger the accuracy of the count. Non-Response
3 Follow Up is thus important not only for collecting information, but also for ensuring that the
4 information that is collected is accurate. These two components—gathering data and ensuring its
5 accuracy—must both occur for the Bureau to get a fair and accurate count.

6 97. The Bureau anticipated that approximately 60% of housing units nationally would
7 respond to the 2020 Census through Self-Response and Update Leave, potentially making up to
8 40% of housing units targets for Non-Response Follow Up.

9 98. A Non-Response Follow Up universe of 40% of the housing units in the country
10 would have been the largest follow up universe on a percentage basis since at least 1970.

11 99. The Census Bureau did not anticipate that the Non-Response Follow Up universe
12 in 2020 would mirror the demographic makeup of the nation’s population as a whole.

13 100. Instead, the Census Bureau anticipated that the Non-Response Follow Up
14 universe in 2020 would contain a disproportionate number of people who belong to communities
15 that the Bureau calls “hard-to-count.”

16 101. The Final Operational Plan describes hard-to-count populations as including, but
17 not limited to, the following populations: young children; highly mobile persons; racial and
18 ethnic minorities; non-English speakers; low-income persons; persons experiencing
19 homelessness; undocumented immigrants; persons who have distrust in the government; lesbian,
20 gay, bisexual, transgender, and questioning/queer (LGBTQ) persons; persons with mental and
21 physical disabilities; and persons who do not live in traditional housing.

22 102. Historically, these populations have had low self-response rates and have, thus,
23 made up disproportionate shares of households that must receive contact days during Non-
24 Response Follow Up.

25 103. Consequently, the Final Operational Plan acknowledges, “[t]he NRFU Operation
26 is entirely about hard-to-count populations.”

1 104. The Final Operational Plan also acknowledges that hard-to-count populations may
 2 require more outreach than the Non-Response Follow Up method would normally provide, and
 3 the Bureau designed its Final Operational Plan accordingly.

4 105. The Final Operational Plan states that “[w]hile most cases receive a maximum of
 5 six attempts, cases in hard-to-count areas may receive more than six attempts to achieve a
 6 consistent response rate for all geographic areas.”

7 106. Accurate data about the size, location, and characteristics of communities of color
 8 is necessary to equitably distribute political power through congressional reapportionment and
 9 redistricting at the state and local levels, enforce civil-rights laws that affect basic needs like
 10 housing and employment, and conduct effective research, including on pressing issues like
 11 public health.

12 **B. Census Data-Processing**

13 107. After collection activities are complete, the Census Bureau must process the data.

14 108. Census data-processing cannot begin until census data-collection concludes.

15 109. Census data is unusable for its intended purposes until it has been processed.

16 110. The Census Bureau’s data-processing operations transform tens of millions of
 17 census responses into usable products, including the population totals used to reapportion seats in
 18 the U.S. House of Representatives and to create electoral districts.

19 111. The Bureau uses its data-processing operations to, among other things, ensure that
 20 data received from different data-collection methods are all in a single format allowing them to
 21 be processed together.

22 112. The Bureau uses its data-processing operations to “unduplicate responses”—
 23 meaning to resolve conflicts of information among multiple forms attributable to the same
 24 housing unit.

25 113. The Bureau uses its data-processing operations to determine the final status of a
 26 housing unit—such as vacant or inhabited—and determine the total number of people that should
 27 be attributed to any apparently inhabited unit that was not counted through Self-Response,
 28 Update Leave, or Non-Response Follow Up.

114. The Bureau also uses its data-processing operations to ensure that Bureau data products accurately report respondents' characteristics, such as age, race, and ethnicity.

115. The Bureau uses administrative records and statistical imputation during the data-processing phase to fill in both missing people and their characteristics. But administrative records—especially low-quality administrative records—and statistical imputation are generally less accurate than self-response data.

116. For many households, administrative data provides only low quality information, replete with inaccuracies and incomplete information. This is especially the case for particular communities that are underrepresented in administrative records, including communities of color, immigrants, and low-income families. Use of this low-quality data to fill in missing information for non-responsive households produces less accurate information.

117. Imputation involves the Bureau using information from surrounding responsive households to infer the count and characteristics of a non-responsive household. Imputation thus assumes the existence of other data points gathered through other data-collection methods—such as self-response, proxies, and administrative records—and generates more accurate results when it can be triangulated against those data points. The processes that the Bureau uses to collect and process self-response data, proxy data, and administrative records are thus critical and inextricably linked to the Bureau's ability to impute data accurately.

118. At various phases of the Bureau's data-processing operations, Census Bureau personnel must review the quality of files in-process before those files can be sent to the subsequent steps in the data-processing operation. These reviews include personnel with subject-matter expertise from several different divisions of the Bureau.

119. The Bureau's data-processing operations help ensure that people are not missed, that other people are not counted multiple times, and that people's characteristics are accurately reported. These processes help eliminate or reduce undercounts, among other kinds of data-quality issues.

C. The Final Operational Plan's Original Timeline for the 2020 Census

120. The Bureau's Final Operational Plan called for data-collection to run from January 21, 2020, to July 31, 2020, for a total of more than six months.

121. In that window, the Self Response method was scheduled to run from March 12, 2020 to July 31, 2020, and the Update Leave method was scheduled for March 15, 2020 to April 17, 2020.

122. The Bureau also scheduled several special operations to occur early in its census taking process. The Service-Based Enumeration, which counts people experiencing homelessness, was scheduled for March 30, 2020 to April 1, 2020, and Group Quarters Enumeration, which counts people living in group housing such as nursing homes, was scheduled from April 2, 2020 to June 5, 2020.

123. The Bureau scheduled the Non-Response Follow Up method to run from May 13, 2020 to July 31, 2020, for a total of approximately eleven and a half weeks.

124. The Bureau scheduled up to five months—from July 31, 2020 to December 31, 2020—to process census data for the congressional reapportionment report.

125. The Bureau also scheduled an additional three months—from January 1, 2021 to March 30, 2021—to process census data for redistricting.

126. The Bureau's timelines for implementing the Final Operational Plan reflect the Bureau's scientifically informed understanding of the time necessary to complete its operations and generate an accurate count.

III. The Census Bureau's COVID-19 Plan.

A. COVID-19 Disrupts the 2020 Census

127. On January 21, 2020, the Bureau began 2020 Census data-collection in remote Alaska.

128. On March 10, 2020, the Bureau began to accept self-responses on its website.

129. Shortly thereafter, many parts of the nation rapidly began to shut down due to the COVID-19 pandemic.

1 130. The Census Bureau quickly concluded that it could not continue to engage in
2 operations safely. On March 18, 2020, the Bureau announced that it would suspend all field
3 operations for two weeks in order to “help protect the health and safety of the American public.”
4 Press Release, U.S. Census Bureau, *U.S. Census Bureau Director Steven Dillingham on*
5 *Operational Updates* (Mar. 18, 2020), [https://www.census.gov/newsroom/press-](https://www.census.gov/newsroom/press-releases/2020/operational-update.html)
6 [releases/2020/operational-update.html](https://www.census.gov/newsroom/press-releases/2020/operational-update.html).

7 131. On March 28, 2020, the Bureau announced yet another two-week suspension until
8 April 15, 2020, as the coronavirus pandemic made it impossible to engage in operations.

9 132. The suspension disrupted several field operations, including Update/Leave
10 method, the Service Based Enumeration counting people experiencing homelessness, and the
11 Group Quarters Enumeration counting people living in group housing.

12 133. In addition, the Bureau halted all hiring and training of the hundreds of thousands
13 of enumerators it needs to conduct Non-Response Follow Up. This included halting any and all
14 background checks and fingerprinting of enumerators that were conditionally hired at that time.

15 134. The Bureau also decreased office staff at regional centers responsible for
16 processing mail-in self-response forms and at the Bureau’s call centers.

17 **B. Changes to the Final Operational Plan in the COVID-19 Plan**

18 135. On April 13, 2020, the Bureau issued an adjustment to its Final Operational Plan
19 to account for the long-term impact of the COVID-19 pandemic. The new plan included a shifted
20 timeline for data-collection and data-processing operations that corresponded with the delays in
21 operations that the pandemic has caused (the “COVID-19 Plan”).

22 136. Adjustments to plans approved by the Office of Management and Budget under
23 the Paperwork Reduction Act must be re-submitted for approval. 44 U.S.C. § 3507(h)(3). The
24 Census Bureau submitted the COVID-19 Plan to the Office of Management and Budget on April
25 30, 2020. The changes were approved on May 11, 2020.

26 137. The COVID-19 Plan was designed to “[e]nsure a complete and accurate count of
27 all communities,” “[p]rotect the health and safety of the American public and Census Bureau
28 employees,” and “[i]mplement guidance from federal, state, and local authorities regarding

COVID-19.” Press Release, U.S. Census Bureau, *2020 Census Operational Adjustments Due to COVID-19 Fact Sheet* (Apr. 27, 2020).

138. The COVID-19 Plan reflected the conclusions of various experts for how best to proceed with completing an accurate count during the current pandemic. These experts include survey methodologists, statisticians, demographers, geographers, linguists, and mathematicians.

139. Under the COVID-19 Plan, the Bureau suspended 2020 Census field operations for several months, including those operations that were designed to ensure a full count of traditionally undercounted communities.

140. The COVID-19 Plan provided that the Bureau would start the nationwide Non-Response Follow Up operation on August 11, 2020, and continue the door-knocking process through October 31, 2020.

141. Thus, the COVID-19 Plan delayed the start of most door-knocking by three months while maintaining the same amount of time spent undertaking the process—approximately eleven and a half weeks—as the Final Operational Plan had required.

142. Under the COVID-19 Plan, the Bureau also delayed the start of other operations that enumerate traditionally undercounted populations, including the enumeration of the country’s homeless population, which the Bureau shifted from March 30, 2020 to September 22, 2020.

143. And the COVID-19 Plan permitted households to submit self-response data to the Bureau until October 31, 2020, extending the deadline under which private persons were able to submit their responses to be counted by more than one month.

144. The Bureau also granted itself one additional month to process data under its COVID-19 Plan, extending the data-processing leg of its operations to nine months given the pandemic. Under this plan, the Bureau would have up to six months to process the data for the apportionment count (between October 31, 2020 and April 30, 2021) and three months to process the data for redistricting (between April 30, 2021 and July 31, 2021).

1 145. The Bureau’s timelines for implementing the COVID-19 Plan reflect a
2 scientifically informed understanding of the time necessary to appropriately and fully complete
3 its operations and generate an accurate count.

4 **C. Expert and Stakeholder Response to the COVID-19 Plan**

5 146. The Census Bureau solicited feedback on the COVID-19 Plan from relevant area
6 experts and interested stakeholders, including state and local governments and national and
7 community-based non-profit partners.

8 147. For instance, four former Census Bureau Directors—who served under both
9 Democratic and Republican administrations—issued a statement saying that they had “discussed
10 these operational and schedule adjustments with senior career leadership at the Census Bureau.”
11 Press Release, Vincent Barabba et al., *Statement by Former U.S. Census Bureau Directors* (Apr.
12 14, 2020), [https://www.documentcloud.org/documents/6838166-Statement-by-Former-Census-](https://www.documentcloud.org/documents/6838166-Statement-by-Former-Census-Bureau-Directors-04.html)
13 [Bureau-Directors-04.html](https://www.documentcloud.org/documents/6838166-Statement-by-Former-Census-Bureau-Directors-04.html).

14 148. These four former Census Bureau Directors further asserted: “Based on (1) our
15 extensive experience in planning, executing, and often adjusting operations of previous decennial
16 censuses, and (2) our firm conclusion that the extension of the field operations reflect careful
17 analysis by the technical, scientific, and operational staff at the Census Bureau, we support the
18 decision and urge Congress to act in concert with it.” Press Release, Vincent Barabba et al.,
19 *Statement by Former U.S. Census Bureau Directors* (Apr. 14, 2020),
20 [https://www.documentcloud.org/documents/6838166-Statement-by-Former-Census-Bureau-](https://www.documentcloud.org/documents/6838166-Statement-by-Former-Census-Bureau-Directors-04.html)
21 [Directors-04.html](https://www.documentcloud.org/documents/6838166-Statement-by-Former-Census-Bureau-Directors-04.html).

22 149. Prominent civil-rights groups endorsed the COVID-19 Plan. Vanita Gupta,
23 President and CEO of The Leadership Conference on Civil and Human Rights and The
24 Leadership Conference Education Fund, stated that her organization “support[ed] the Census
25 Bureau’s updated timeline.” Press Release, Leadership Conference Education Fund, *Census*
26 *Timeline Must Protect Health, Ensure Fair Count* (Apr. 13, 2020),
27 <https://civilrights.org/edfund/2020/04/13/census-timeline-must-protect-health-ensure-fair-count/>.

D. Implementation of the COVID-19 Plan

150. When announcing the COVID-19 Plan, Secretary Ross and Director Dillingham issued a statement indicating that the Bureau requested that Congress extend by 120 days the December 31, 2020 statutory deadline for reporting the state-population totals to the President for purposes of calculating the state apportionments, and extend by 120 days the March 30, 2021 statutory deadline for delivering redistricting data to the states.

151. That same day, President Trump suggested this request was unnecessary, stating:

152. “I don’t know that you even have to ask them. This is called an act of God. This is called a situation that has to be. They have to give in. I think 120 days isn’t nearly enough.”

Hansi Lo Wang, *Trump Officials Ask to Delay Census Data for Voting Districts, House Seats*, NPR (Apr. 13, 2020), <https://www.npr.org/2020/04/13/833546675/trump-officials-ask-to-delay-census-data-for-voting-districts-house-seats>.

153. Indeed, the Census Bureau did not wait for Congress to act before beginning implementation of the COVID-19 Plan. And the Bureau continued implementation of the COVID-19 Plan for over three months through the end of July 2020.

154. For instance, the Census Bureau field operations remained suspended through May 2020.

155. The Bureau only began re-opening a few limited operations, such as the Update Leave method, on a phased basis through mid-June 2020, over two months after the operation was originally planned to occur in the Final Operational Plan.

156. The Bureau did not undertake any Non-Response Follow Up operations in most of the country between May 13, 2020 and July 31, 2020, the timeframe originally set out in the Final Operational Plan.

157. Instead, while the Bureau “soft-launched” door-knocking in select regions of the country in mid-July 2020, the COVID-19 Plan did not call for door-knocking across the country until August 11, 2020, at the earliest.

158. The Bureau ultimately opened six area census offices for Non-Response Follow Up on July 16, 2020, six more on July 23, 2020, thirty-five on July 30, 2020, and forty additional

1 offices on August 6, 2020.

2 159. The remaining 161 stateside offices remained unopened until August 9, 2020,
3 including offices in many states and localities with relatively low response rates such as the
4 entire southeastern United States, Texas, New Mexico, Arizona, and Southern California.

5 160. All along the Bureau continually communicated to the public, and to important
6 local partners, including local governments and national and community based non-profit
7 organizations, that self-responses would be accepted until October 31, 2020, and that Non-
8 Response Follow Up would continue until at least that date.

9 161. Census partners, stakeholders, and state and local governments relied on the new
10 deadlines set forth in the COVID-19 Plan to redirect their outreach efforts.

11 162. For example, Plaintiffs Urban League and BAJI, publicized the October 31, 2020
12 deadline, letting their constituents, members and local organizations know that households had
13 until that time to self-respond. Urban League representatives informed coalition partners
14 participating in the Black Census Roundtable of the new deadlines, and spoke of the deadlines on
15 webinars and other public events. Officials at BAJI publicized the deadlines at public events,
16 including webinars in July 2020, and as part of the organization's social media campaign.

17 163. Similarly, officials in City of Los Angeles, Harris County, King County, City of
18 San Jose, and City of Salinas, publicized the new deadline while conducting 2020 Census
19 outreach efforts.

20 164. These public education efforts were significant because they were directed at the
21 general public and at local non-profits that do not primarily work on census issues. The latter
22 often rely on information about the census provided by Plaintiff national non-profits and local
23 governments when communicating with their constituents. Plaintiffs, by disseminating the
24 October 31, 2020 deadline for nearly three months to the public, were largely successful in
25 spreading the understanding that communities had until at least that time to complete the count.

26 165. For example, the City of Los Angeles announced this date on its own social media
27 platforms and in a social media toolkit that it developed for partner organizations. Los Angeles is
28 deeply concerned that residents have already received information about the October 31, 2020

1 self-response date and, as a result, will fail to respond before the newly shortened deadline,
2 especially given the Bureau's own minimal efforts at explanation and outreach around the new
3 deadline.

4 166. Finally, the level of self-response during the 2020 Census, and the ongoing
5 COVID-19 pandemic, provided further evidence for the necessity of continued implementation
6 of the COVID-19 Plan.

7 167. Under its Final Operational Plan, for example, the Census Bureau had planned to
8 spend eleven and a half weeks canvassing a Non-Response Follow Up universe comprised of
9 39.5% of households nationally.

10 168. As of August 9, 2020, the first date of nationwide Non-Response Follow Up, the
11 national self-response rate was 63.2%, meaning that nearly 37% of households nationwide had
12 not yet responded to the census.

13 169. Several cities with large percentages of traditionally undercounted populations,
14 have even lower response rates. For instance, as of August 14, 2020, the response rate in the City
15 of Detroit was 48.9%, Miami was 49.9%, Philadelphia was 52.3%, Los Angeles was 53.8%,
16 Houston was 54.4%, and New York City was 55.6%.

17 170. The United States had 24,156 new coronavirus cases on April 13, 2020, the day
18 the Bureau announced its COVID-19 Plan. On August 3, 2020, the United States had
19 approximately 50,000 new coronavirus cases.

20 171. With COVID-19 limiting the willingness of people to apply for enumerator
21 positions, the areas where the Bureau can safely send enumerators to knock on doors, and the
22 willingness of the public to interact with enumerators, the Non-Response Follow Up operation
23 continues to face far more complications than the Final Operational Plan anticipated.

24 172. Given these conditions of low response rates and increased coronavirus spread,
25 the Bureau can reasonably expect that it will need to engage in a Non-Response Follow Up
26 operation at least as comprehensive and time-consuming as the operation laid out in the Final
27 Operational Plan.

28 173. Due to significant delays in operations resulting from the implementation of the

COVID-19 Plan, the Bureau itself has recognized that it would be impossible to produce fair and accurate apportionment numbers to the President by December 31, 2020.

174. On May 27, 2020, Tim Olson, head of field operations for the 2020 Census, stated during a May 26, 2020 webinar organized by the National Congress of American Indians that, “[w]e have passed the point where we could even meet the current legislative requirement of December 31st. We can’t do that anymore.” Nat’l Conf. of Am. Indians, *2020 Census Webinar: American Indian/Alaska Native*, YouTube (May 26, 2020), <https://www.youtube.com/watch?v=F6IyJMtDDgY&feature=youtu.be&t=4689>.

175. On July 8, 2020, Al Fontenot, Jr., Associate Director for Decennial Census Programs and a top Census Bureau official, affirmed that the Bureau is “past the window of being able to get” accurate counts to the President by December 31, 2020. U.S. Census Bureau, *Operational Press Briefing – 2020 Census Update* at 21 (July 8, 2020), <https://www.census.gov/content/dam/Census/newsroom/press-kits/2020/news-briefing-program-transcript-july8.pdf>.

IV. The Census Bureau’s New Rush Plan.

A. The Announcement of the Rush Plan

176. On August 3, 2020, at the behest of the Secretary of Commerce, Director Dillingham abruptly and without explanation abandoned the COVID-19 Plan and announced the Rush Plan.

177. The Rush Plan drastically shortens the timelines for multiple operations set out in the COVID-19 Plan.

178. The Rush Plan took the form of a short press release on the Census Bureau’s website. The press release included a statement from Director Dillingham, which did not provide an explanation for Defendants’ decision to suddenly abandon the COVID-19 Plan that the Bureau had adopted and implemented for approximately three and a half months. Nor did it provide any specifics as to why the Bureau no longer believed the timelines called for in the COVID-19 Plan were necessary to ensure an accurate count.

179. The statement noted that the Bureau was taking this action at the direction of the

Secretary of Commerce. But the Secretary made no statement explaining his reason for giving this directive.

180. The Director's statement was largely silent on specific adjustments the Bureau would need to make in order to reengineer its field operations to meet its new, artificially compressed schedule. The statement included proposals for enumerator "awards" and maximizing enumerators' phone and tablet usage, but it did not provide any details about adjustments to the detailed operations provided in the Final Operational Plan.

181. The only adjustments announced under the Rush Plan were severely truncated timelines for conducting data-collection and data-processing operations.

182. Under the Rush Plan, data-collection is now set to end on September 30, 2020, one month earlier than contemplated in the Bureau's COVID-19 Plan.

183. While the Bureau's pre-COVID-19 Final Operational Plan provided 79 days for the nationwide door-knocking stage of the census, and the COVID-19 Plan provided 81 days, the Rush Plan provides just 52 days of nationwide door-knocking.

184. The Rush Plan also cuts post-collection data processing for the apportionment report from up to 6 months as provided in the COVID-19 Plan, and up to 5 months as originally provided in the Final Operational Plan, to less than 3 months.

185. The Rush Plan also shortened the time under which households can self-respond, providing that self-responses delivered after September 30, 2020—which previously would have been timely under the October 31, 2020 deadline—will no longer be counted.

186. While the Rush Plan requires the Bureau to accelerate its operations to complete the 2020 Census by the same deadline contemplated in the Final Operational Plan, it ignores the multiple-month pause in operations, beginning in mid-March 2020, caused by the initial outbreak of COVID-19 in the United States.

187. The decision to rescind the COVID-19 Plan and adopt the Rush Plan was announced without consultation with important stakeholders.

188. As noted above, as late as July 8, 2020, senior Bureau officials were still confirming that it was impossible to complete an accurate count by December 31, 2020.

189. In addition, until July 30, 2020, just four days before the Bureau announced its decision to abandon the COVID-19 Plan, the Bureau was informing respondents on its website that it would engage in Non-Response Follow-Up until October 31, 2020 and that non-responsive households would have until that date to self-respond. Those references were deleted from the website on or about July 31, 2020 and were replaced with the shortened timeframe after the August 3, 2020 announcement.

190. An official at the Government Accountability Office confirmed that Bureau officials told his office that they were given “hours rather than days or weeks” to adjust their plans to finish counting by September 2020. Hansi Lo Wang, *‘Not Enough Time’: Census Workers Fear Rushing Count Could Botch Results*, NPR (Aug. 11, 2020), <https://www.npr.org/2020/08/11/901202892/not-enough-time-census-workers-fear-rushing-count-could-botch-results>.

191. While the Census Bureau’s decisions, even during the COVID-19 emergency, have often involved consultations with scientific advisory committees, the Committee on National Statistics in the National Academies of Science, other external experts and local government officials, and the thousands of organizations partnering with the Bureau to conduct crucial outreach to historically undercounted communities, no such consultation was made before the Bureau announced its abandonment of the COVID-19 Plan.

192. Census stakeholders immediately denounced the Rush Plan, including stakeholders who had endorsed the COVID-19 Plan.

193. The same four former Census Bureau Directors who endorsed the COVID-19 Plan issued a statement saying that “our expert opinion is that failing to extend the deadlines to April 30, 2021 will result in seriously incomplete enumerations in many areas across our country.” Press Release, Former Census Bureau Directors, *On the Importance of Extending the 2020 Census Statutory Deadlines to Achieve a Fair and Accurate Enumeration of the United States* (Aug. 4, 2020), <https://www.documentcloud.org/documents/7013550-Aug-4-2020-Statement-By-Former-U-S-Census-Bureau.html>.

194. These four former Census Bureau Directors further asserted: “The Census Bureau

will not be able to carry out the NRFU fully and will be forced to take steps such as fewer in-person visits and rely instead on the use of administrative records or statistical techniques on a much larger scale than in previous census. The end result will be under-representation of those persons that NRFU was expected to reach and, at even greater rates for traditionally hard-to-count populations and over-representation of all other populations with potentially extreme differential undercounts.” Press Release, Former Census Bureau Directors, *On the Importance of Extending the 2020 Census Statutory Deadlines to Achieve a Fair and Accurate Enumeration of the United States* (Aug. 4, 2020), <https://www.documentcloud.org/documents/7013550-Aug-4-2020-Statement-By-Former-U-S-Census-Bureau.html>.

195. The President of the American Statistical Association, the world’s largest professional organization of statisticians, issued a statement saying “[t]here is no scientific rationale to curtail the data-collection period for this constitutionally mandated activity, and the premature cessation of census enumeration will produce flawed counts.” Letter from Rob Santos, President of the American Statistical Association, to Mitch McConnell, U.S. Senate Majority Leader (Apr. 5, 2020), <https://www.amstat.org/asa/files/pdfs/POL-CensusSenateAugust.pdf>.

196. Nearly 450 nonpartisan philanthropic organizations who “rely on accurate census data to help identify community needs and to prioritize grantmaking” issued a letter to Secretary Ross and Director Dillingham urging the Bureau to revert to its COVID-19 Plan. Letter from U.S. Philanthropy Leaders to Wilbur Ross, Secretary of the U.S. Dep’t of Commerce (Aug. 5, 2020), <https://funderscommittee.org/wp-content/uploads/2020/08/Letter-Philanthropic-Leaders-on-Census-Being-Cut-Short-8-5.pdf>.

197. Prominent civil-rights groups condemned the Rush Plan. Vanita Gupta, President and CEO of The Leadership Conference on Civil and Human Rights and The Leadership Conference Education Fund, stated that “[c]urtailing operations is an obvious ploy to guarantee the Census Bureau won’t be able to finish counting millions of people—especially those hit hardest by the pandemic.” Press Release, Leadership Conference on Civil and Human Rights, *Trump Plans to Sabotage 2020 Census by Cutting Short Operations* (July 31, 2020),

1 [https://civilrights.org/2020/07/31/trump-plans-to-sabotage-2020-census-by-cutting-short-](https://civilrights.org/2020/07/31/trump-plans-to-sabotage-2020-census-by-cutting-short-operations/)
2 [operations/](https://civilrights.org/2020/07/31/trump-plans-to-sabotage-2020-census-by-cutting-short-operations/).

3 198. And the Census Bureau's own field workers have confirmed the impossibility of
4 this new timeline, explaining that the Rush Plan means that it will not be an accurate count for
5 the next 10 years.

6 **B. The Rush Plan Fails to Appropriately Account for Key Factors Affecting the**
7 **2020 Census**

8 199. The Rush Plan fails to account for several important factors that affect the 2020
9 Census Non-Response Follow Up operation.

10 200. *First*, the Rush Plan does not adequately account for the large number of
11 households in the Non-Response Follow Up universe.

12 201. Under the Rush Plan, the Census Bureau must attempt to count approximately the
13 same number of households during Non-Response Follow Up as it anticipated counting in its
14 pre-COVID-19 Final Operational Plan, but the Bureau will have four weeks less than provided in
15 that plan to complete the operation. In other words, the Bureau must now try to complete the
16 same amount of work in just 65% of the time it had originally scheduled to complete that work.

17 202. Over 37% of households nationwide are non-responsive, and several states have
18 even higher percentages of households in the Non-Response Follow Up universe, including New
19 Mexico (46.1%), South Carolina (42.4%), Texas (41.3%), and Georgia (40.8%).

20 203. While soft-launches of Non-Response Follow Up began in select locations in
21 mid-July 2020, the operation did not begin in any of these states, with large amounts of non-
22 responsive households, until August 9, 2020.

23 204. Within states, and in particular cities and localities, there are even higher Non-
24 Response Follow Up workloads. For instance, in Plaintiff Harris County, enumerators must still
25 visit over 41% of households. In the City of Los Angeles, over 46% of households remain to be
26 enumerated. The self-response rate in Los Angeles is approximately 14 percentage points below
27 the final self-response rate the City attained during the 2010 Census. Counting in these
28 jurisdictions also did not begin until August 9, 2020.

205. Moreover, given the time constraints placed by the Rush Plan, counting will need to be conducted while these jurisdictions, in many places, struggle to control a surge in COVID-19 cases.

206. While the Bureau announced on August 11, 2020 that it is now “training census takers to follow up with households by phone” in light of the pandemic, that change in Non-Response Follow Up operations was not anticipated in the Final Operational Plan. Press Release, U.S. Census Bureau, *Door-to-Door Visits Begin Nationwide for 2020 Census* (Aug. 11, 2020), <https://www.census.gov/newsroom/press-releases/2020/door-to-door-visits-begin-nationwide.html>.

207. Given the traditionally low response rates for phone surveys in the wireless era, following up by phone is unlikely to materially increase response rates.

208. A recent Census Bureau survey running in parallel with the 2020 Census demonstrates the difficulty in obtaining responses via phone or email. This spring, the Bureau began conducting a “Household Pulse Survey” to measure household experiences under the COVID-19 pandemic. This survey solicited participation through emails and text messages. Over the first twelve weeks of this survey, response rates were meager, ranging from 1.3% to 3.8%.

209. *Second*, the Rush Plan does not account for the staffing challenges that the Bureau is currently experiencing, many of which are directly related to the ongoing pandemic.

210. As demonstrated in the soft-launch of Non-Response Follow Up in select locales, the Bureau is already experiencing staffing shortages and retention problems with enumerators.

211. In the midst of the ongoing pandemic, prospective enumerators, many of whom are elderly and at high risk of contracting a severe COVID-19 related illness, are less willing to engage in the required door-to-door canvassing.

212. Indeed, Tim Olson, head of field operations for the 2020 Census, stated at a July 8, 2020 press briefing that “[a]bout a third of our [enumerator] applicants [are] older persons considered high risk of the virus.” U.S. Census Bureau, *Operational Press Briefing – 2020 Census Update* at 21 (July 8, 2020), <https://www.census.gov/content/dam/Census/newsroom/press-kits/2020/news-briefing-program-transcript-july8.pdf>.

213. And Deborah Stempowski, the Census Bureau's Assistant Director for Decennial Programs, noted the Bureau's difficulty retaining enumerators in early August 2020, confirming that potential enumerators were "a little hesitant because of the COVID environment." Mike Schneider, *Census Bureau Drop-Outs Complicate Door-Knocking Efforts*, Associated Press (Aug. 8, 2020), <https://www.usnews.com/news/us/articles/2020-08-08/census-bureau-drop-outs-complicate-door-knocking-efforts>.

214. In testimony before Congress on July 28, 2020, Director Dillingham confirmed that the Bureau believed that "the pandemic is estimated to increase the number of no shows to training sessions, as well as the number of employees who complete training but decline to show up for work." *Id.*

215. According to reports from census-operations staff working in the field, these predictions have come to pass. One census field supervisor working in the mid-Atlantic noted that, given the new rushed timeline and lack of sufficient staff, "[w]e're just sending bodies out regardless of whether they're ready or not." Hansi Lo Wang, *'Not Enough Time': Census Workers Fear Rushing Count Could Botch Results*, NPR (Aug. 11, 2020), <https://www.npr.org/2020/08/11/901202892/not-enough-time-census-workers-fear-rushing-count-could-botch-results>.

216. In addition to enumerator low-count and hesitancy, another source of staffing issues involves delays in processing background checks on enumerator applicants and in enumerator onboarding.

217. A June 2020 GAO report on the 2020 Census delays COVID-19 has caused, and the risks the pandemic has exacerbated, noted that the Bureau "will have to quickly hire and onboard sufficient staff to conduct its operations" to reach adequate staffing levels. U.S. Gov't Accountability Office, *COVID-19 Presents Delays and Risks to Census Count* (June 2020), <https://www.gao.gov/assets/710/707456.pdf>.

218. That same report also noted that, once potential enumerators accept a job offer from the Bureau, the new hires "must wait a minimum of 60 days before they can begin training, a time period during which they must complete fingerprinting and a background check." *Id.*

219. Reports from recently hired enumerators confirm that the Bureau is facing these

1 technical challenges as well, under the compressed timeline. One recent hire in Boulder,
2 Colorado noted that he lost six potential days of door-knocking because he was unable to
3 complete the Bureau's online training module.

4 220. Thus, under the Rush Plan, the Bureau will not be able to hire and train sufficient
5 enumerators.

6 221. Even if it were possible for the Bureau to hire all of the enumerators it will need,
7 the Bureau would also need time and funding to obtain additional equipment for any additional
8 enumerators it hires beyond its initial estimates of equipment. For example, the Bureau would
9 need more of the iPhones discussed above that the Bureau specifically contracted and
10 customized for 2020 Census enumerators.

11 222. With fewer enumerators in the field, in addition to training and equipment issues,
12 the Bureau cannot ensure that non-responsive households receive the requisite number of visits,
13 as contemplated in the Final Operational Plan.

14 223. While the Bureau had a \$2 billion contingency fund prior to the existence of the
15 COVID-19 pandemic, it has already used \$1.5 billion of that fund addressing pandemic-related
16 issues. The remaining \$500 million will be needed to further respond to the pandemic, and, in
17 any event, is nowhere near the \$1 billion that the administration claims that the Bureau would
18 need to conduct adequate Non-Response Follow Up operations under the Rush Plan.

19 224. Thus, instead of providing additional enumerators, the Bureau's Rush Plan will
20 likely result in a smaller number of enumerators shouldering larger-than-planned workloads.
21 Increasing workloads for enumerators over a short period of time can result in errors and
22 inaccuracies in counting but it cannot make up for the time lost to the Rush Plan.

23 225. *Third*, the Rush Plan fails to account for factors relevant to efficient enumeration,
24 such as the time when enumerators visit households.

25 226. For instance, under the Final Operational Plan, enumerators visit households at
26 specific times of day and on specific days of the week, depending on when residents are likely to
27 answer.

28 227. Under the Rush Plan, enumerators will be under pressure to complete their work

1 in a tightly constrained timeframe. As a result, ensuring that non-responsive households receive
2 the requisite number of enumerator visits at the most opportune times for enumeration may
3 become exceedingly difficult, if not impossible. Instead, the Rush Plan increases the likelihood
4 that households will either receive visits at less opportune times, or simply receive fewer visits
5 altogether.

6 228. *Fourth*, the Rush Plan fails to account for the additional crucial operations that
7 enumerators must conduct, as contemplated in the Bureau's final plans for the 2020 Census.
8 Apart from visiting households upwards of six times, enumerators also engage in a host of
9 additional quality control activities.

10 229. As noted above, enumerators are expected to visit the households of persons that
11 self-responded to the census online but did not enter the unique identifier provided on census
12 mailers. This "non-ID processing" is necessary to verify the address information provided by
13 respondents. While this process only requires a single visit to a household, it nevertheless must
14 be completed in the compressed timeline provided for under the Rush Plan.

15 230. Similarly, the Bureau must conduct quality control reinterviews of a sample of
16 households during Non-Response Follow Up. This operation is designed to deter and detect
17 enumerator falsification. Detecting such falsifications will be especially important under the
18 Rush Plan where individual enumerators must shoulder a heavier workload. The use of
19 enumerators to conduct these reinterviews will, under the Rush Plan, place additional strain on
20 the Bureau's already stretched labor resources.

21 231. Cutting any one of these functions will cause errors and inaccuracies to affect the
22 final 2020 Census data. By reversing the COVID-19 Plan and shortening the timeframe for
23 conducting Non-Response Follow Up by a month, the Bureau will likely need to make cuts to
24 one or more of these operations.

25 232. By reducing the amount of time and resources necessary to perform the kinds of
26 quality-control measures that the Bureau originally planned for Non-Response Follow Up, the
27 Rush Plan actively dismantles processes that the Bureau has specifically developed over the
28 course of time as checks against falsified census responses. The Rush Plan thus threatens census

1 accuracy not only by reducing the Bureau's time to *collect* data, but also by reducing the
 2 Bureau's time to ensure that the data it has collected has been collected *properly* and *truthfully*.

3 233. *Fifth*, the Rush Plan fails to account for the other field operations enumerators
 4 will need to conduct at the same time as they attempt to speed through door-knocking operations.

5 234. Under the Final Operational Plan, the Bureau planned to finish specialized
 6 operations for counting people experiencing homelessness, and people living in group housing in
 7 April 2020, before engaging in nationwide door-knocking. After suspending operations due to
 8 COVID-19, the Bureau moved these operations to September 2020, well-before the October 31,
 9 2020 deadline the Bureau set for completing the Non-Response Follow Up operation.

10 235. The new Rush Plan requires the Bureau to conduct these specialized operations at
 11 the same time as it is scrambling to complete Non-Response Follow Up. This will further stretch
 12 the Bureau's limited resources and increase the likelihood of missing information.

13 **C. The Rush Plan Also Fails to Appropriately Account for Factors that Will Affect**
 14 **Post-Collection Data Processing**

15 236. The Rush Plan fails to account for the additional strain on data-processing
 16 operations resulting from the consequences of the COVID-19 pandemic.

17 237. Following the outbreak of COVID-19 in the United States in mid-March 2020,
 18 colleges and universities across the country closed, and students moved out of campus and off-
 19 campus housing. Similarly, many residents of cities, especially those living in COVID-19
 20 hotspots, moved to locations where the virus was less prevalent. In a recent study, three percent
 21 of people surveyed reported that they had moved permanently or temporarily as a result of the
 22 pandemic.

23 238. This significant movement of people coincided with Census Day, April 1, 2020,
 24 and will lead to confusion about what residence should be listed on responses.

25 239. It is likely that the Bureau will receive an increased amount of duplicate
 26 responses, which will, in turn, require more time and Bureau resources to review and correct.

27 240. The Rush Plan also fails to account for the Bureau's inability to timely obtain and
 28 process all the administrative-records data crucial for completing an accurate count.

241. The Bureau relies principally on Title 26 data—that is, tax returns that individuals file with the Internal Revenue Service (“IRS”)—for the administrative records it uses to fill in missing people and their characteristics.

242. Because this year’s tax filing deadline was July 15, 2020, and the IRS generally requires three months to transfer Title 26 data to the Census Bureau, the Bureau will not possess all the Title 26 data it is planning to use until mid-October 2020, at the earliest. Once the Bureau has possession of that Title 26 data, it will have to undertake a time-consuming round of additional review and processing, further delaying its ability to use the data for its planned purposes. These delays will compel the data-processing phase of 2020 Census operations to proceed more slowly than the Rush Plan contemplates or would allow.

243. Ultimately, the solution to alleviate each of these problems was articulated in the COVID-19 Plan: provide the Bureau’s limited number of enumerators with additional time to conduct the data-collection operations necessary to ensure a complete and accurate census, and provide Bureau staff with additional time to conduct the data-processing operations necessary to ensuring the same. The Rush Plan fails to address these issues or explain why the Bureau's prior conclusions were incorrect..

D. The Rush Plan Does Not Account for Federal Statistical Guidelines

244. In replacing the COVID-19 Plan with the Rush Plan, Defendants departed from federal government statistical standards that promote the accuracy of information collected and disseminated by the agencies.

245. The Bureau’s failure to follow these standards further emphasizes its inability to conduct an adequate count in the time and under the conditions that the Rush Plan provides.

246. Under the Paperwork Reduction Act, the Office of Management and Budget is responsible for coordinating the federal statistical system, including the development and implementation of “Governmentwide policies, principles, standards, and guidelines” “concerning [] statistical collection procedures and methods.” 44 U.S.C. § 3504(e)(3) (A).

247. The Office of Management and Budget is responsible for issuing guidelines that provide “procedural guidance to Federal agencies for ensuring and maximizing the quality,

objectivity, utility and integrity of information (including statistical information) disseminated by Federal agencies.” Consolidated Appropriations Act, FY 2001, Pub. L. No. 106-554, § 515, 114 Stat. 2763 (2000).

248. One such guideline issued by the Office of Management and Budget provides specific standards to agencies like the Census Bureau, in ensuring the quality and utility of federal statistical surveys, such as the decennial census. Office of Mgmt. & Budget, Standards and Guidelines for Statistical Surveys § 2 (2006).

249. Under these standards, agencies are required to develop “realistic timetable[s]” for surveys. *Id.* § 1.2.

250. The Bureau failed to take this basic requirement into account when it decided to implement the Rush Plan. The Rush Plan compresses the timeline for counting operations despite evidence of staffing shortages and heavier workload. The Plan attempts to accomplish a task—speedy delivery of results by December 31, 2020—that the Bureau has already deemed “impossible.”

251. The standards also require agencies, including the Census Bureau, to “[e]ncourage respondents to participate to maximize response rates and improve data quality.” Office of Mgmt. & Budget, Standards and Guidelines for Statistical Surveys § 2.3.2. This standard requires that the Census Bureau “[e]nsure that the data collection period is of adequate and reasonable length.”

252. Again, the Rush Plan does not account for this standard. The Final Operational Plan and the COVID-19 Plan provided for over eleven weeks of Non-Response Follow Up, and up to five and six months, respectively, of post-collection data processing for the apportionment report. The Rush Plan, on the other hand, cuts the time allotted for counting by four weeks, without explaining how it will encourage more efficiency in collecting responses than the plan it reversed.

253. The standards also require the Bureau to plan for “an adequate number of contact attempts” to the respondent and to establish protocols for minimizing enumerator falsification, including “reinterviewing respondents.” Office of Mgmt. & Budget, Standards and Guidelines

for Statistical Surveys, Directive No. 2, § 2.3.3.

254. With the Rush Plan significantly cutting the time available to conduct Non-Response Follow Up, it is expected that the Bureau will need to cut particular Non-Response Follow Up processes. This includes reducing the number of housing unit visits it earlier deemed necessary to enumerate a non-responsive household, or cutting back on enumerator reinterviews. Either decision will conflict with the Bureau's obligation to abide by federal statistical standards.

E. The Rush Plan Will Produce Low Quality and Inaccurate Data

255. Ultimately, Defendants' decision to rush completion of the 2020 Census will produce a significantly less accurate census than the COVID-19 Plan.

256. By cutting down the time allotted for door-knocking, the Rush Plan will result in fewer contact days by enumerators to non-responsive households, and less data collected by enumerators about those households.

257. The concerns about inaccuracy resulting from shortening time for Non-Response Follow Up are real and verified. A GAO review of the 2010 Non-Response Follow Up operation determined that local census offices with "higher percentages" of "less complete house-hold data" were more likely to have completed their Non-Response Follow Up in 53 days or less as compared to those offices that took a longer period of time. U.S. Gov't Accountability Office, *2010 Census: Data Collection Operations Were Generally Completed as Planned, but Long-Standing Challenges Suggest Need for Fundamental Reforms* (Dec. 2010), <https://www.gao.gov/new.items/d11193.pdf>.

258. As noted above, after the Bureau exhausts attempts to enumerate households through methods that render more accurate results, such as self-response and enumerator interviews, the Bureau turns to less accurate sources of data and statistical methods as a last resort to fill in missing information.

259. By curtailing Non-Response Follow Up, the Rush Plan will force the Bureau to resort to less accurate methods of data collection, well before the exhaustion of more accurate methods. Consequently, the Rush Plan will lead to the production of lower-quality information.

260. For instance, under the Final Operational Plan, the Bureau would not consider

1 low-quality administrative data before conducting the requisite number of contact days for a
2 particular type of housing unit. By reducing the number of enumerator contact days, the Rush
3 Plan will lead to reliance on these types of lower-quality data sources prior to exhausting the
4 more accurate methods contemplated in the Final Operational Plan. Consequently, the Rush Plan
5 will lead to more inaccuracies in the data.

6 261. Based upon past practices, the Bureau may also use whole-count imputation to
7 calculate missing household data but to an extent and in ways not used previously. Imputation
8 involves the Bureau using information from surrounding responsive households to infer the
9 count and characteristics of a non-responsive household.

10 262. In previous censuses, the Bureau imputed upwards of 2.0% of households left
11 over after exhausting its Non-Response Follow Up efforts. Under the time constraints of the
12 Rush Plan, the Bureau will need to turn to imputation before exhausting its in-person
13 enumeration efforts. One former Census Bureau Director estimates that, under the Rush Plan, the
14 Bureau may end up imputing up to 10% of households.

15 263. Since data produced through the Bureau's current imputation methods are less
16 accurate than data collected from enumerator interviews, Defendants' decision to rush
17 completion of the 2020 Census will result in significantly less accurate total-population data than
18 would have been produced under the COVID-19 Plan. This decline in accuracy will affect both
19 the census's calculations of the total number of people living in the country and the census's
20 recording of the characteristics of those people, and such inaccurate data will not meet the
21 constitutional minimum for conducting the decennial enumeration or satisfy the "strong
22 constitutional interest in accuracy" of the Census. *Utah v. Evans*, 536 U.S. 452, 478 (2002).

23 264. The Rush Plan will likely exacerbate the quality problems associated with
24 imputation by compromising the Bureau's ability to collect the other kinds of data—such as self-
25 responses, proxies, and administrative records—that it requires to impute most accurately. As
26 noted above, imputation does not occur in isolation from the Bureau's other data sources, but in
27 concert with them. With less data drawn from these other sources and less accurate data drawn
28 from these other sources, the quality of the Bureau's imputation will decline.

265. The Rush Plan will also disrupt the post-collection data processing operations, described above. As noted by Secretary Ross and Director Dillingham in mid-April 2020, following Non-Response Follow Up the Bureau engages in “lengthy, thorough and scientifically rigorous” data processing, which is essential to ensuring an accurate census.

266. In announcing the new plan to rush the completion of the 2020 Census, Director Dillingham stated that the Bureau would “streamline” these operations in order to meet the December 31, 2020 deadline.

267. While the Director has not specified what this “streamlining” means for post-collection operations, the bottom line is that the Bureau cannot fully engage in the operations as contemplated in its Final Operational Plan on the shortened timeframe. As a result, the Bureau will have to cut or reduce its efforts to review and process collected data to ensure accuracy.

F. The New “Rush” Plan Will Create Confusion that Plaintiffs Will Be Forced to Spend Time and Money Counteracting

268. The new plan to rush completion of the 2020 Census also creates additional confusion about census operations at a critical moment in the census-taking process.

269. The Census Bureau’s abrupt change will require groups and local governments engaging in Get Out the Count campaigns, including Plaintiff localities and Plaintiff organizations, to expend resources to correct confusion about the last date for counting in the 2020 Census.

270. As noted above, Plaintiff organizations and localities engaged in extensive public information campaigns that publicized the October 31, 2020 deadline.

271. The Rush Plan requires Plaintiffs to expend additional resources in order to update existing public materials, distribute new materials, and engage in more public-facing efforts to educate the public, their constituents, their members and/or constituents, and local organizations that the self-response period for the census ends on September 30, 2020.

272. For instance, in Harris County, officials ordered a mailing to constituents informing them that they had until October 31, 2020 to respond to the census. That order occurred before the August 3, 2020 decision to implement the Rush Plan. In light of the new

1 plan, the officials were forced to order stickers to cover the reference to October 31, 2020 on the
2 mailer and to dedicate office staff to spend time affixing those stickers and updating the mailer.
3 Similarly, Plaintiffs the City of Los Angeles, BAJI, and Urban League must update
4 advertisements on social media to correct previous communications that referenced the October
5 31, 2020 deadline.

6 273. Apart from correcting misinterpretations arising from earlier statements Plaintiffs
7 made in reliance on the Bureau's COVID-19 Plan, Plaintiffs must now also engage in more,
8 unanticipated outreach to educate the public about the Census Bureau's Rush Plan decision. With
9 one month less of counting, there is now increased urgency for non-responsive households to
10 self-respond. As a result, Plaintiffs are developing new plans to reach more households and
11 encourage more census participation.

12 **G. The New "Rush" Plan Will Lead to Undercounting of Minorities**

13 274. The new plan to rush completion of the 2020 Census will exacerbate
14 undercounting of Black, Latino, and Native American communities.

15 275. As noted above, Non-Response Follow Up, is specifically designed to ensure that
16 traditionally hard-to-count communities, including Black, Latino, and Native American
17 communities are fully counted. By cutting Non-Response Follow Up short, the administration is
18 disrupting the operation most essential to ensuring an accurate count for these communities.

19 276. For the 2020 Census, Black, Latino and Native American populations make up a
20 disproportionate share of the population in tracts with the lowest self-response rates in the United
21 States. For instance, as of July 23, 2020, one in five residents living in census tracts with the
22 lowest self-response rates was Black, and one in four was Hispanic, far larger proportions than
23 Black and Hispanic shares of the general population.

24 277. Consequently, Black, Latino, and Native American households will make up a
25 disproportionate share of the Non-Response Follow Up universe.

26 278. Given the challenges of the shortened Non-Response Follow Up timeline, Black,
27 Latino, and Native American households have a high likelihood of being missed, or inaccurately
28 enumerated through administrative records and imputation. As noted above, these alternative

1 methods for enumeration will result in lower quality data for these groups.

2 279. The problem, however, is even more serious because it replicates and exacerbates
3 problems the Census Bureau has found in prior censuses and has striven to correct in subsequent
4 censuses. Data from previous censuses shows that Black, Latino, and Native Americans have
5 historically been undercounted. Over-reliance on alternative methods of data to enumerate a
6 disproportionate share of the population in these groups will further exacerbate potential
7 undercounting in these groups during the 2020 Census.

8 280. Accurate data about the size, location, and characteristics of communities of color
9 is necessary to equitably distribute political power through congressional reapportionment and
10 redistricting at the state and local levels, enforce civil-rights laws that affect basic needs like
11 housing and employment, and conduct effective research, including on pressing issues like
12 public health.

13 281. Truncating Non-Response Follow Up will exacerbate undercounts of
14 communities of color in at least two ways: first, by missing members of those communities
15 entirely; or, second, by recording their characteristics incorrectly, such that the census results
16 will not register them as members of communities of color. In either instance, data regarding
17 communities of color will be inaccurate. This inaccuracy then deprives communities of color of
18 federal funding, all the material support that flows from federal funding, the protections of the
19 law, and political power at the federal, state, and local levels.

20 **H. The New Rush Plan Has No Legitimate Justification**

21 282. In announcing the Rush Plan, Defendants provided no express justification.
22 Defendants stated in passing, however, that reporting of apportionment data to the President by
23 December 31, 2020 is required by statute.

24 283. But there is “nothing sacred in the due date of the filing [of apportionment data],
25 especially when the work of the Census Bureau . . . is incomplete.” *Carey v. Klutznick*, 637 F. 2d
26 834, 837 (2d Cir. 1980).

27 284. The Supreme Court thus determined that the government can and should
28 substitute apportionment counts that have already been filed and certified with “newer, more

1 accurate version[s].” *Utah v. Evans*, 536 U.S. 452, 462 (2002).

2 285. Defendants have also recognized that, in the event of a conflict between the two,
3 the constitutional requirement of a fair and accurate enumeration, rather than the statutory
4 deadline, is the controlling legal requirement. With the COVID-19 pandemic threatening the
5 health and safety of communities across the country, Defendants adjusted 2020 Census
6 operations in the COVID-19 Plan, shifting the timeline by several months. Defendants did not
7 wait for Congress to act to implement this plan, recognizing that the Plan was necessary to
8 protect enumerators and respondents, and to ensure an accurate count.

9 286. Because of those delays, as the Bureau itself recognized, it was no longer possible
10 for Defendants to produce data by December 31, 2020 that fulfilled their constitutional and
11 statutory mandate. Specifically, the Bureau could not simultaneously pursue an accurate 2020
12 Census, and speed through completion of census-taking in order to report numbers to the
13 President by the end of the year.

14 287. Several senior officials charged with actually conducting the 2020 Census
15 confirmed the impossibility of this task throughout the summer, including approximately four
16 weeks before Defendants’ abruptly announced their decision to adopt the Rush Plan.

17 288. The statutory deadline at issue is not mandated by the Constitution. Taking the
18 modest additional time necessary to ensure an accurate census, should not prevent a timely
19 reapportionment, as elections for congressional seats impacted by reapportionment will not occur
20 until 2022.

21 289. Ultimately, Defendants cannot sacrifice their mandatory *constitutional* obligation
22 to make decisions reasonably related to producing an accurate count in order to comply with a
23 pro forma *statutory* deadline. Congress clearly could not, for instance, satisfy its constitutional
24 obligations by providing the Census Bureau with a single week in which to conduct the census.
25 Strictly adhering to the December 31, 2020 deadline, as applied in extraordinary circumstances
26 of the ongoing pandemic, would be equally unconstitutional.

27 **I. Implementation of the Apportionment Exclusion Order**

28 290. Defendants have not yet sought to justify their motivation for adopting the Rush

1 Plan, and it cannot be justified on the basis of artificial statutory deadlines. Instead, the timing of
2 the abandonment suggests that the decision was influenced by a desire to implement the
3 President's Executive Memorandum excluding undocumented immigrants from the
4 apportionment count, thereby undercutting the contribution of communities of color to the
5 calculations for equal representation for purposes of congressional apportionment
6 (the "Apportionment Exclusion Order").

7 291. In late June 2020, the White House took the unprecedented step of adding two
8 political appointees to Census Bureau staff with unspecified job duties. Neither appointee had an
9 expertise in statistics, and both had a demonstrated history of partisan activity. These unusual
10 appointees had previously engaged with the Census Bureau on questions about changing
11 operations and methodology.

12 292. In mid-July 2020, White House officials reportedly asked congressional
13 appropriators to include \$1 billion in the next coronavirus stimulus bill for the purpose of
14 completing the 2020 Census by the December 31, 2020 deadline.

15 293. This abrupt change in policy coincided with and was motivated by the President's
16 July 21, 2020 issuance of the unconstitutional Apportionment Exclusion Order declaring that it is
17 the policy of the United States to remove undocumented persons from the apportionment count,
18 and requiring the Secretary of Commerce to produce estimates of the number of undocumented
19 persons in the United States when reporting total population counts to the President. As noted,
20 the Apportionment Exclusion Order is currently being challenged as unconstitutional and
21 unlawful in a number of lawsuits filed in jurisdictions around the country, including in this
22 District.

23 294. Shortening the census timeline increases the likelihood that, regardless of the
24 outcome of the November 2020 election, this President will have the opportunity to implement
25 his Apportionment Exclusion Order. Delaying reporting until spring—as the COVID-19 Plan
26 issued by the Census Bureau and Department of Commerce previously did—leaves open the
27 possibility that the President will no longer be in office when data is provided, and thus will be
28 unable to effectuate the Apportionment Exclusion Order.

295. Defendants did not justify their sudden, unexplained reversal of position with any evidence that Bureau officials had been wrong in stating, repeatedly, that it would be impossible to produce accurate counts by December 31, 2020. There is also no evidence that the decision to cut short counting operations was driven by the scientifically based judgment of Bureau personnel or external experts.

296. To the extent that Defendants' are motivated by a desire to implement the President's Apportionment Exclusion Order, that motivation is improper. It bears no reasonable relationship to the achievement of a fair and accurate census, and, under the circumstances currently facing the count, implementing the Apportionment Exclusion Order will undermine that goal.

297. Moreover, that Memorandum is just the latest attempt by the President and Secretary Ross to manipulate the census along racial and ethnic lines. Beginning in 2017, Secretary Ross attempted to add an untested citizenship question to the 2020 Census, claiming that the question was necessary to better enforce the Voting Rights Act. In reality, the administration was seeking block-level citizenship data so states could draw district lines in a manner that would disadvantage Black and Latino communities.

298. Defendant Ross's decision was litigated, and enjoined by three district courts. One of those cases ultimately ended up before the Supreme Court. There the Court found that Defendant Ross's stated Voting Rights Act rationale to support the addition of a citizenship question to the 2020 Census was "contrived" and vacated Defendant Ross's decision. *Dep't of Commerce v. New York*, 139 S. Ct. 2551, 2575-76 (2019).

299. On July 5, 2019, following the Supreme Court's decision, President Trump confirmed the real rationale—and fully justified the Supreme Court's holding that the administration's rationale for this census decision was pretextual—when he stated that the administration sought a citizenship question, not to enforce the Voting Rights Act, but rather "for districting" and "for appropriations." Remarks by President Trump Before Marine One Departure (July 5, 2019), <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-marine-one-departure-51/>.

300. Indeed, further evidence that Defendants’ actions were pretextual arose from files of a prominent redistricting strategist, Thomas Hofeller. In 2015, Hofeller prepared a study titled “The Use of Citizen Voting Age Population in Redistricting.” In the study, Hofeller recommended adding a citizenship question to the census so that states could use citizen voting-age population rather than total population to redistrict. This change in the redistricting base, in Hofeller’s words, would be advantageous to “Non-Hispanic Whites” and would undercut the political power of Hispanics.

301. It was later revealed that Hofeller was involved in drafting portions of the memorandum from the Department of Justice to Defendant Commerce seeking addition of a citizenship question on the 2020 Census, including sections relating to the pretextual reason for requesting the question. *See* Ex. 8 to NYIC Pls.’ Mot. for Sanctions at 124-31, *New York v. U.S. Dep’t of Commerce*, No. 1:18-cv-2921-JMF (S.D.N.Y. July 16, 2019), ECF No. 635-1; Defs.’ Opp. to Letter Mot. to Compel at 3, *New York v. U.S. Dep’t of Commerce*, No. 1:18-cv-2921-JMF (S.D.N.Y. Oct. 30, 2018), ECF No. 451.

302. Shortly after the Supreme Court’s decision, President Trump issued an executive order, demanding executive agencies provide the Census Bureau with administrative records sufficient to allow the Bureau to determine “the number of citizens and noncitizens in the country.” Exec. Order No. 13,880, § 1, 84 Fed. Reg. 33,821, 33,821 (July 16, 2019). The Executive Order explicitly states that the reason this data is necessary is to design “legislative districts based on the population of voter-eligible citizens,” instead of total population. *Id.* at 33,823-84.

303. In light of that history, the Apportionment Exclusion Order, and the near-contemporaneous decision to cut counting operations short represent yet another attempt by the administration to manipulate the 2020 Census and potentially undercut the political power of communities of color. Defendants cannot rely on this memorandum as justification to support their decision to undermine the accuracy of the census.

V. Harm to Plaintiffs.

304. Plaintiffs and Plaintiff non-profits’ members and/or constituents reside in locales

that will suffer harm as a result of Defendants' decision because that decision is very likely to cause these locales to be more disproportionately undercounted in the 2020 Census than they otherwise would have been.

305. On August 9, 2020, at the beginning of the Non-Response Follow Up operation, Plaintiff City of Los Angeles, had a response rate of just 53.1%, which was significantly lower than the 64.5% statewide response rate in California on that same date.

306. The Urban League, League of Women Voters, and BAJI have affiliates, constituents, and members in major cities across the United States. This includes cities where response rates were lower than their corresponding statewide response rates on the first day of Non-Response Follow Up including San Francisco (61.4%) and Monterey (60.5%) as compared to California (64.5%), Miami (49.6%) as compared to Florida (60.1%), Philadelphia (52%) as compared to Pennsylvania (65.5%), Detroit (48.7%) as compared to Michigan (68.9%), and New York City (54.9%) as compared to New York State (58.9%).

307. Plaintiffs Ellis and Garcia are residents of Houston, Texas. The response rate in Houston at the beginning of Non-Response Follow Up was 54%, which was lower than the statewide response rate for Texas on that date, 58.2%.

308. As noted above, Defendants' decision will result in fewer enumerations through Non-Response Follow Up, increased reliance on low-quality administrative data, and increased imputation. Consequently, Defendants' decision will result in cities' with higher rates of non-response (1) having less accurate data; and (2) experiencing higher rates of undercounting.

309. Because these cities have a higher proportion of households in the Non-Response Follow Up universe than their corresponding states, these cities have a substantially higher likelihood of being undercounted because of Defendants' decision than surrounding communities in their states. These disproportionate undercounts will cause Plaintiffs to suffer both fiscal and representational harm.

A. Funding Harms

310. The Rush Plan will result in loss of federal funding for Plaintiffs Harris County, City of Salinas, and the City of Los Angeles and the communities where members of Plaintiff

1 non-profits reside, including Miami, Detroit, Philadelphia and New York.

2 311. Over 130 programs and 675 billion dollars are allocated to states and localities on
3 the basis of census-derived information. This includes funding to states for federal transportation
4 planning purposes, education, and healthcare.

5 312. Many important federal programs, including Title I Grants under the Every
6 Student Succeeds Act, require states to distribute funds to localities on the basis of census-
7 derived information.

8 313. State Education Agencies must allocate Title I Grants, at least in part, on the
9 number of children aged 5-17 living in poverty in a local education agency's jurisdiction.

10 314. Given that members of Plaintiff non-profits reside in cities that are likely to be
11 more undercounted under the Rush Plan relative to surrounding communities in their states,
12 including San Francisco, Miami, Detroit, Philadelphia, and New York City, Defendants' decision
13 will likely deprive the communities where these members reside of Title I Grant funding they
14 would have otherwise received. Similarly, Defendants' decision places Plaintiffs Ellis and
15 Garcia's community at higher risk of deprivation of Title I Grant funding.

16 315. Several additional federal programs require states to use census-derived
17 information to distribute funds directly to cities and counties, based on their share of a relevant
18 population. For instance, the Low Income Home Energy Assistance Program, the Workforce
19 Innovation and Opportunity Act program, and the Community Services Block Grant Program, all
20 require states to distribute funds to cities and counties, at least in part, on the proportion of a
21 state's low-income residents living in those cities and counties. This data is derived from
22 information collected during the decennial census.

23 316. Both Harris County and the City of Los Angeles receive funds under these
24 programs. Consequently, disproportionate undercounting of Harris County and the City of Los
25 Angeles, as compared to their states, is likely to result in loss of funds under these and similar
26 programs.

27 317. Several federal funding programs provide funding directly to cities and counties
28 based on census-derived information. For instance, the Community Development Block Grant

1 program, and the Emergency Solutions Grant, allocate funding to cities and counties based, at
2 least in part, on their share of the overall population count relative to other metropolitan areas.

3 318. Of cities with over 500,000 people, the City of Los Angeles had the fourth lowest
4 response rate in the country, just behind Detroit and Philadelphia. Consequently, Los Angeles
5 will likely lose Community Development Block Grant funds because of Defendants' decision.

6 319. Similarly, members of Plaintiff non-profits live in major metropolitan areas with
7 some of the lowest response rates in the country, such as Miami, Detroit and Philadelphia.
8 Defendants' decision will likely deprive these members' communities of funding under the
9 Community Development Block Grant program.

10 320. Finally, the allocation of federal transportation including the Surface
11 Transportation Block Grant Program, and the Metropolitan and Statewide Nonmetropolitan
12 Transportation Planning Programs are based on the population of urbanized areas in a state
13 compared to those of other states, as determined by the decennial census.

14 321. Plaintiffs Ellis and Garcia regularly drive on highways and roads in Texas.
15 Disproportionate undercounting of urbanized areas in Texas during the 2020 Census will result
16 in reduced transportation funding for Texas under federal transportation programs.

17 **B. Representational Harm**

18 322. Defendants' decision will also likely result in representational harm to individual
19 Plaintiffs and to the members of Plaintiff organizations.

20 323. Plaintiffs Ellis and Garcia reside in Houston, Texas. In terms of self-response
21 rates, Texas ranks 39th in the United States. Approximately four million Texas households are in
22 the Non-Response Follow Up universe, which is more households than any state other than
23 California.

24 324. Consequently, Defendants' decision will not only cause a substantial undercount
25 in Texas, but that undercount will likely be disproportionate as compared to other states. Texas
26 will likely be deprived of its fair share of representation in the next congressional apportionment.

27 325. As a result, Defendants' decision is likely to result in reduction of voting power
28 and representation for Plaintiffs Ellis and Garcia, because it will likely cause the loss of a seat in

1 Texas, and will result in fewer Representatives spread out over the state of Texas.

2 326. As for Plaintiff City of Los Angeles, at least one study has predicted that, were
3 California to lose a congressional seat because of the final census count, that seat is very likely to
4 come from a district that includes portions of South Los Angeles, thus reducing the city's
5 representational delegation.

6 327. Defendants' decision will also cause Plaintiff Ellis and members of Plaintiff non-
7 profits to experience a loss of intrastate voting power.

8 328. By causing disproportionate undercounting of communities in Houston, Detroit,
9 Philadelphia, and Miami, as compared to their corresponding states, Defendants' decision will
10 result in drawing of district lines that do not accurately represent the population of the state, and
11 disadvantage Plaintiffs Ellis and Garcia, and members of Plaintiff organizations that live in
12 undercounted communities.

13 **C. Inaccurate Data**

14 329. Plaintiff local governments will suffer harm from the adverse impact Defendants'
15 decision will have the accuracy of population counts produced by the Census Bureau. Plaintiff
16 local governments often rely on accurate information collected by the Census Bureau for crucial
17 public planning purposes, including planning for how to respond to emergencies.

18 330. For example, local governments often rely on a Social Vulnerability Index to
19 identify communities that are at high risk during a particular emergency. Government officials
20 rely on this index to determine where to allocate resources before and during emergencies. A
21 Social Vulnerability Index use census data to identify specific populations that may be
22 vulnerable to a particular emergency, including data relating to age, housing density, income
23 status, and race and ethnicity. Inaccurate census data would make disaster planning and
24 emergency response more difficult, and could disrupt important public programs.

25 331. In Harris County, officials used the Center for Disease Control's Social
26 Vulnerability Index to inform decisions about proper distribution of COVID-19 Relief Funds.
27 The funds were allocated to provide relief to Harris County residents most impacted by the
28 global pandemic. That Social Vulnerability Index, which was based on census data, was used to

1 identify census tracts with the most vulnerable residents, and applications from residents from
 2 those tracts were prioritized and given higher chances of acceptance for funds. Without accurate
 3 census data, Harris County would struggle to ensure that crucial relief funds were reaching the
 4 communities most in need of them.

5 332. Similarly, King County relies on accurate census data to inform its public-policy
 6 decision making. For instance, the county uses census data to plan public-transit service, and to
 7 ensure priority populations have transit access, and to site public health clinics.

8 333. The low-quality data and undercounting that Defendants' decision will cause will
 9 also harm Plaintiffs. For instance, undercounting of Black, Latino, Native American, and
 10 immigrant communities will negatively affect the Urban League, League of Women Voters and
 11 BAJI by undermining these organizations' core missions of promoting equal and just laws and
 12 empowering vulnerable communities through building coalitions and initiating campaigns with
 13 African Americans and Black immigrants, and fostering racial, economic, and social equality for
 14 the communities they serve.

15 **D. Expending Additional Resources**

16 334. Plaintiff organizations, the Urban League, the League of Women Voters, and
 17 BAJI, and Plaintiff local governments, City of San Jose, Harris County, King County, City of
 18 Salinas, and City of Los Angeles will need to expend additional resources and divert resources
 19 from planned programs and projects in order to address the adverse consequences of Defendants'
 20 decision to abandon the COVID-19 Plan, and implement the Rush Plan.

21 335. Plaintiffs' planned efforts to ensure the effective enumeration of historically
 22 undercounted communities were based on the understanding that the Census Bureau would
 23 implement the Non-Response Follow Up operation contemplated in the Final Operational Plan
 24 and adjusted in the COVID-19 Plan.

25 336. The abrupt reversal of the COVID-19 Plan, and the implementation of curtailed
 26 Non-Response Follow Up in the Bureau's Rush Plan will adversely affect Plaintiffs' plans.

27 337. Plaintiff organizations and local governments will likely need to adjust plans, and
 28 divert resources from other planned activities and programs in order to ensure the communities

they serve are adequately counted. Specifically, Plaintiffs will need to recruit and train staff to engage in increased and expanded outreach to potential non-responsive households in order to make up for fewer enumerator visits, or to other aspects of the Non-Response Follow Up program, such as the reinterview process.

338. For instance, Plaintiff BAJI is planning significant adjustments to its 2020 Census outreach plans in light of Defendants' decision, that include diversion of resources from other sources, and significant expenditures. In order to engage in effective outreach, BAJI needs organizing staff dedicated to civic engagement. With Non-Response Follow Up occurring from August 11, 2020 through October 31, 2020, BAJI anticipated that it could spread its staffing resources over that timeframe to ensure it was meeting its goals within the organization's budget. However, on a shorter timeframe, BAJI needs additional staff on a shorter timeframe, which will require adjusting the organization's budget and priorities for the next several months.

339. The adjustment is also challenging for BAJI as the organization caters to immigrant communities with a variety of language needs. Increasing staffing on a short timeframe poses significant challenges for the organization, because it must locate staff that can communicate with the particular community that the organization is targeting for outreach efforts.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

Violation of the Enumeration Clause, and Fourteenth Amendment (U.S. Const. art. I, § 2; U.S. Const. amend. XIV, § 2)

340. Plaintiffs incorporate by reference the allegations set forth in the preceding paragraphs.

341. Under the Enumeration Clause of the U.S. Constitution, Congress, and, by delegation, the Secretary of Commerce, must conduct an "actual Enumeration" of the population. This clause requires that decisions relating to census-taking "bear a reasonable relationship to the accomplishment of an actual enumeration of the population." *Wisconsin v. City of N.Y.*, 517 U.S. 1, 20 (1996).

342. The COVID-19 pandemic severely disrupted the 2020 Census, resulting in

1 months of suspended operations and significant delays in crucial counting processes. Moreover,
 2 the public-health crisis continues to impact census operations, as the Bureau struggles to retain
 3 enumerators and engage in door-knocking in communities experiencing surges of the virus.

4 343. To navigate this emergency, the Bureau took necessary action to adjust its
 5 operational timelines in the COVID-19 Plan while seeking to maintain the operations and
 6 processes included in the Final Operational Plan that had been designed to help ensure a
 7 complete and accurate count.

8 344. Abruptly and without explanation, on August 3, 2020, Defendants abandoned the
 9 COVID-19 Plan and implemented the Rush Plan. The Rush Plan does not “bear a reasonable
 10 relationship to the accomplishment of an actual enumeration of the population.” After delaying
 11 all operations for months, the Bureau and its staff repeatedly recognized that it was impossible to
 12 produce counts consistent with their duties to ensure a full, fair, and accurate count by December
 13 31, 2020. Indeed, current conditions demonstrate that it is infeasible to obtain a fair and accurate
 14 count by the end of the year. Nevertheless, the Defendants abandoned their constitutionally
 15 mandated pursuit of fair and accurate data, in favor of the speed of the Rush Plan, and the
 16 inaccurate data it will produce.

17 345. Under these circumstances, the decision to curtail crucial 2020 Census operations
 18 violates the Enumeration Clause of the United States Constitution.

19 346. These constitutional violations have caused, are causing, and will continue to
 20 cause harm to Plaintiffs as alleged above, and there is a substantial likelihood that the requested
 21 relief will redress this harm.

22 **SECOND CLAIM FOR RELIEF**
 23 **Violation of Administrative Procedure Act—Arbitrary and Capricious**
 24 **(5 U.S.C. § 706(2)(A))**

25 347. Plaintiffs incorporate by reference the allegations set forth in the preceding
 26 paragraphs.

27 348. The APA, 5 U.S.C. § 706(2), provides that a court shall hold unlawful and set
 28 aside agency action found to be arbitrary, capricious, an abuse of discretion, or otherwise not in
 accordance with law. The Rush Plan is final agency action because it marks the consummation

1 of the agency's decision-making process, and it is one by which rights or obligations have been
2 determined, or from which legal consequences will flow. *Bennett v. Spear*, 520 U.S. 154, 177-78
3 (1997).

4 349. In determining whether an action violates the APA, courts consider whether the
5 agency examined relevant data and articulated a satisfactory explanation for its decision,
6 including formulating a rational connection between the facts found and the choice made. *Motor*
7 *Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).
8 Where an agency wishes to depart from an earlier decision, it must acknowledge that change and
9 any reliance interests its previous actions engendered. *See Perez v. Mortg. Bankers Ass'n*, 575
10 U.S. 92, 105-06 (2015).

11 350. The Bureau spent several years developing its Final Operational Plan for the 2020
12 Census. That plan carefully determined the required length of each operation, including the
13 appropriate length for data-collection and data-processing. It also included details about the
14 implementation of the various operations.

15 351. The COVID-19 pandemic disrupted census operations, and the Bureau responded
16 by adjusting its operations in its COVID-19 Plan. That plan involved retaining the details and the
17 length of time of various operations laid out in the Final Operational Plan, but shifting the
18 timeline for counting several months into the future to account for both the necessity of those
19 operations and the public-health emergency.

20 352. The Bureau began implementing the plan, and critical operations were suspended
21 and delayed through the summer. Bureau officials publicly and expressly recognized that it was
22 no longer possible to comply with the December 31, 2020 deadline if the Bureau intended to
23 fulfill its constitutional and statutory obligation of producing reasonably accurate population
24 counts.

25 353. Without explanation and without citing any evidence, Defendants suddenly
26 changed their position and issued a new plan with shortened timelines. Among other things, that
27 change conclusively changed the legal rights and obligations of private households, who now
28 have substantially less time to respond if they wish to be counted in the 2020 Census. Defendants

1 have provided no evidence to support rescinding the COVID-19 Plan, have failed to
 2 acknowledge or explain their departure from their previous conclusions as to the length of time
 3 necessary for an accurate census, and have cited no evidence that they could obtain accurate
 4 counts on the shortened timeframe. Defendants’ unexplained and unjustifiable reversal is
 5 precisely the sort of arbitrary and capricious agency action that the Administrative Procedure Act
 6 forbids.

7 354. Defendants’ decision also fails to account for several factors relevant to the
 8 decision, including the multiple-month long suspension in operations and delay of crucial census
 9 operations, the staffing shortages facing the Bureau, the meticulously designed and tested
 10 technical requirements for effective enumeration included in the Bureau’s Final Operational
 11 Plan, and the various quality-control measures the Bureau must engage in to ensure that its
 12 reported data is accurate.

13 355. Consequently, Defendants’ action is arbitrary and capricious.

14 356. This unlawful action has caused, is causing, and will continue to cause harm to
 15 Plaintiffs as alleged above, and there is a substantial likelihood that the requested relief will
 16 redress this harm.

17 **THIRD CLAIM FOR RELIEF**
 18 **Violation of Administrative Procedure Act—Pretext**
(5 U.S.C. § 706)

19 357. Plaintiffs incorporate by reference the allegations set forth in the preceding
 20 paragraphs.

21 358. Under the Administrative Procedure Act, agencies are required to disclose the
 22 “genuine justification[] for important decisions.” *Dep’t of Commerce*, 139 S. Ct. at 2569, 2575-
 23 76. Courts will not accept “contrived reasons” provided by agencies as that would defeat the
 24 purpose of judicial review. *Id.* at 2576. Moreover, agencies cannot simply avoid providing
 25 reasoning for their decision-making altogether.

26 359. Defendants have decided to cut crucial operations in order to produce 2020
 27 Census population results to the President by December 31, 2020. In announcing that decision,
 28 Defendants provided no legitimate justification for abandoning the COVID-19 Plan and

1 implementing the Rush Plan.

2 360. Any attempt by the Defendants to rely on the reporting deadline provided under
3 the Census Act as justification for their decision is mere pretext. 13 U.S.C § 141(b).

4 361. For months, Defendants implemented the COVID-19 Plan, the timeline for which
5 necessarily assumed the statutory deadlines could not defeat the constitutional duty to conduct an
6 accurate enumeration, as applied to the extraordinary circumstances at hand. Defendants made
7 significant adjustments, including months-long delays of census operations, on the assumption
8 that the Bureau could and would conduct a full and robust count through the end of October 31,
9 2020. Since mid-April 2020, Defendants have expressly and publicly recognized that the Bureau
10 could not provide a complete and accurate count by December 31, 2020. And President Trump
11 maintained that the statutory deadlines need not be followed.

12 362. Defendants' reversal of position on the 2020 Census timeline appears driven by
13 Defendants' efforts to ensure implementation of the President's unconstitutional Apportionment
14 Exclusion Order, which attempts to exclude undocumented persons from the apportionment
15 count and continues a long-running pattern of racially discriminatory and improperly politically
16 motivated conduct of the 2020 Census.

17 363. In light of these considerations, Defendants' purported justification is pretextual
18 and, thus, arbitrary and capricious under the Administrative Procedure Act.

19 364. Defendants' unlawful action has caused, is causing, and will continue to cause
20 harm to Plaintiffs as alleged above, and there is a substantial likelihood that the requested relief
21 will redress this harm.

22 **PRAYER FOR RELIEF**

23 365. Plaintiffs respectfully request that this Court:

24 366. Declare that Defendants' promulgation of the Rush Plan, and corresponding
25 revocation of the COVID-19 Plan is unconstitutional under the Enumeration Clause, and
26 unlawful under the Administrative Procedure Act.

27 367. Vacate the Rush Plan, thereby reinstating the COVID-19 Plan.

28 368. Enjoin Defendants from implementing the Rush Plan or otherwise unlawfully

interfering with the COVID-19 Plan.

369. Award Plaintiffs costs, expenses, and reasonable attorneys' fees.

370. Award any other relief the Court deems just and proper.

Dated: September 1, 2020

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ATTESTATION

I, Sadik Huseny, am the ECF user whose user ID and password authorized the filing of this document. Under Civil L.R. 5-1(i)(3), I attest that all signatories to this document have concurred in this filing.

Dated: September 1, 2020

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**U.S. District Court
California Northern District (San Jose)
CIVIL DOCKET FOR CASE #: 5:20-cv-05799-LHK**

National Urban League et al v. Ross et al
Assigned to: Judge Lucy H. Koh
Referred to: Judge Nathanael M. Cousins
Relate Case Case: [5:20-cv-05167-LHK-RRC-EMC](#)
Case in other court: Ninth Circuit, 20-16868
Cause: 05:702 Administrative Procedure Act

Date Filed: 08/18/2020
Jury Demand: None
Nature of Suit: 899 Other Statutes:
Administrative Procedures Act/Review or
Appeal of Agency Decision
Jurisdiction: U.S. Government Defendant

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V.

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Date Filed	#	Docket Text
08/18/2020	<u>1</u>	COMPLAINT for Declaratory and Injunctive Relief (Filing fee \$400, receipt number 0971-14828740) against Steven Dillingham, Wilbur L. Ross, U.S. Census Bureau, U.S. Department of Commerce. Filed by City of Los Angeles, California, Black Alliance For

		Just Immigration, City of Salinas, California, Rodney Ellis, League of Women Voters, City of San Jose, California, Harris County, Texas, National Urban League, Adrian Garcia, King County, Washington. (Attachments: # 1 Civil Cover Sheet)(Huseny, Sadik) (Filed on 8/18/2020) (Entered: 08/18/2020)
08/18/2020	2	MOTION for leave to appear in Pro Hac Vice (Filing fee \$ 310, receipt number 0971-14829876.) filed by Black Alliance For Just Immigration, City of San Jose, California, Rodney Ellis, Adrian Garcia, Harris County, Texas, King County, Washington, League of Women Voters, National Urban League. (Attachments: # 1 Exhibit Certificate of Good Standing)(Wolf, Thomas) (Filed on 8/18/2020) (Entered: 08/18/2020)
08/18/2020	3	Case assigned to Judge Nathanael M. Cousins. Counsel for plaintiff or the removing party is responsible for serving the Complaint or Notice of Removal, Summons and the assigned judge's standing orders and all other new case documents upon the opposing parties. For information, visit <i>E-Filing A New Civil Case</i> at http://cand.uscourts.gov/ecf/caseopening . Standing orders can be downloaded from the court's web page at www.cand.uscourts.gov/judges . Upon receipt, the summons will be issued and returned electronically. Counsel is required to send chambers a copy of the initiating documents pursuant to L.R. 5-1(e)(7). A scheduling order will be sent by Notice of Electronic Filing (NEF) within two business days. Consent/Declination due by 9/1/2020. (mbcS, COURT STAFF) (Filed on 8/18/2020) (Entered: 08/18/2020)
08/18/2020	4	MOTION for leave to appear in Pro Hac Vice (Filing fee \$ 310, receipt number 0971-14830168.) filed by Black Alliance For Just Immigration, City of San Jose, California, Rodney Ellis, Adrian Garcia, Harris County, Texas, King County, Washington, League of Women Voters, National Urban League. (Attachments: # 1 Exhibit Certificate of Good Standing)(Percival, Kelly) (Filed on 8/18/2020) (Entered: 08/18/2020)
08/18/2020	5	First MOTION for leave to appear in Pro Hac Vice <i>Wendy Weiser</i> (Filing fee \$ 310, receipt number 0971-14830320.) filed by Black Alliance For Just Immigration, City of San Jose, California, Rodney Ellis, Adrian Garcia, Harris County, Texas, King County, Washington, League of Women Voters, National Urban League. (Attachments: # 1 Certificate/Proof of Service certificate of good standing)(Weiser, Wendy) (Filed on 8/18/2020) (Entered: 08/18/2020)
08/18/2020	6	SUA SPONTE Judicial Referral for Purpose of Determining Relationship of Case 5:20-cv-05799 NC with 5:20-cv-05167 LHK and 5:20-cv-05169 LHK. Signed by Judge Nathanael Cousins on 8/18/2020. (lmh, COURT STAFF) (Filed on 8/18/2020) (Entered: 08/18/2020)
08/18/2020	7	Initial Case Management Scheduling Order with ADR Deadlines: Case Management Statement due by 11/11/2020. Initial Case Management Conference set for 11/18/2020 10:00 AM in San Jose, Courtroom 5, 4th Floor. (sfbS, COURT STAFF) (Filed on 8/18/2020) (Entered: 08/18/2020)
08/18/2020	8	Proposed Summons. (Huseny, Sadik) (Filed on 8/18/2020) (Entered: 08/18/2020)
08/18/2020	9	NOTICE of Appearance by Steven Mark Bauer <i>on behalf of Plaintiffs National Urban League; League of Women Voters; Black Alliance for Just Immigration; Harris County, Texas; King County, Washington; City of San Jose, California; Rodney Ellis and Adrian Garcia</i> (Bauer, Steven) (Filed on 8/18/2020) (Entered: 08/18/2020)
08/18/2020	10	MOTION for leave to appear in Pro Hac Vice <i>for Richard P. Bress</i> (Filing fee \$ 310, receipt number 0971-14832247.) filed by Black Alliance For Just Immigration, City of San Jose, California, Rodney Ellis, Adrian Garcia, Harris County, Texas, King County,

		Washington, League of Women Voters, National Urban League. (Attachments: # 1 Certificate of Good Standing)(Bress, Richard) (Filed on 8/18/2020) (Entered: 08/18/2020)
08/18/2020	11	MOTION for leave to appear in Pro Hac Vice <i>for Melissa Arbus Sherry</i> (Filing fee \$ 310, receipt number 0971-14832288.) filed by Black Alliance For Just Immigration, City of San Jose, California, Rodney Ellis, Adrian Garcia, Harris County, Texas, King County, Washington, League of Women Voters, National Urban League. (Attachments: # 1 Certificate of Good Standing)(Sherry, Melissa) (Filed on 8/18/2020) (Entered: 08/18/2020)
08/18/2020	12	MOTION for leave to appear in Pro Hac Vice <i>for Anne W. Robinson</i> (Filing fee \$ 310, receipt number 0971-14832323.) filed by Black Alliance For Just Immigration, City of San Jose, California, Rodney Ellis, Adrian Garcia, Harris County, Texas, King County, Washington, League of Women Voters, National Urban League. (Attachments: # 1 Certificate of Good Standing)(Robinson, Anne) (Filed on 8/18/2020) (Entered: 08/18/2020)
08/18/2020	13	NOTICE of Appearance by Shannon Danielle Lankenau <i>on behalf of Plaintiffs National Urban League; League of Women Voters; Black Alliance for Just Immigration; Harris County, Texas; King County, Washington; City of San Jose, California; Rodney Ellis and Adrian Garcia</i> (Lankenau, Shannon) (Filed on 8/18/2020) (Entered: 08/18/2020)
08/18/2020	14	MOTION for leave to appear in Pro Hac Vice <i>for Tyce R. Walters</i> (Filing fee \$ 310, receipt number 0971-14832361.) filed by Black Alliance For Just Immigration, City of San Jose, California, Rodney Ellis, Adrian Garcia, Harris County, Texas, King County, Washington, League of Women Voters, National Urban League. (Attachments: # 1 Certificate of Good Standing)(Walters, Tyce) (Filed on 8/18/2020) (Entered: 08/18/2020)
08/18/2020	15	MOTION for leave to appear in Pro Hac Vice <i>for Genevieve P. Hoffman</i> (Filing fee \$ 310, receipt number 0971-14832370.) filed by Black Alliance For Just Immigration, City of San Jose, California, Rodney Ellis, Adrian Garcia, Harris County, Texas, King County, Washington, League of Women Voters, National Urban League. (Attachments: # 1 Certificate of Good Standing)(Hoffman, Genevieve) (Filed on 8/18/2020) (Entered: 08/18/2020)
08/18/2020	16	MOTION for leave to appear in Pro Hac Vice <i>for Gemma Donofrio</i> (Filing fee \$ 310, receipt number 0971-14832380.) filed by Black Alliance For Just Immigration, City of San Jose, California, Rodney Ellis, Adrian Garcia, Harris County, Texas, King County, Washington, League of Women Voters, National Urban League. (Attachments: # 1 Certificate of Good Standing)(Donofrio, Gemma) (Filed on 8/18/2020) (Entered: 08/18/2020)
08/19/2020	17	NOTICE of Appearance by Jon Greenbaum (Greenbaum, Jon) (Filed on 8/19/2020) (Entered: 08/19/2020)
08/19/2020	18	Summons Issued as to Steven Dillingham, Wilbur L. Ross, U.S. Census Bureau, U.S. Department of Commerce, U.S. Attorney and U.S. Attorney General (sfbS, COURT STAFF) (Filed on 8/19/2020) (Entered: 08/19/2020)
08/19/2020	19	ORDER GRANTING 2 APPLICATION for Admission of Attorney <i>Thomas P. Wolf</i> Pro Hac Vice representing Plaintiffs. Signed by Judge Nathanael Cousins. (lmh, COURT STAFF) (Filed on 8/19/2020). (Entered: 08/19/2020)
08/19/2020	20	ORDER GRANTING 4 APPLICATION for Admission of Attorney <i>Kelly M. Percival</i> Pro Hac Vice representing Plaintiffs. Signed by Judge Nathanael Cousins. (lmh, COURT STAFF) (Filed on 8/19/2020) (Entered: 08/19/2020)

08/19/2020	<u>21</u>	ORDER GRANTING <u>5</u> APPLICATION for Admission of Attorney <i>Wendy Weiser Pro Hac Vice</i> representing Plaintiffs. Signed by Judge Nathanael Cousins. (lmh, COURT STAFF) (Filed on 8/19/2020) (Entered: 08/19/2020)
08/19/2020	<u>22</u>	ORDER GRANTING <u>10</u> APPLICATION for Admission of Attorney <i>Richard P. Bress</i> representing Plaintiffs. Signed by Judge Nathanael Cousins. (lmh, COURT STAFF) (Filed on 8/19/2020) (Entered: 08/19/2020)
08/19/2020	<u>23</u>	ORDER GRANTING <u>11</u> APPLICATION for Admission of Attorney <i>Melissa Arbus Sherry Pro Hac Vice</i> representing Plaintiffs. Signed by Judge Nathanael Cousins. (lmh, COURT STAFF) (Filed on 8/19/2020) (Entered: 08/19/2020)
08/19/2020	<u>24</u>	ORDER GRANTING <u>12</u> APPLICATION for Admission of Attorney <i>Anne W. Robinson Pro Hac Vice</i> representing Plaintiffs. Signed by Judge Nathanael Cousins. (lmh, COURT STAFF) (Filed on 8/19/2020) (Entered: 08/19/2020)
08/19/2020	<u>25</u>	ORDER GRANTING <u>14</u> APPLICATION for Admission of Attorney <i>Tyce R. Walters Pro Hac Vice</i> representing Plaintiffs. Signed by Judge Nathanael Cousins. (lmh, COURT STAFF) (Filed on 8/19/2020) (Entered: 08/19/2020)
08/19/2020	<u>26</u>	ORDER GRANTING <u>15</u> APPLICATION for Admission of Attorney <i>Genevieve P. Hoffman Pro Hac Vice</i> representing Plaintiffs. Signed by Judge Nathanael Cousins. (lmh, COURT STAFF) (Filed on 8/19/2020) (Entered: 08/19/2020)
08/19/2020	<u>27</u>	ORDER GRANTING <u>16</u> APPLICATION of Attorney <i>Gemma Donofrio Pro Hac Vice</i> representing Plaintiffs. Signed by Judge Nathanael Cousins. (lmh, COURT STAFF) (Filed on 8/19/2020) (Entered: 08/19/2020)
08/21/2020	28	ORDER RELATING CASES by Judge Lucy H. Koh. The Court RELATES Case No. 5:20-cv-05799-NC, <i>National Urban League et al v. Ross et al</i>, to Case Nos. 5:20-cv-05167-LHK, <i>City of San Jose, et al v. Donald J. Trump, et al</i>, and 5:20-cv-05169 LHK, <i>State of California, et al v. Donald J. Trump, et al</i>. The Clerk shall reassign <i>National Urban League et al v. Ross et al</i> to Judge Lucy H. Koh. (This is a text-only entry generated by the court. There is no document associated with this entry.) (kedS, COURT STAFF) (Filed on 8/21/2020) (Entered: 08/21/2020)
08/21/2020	<u>29</u>	ORDER REASSIGNING CASE. Case reassigned to Judge Lucy H. Koh for all further proceedings. Magistrate Judge Nathanael M. Cousins no longer assigned to case Notice: The assigned judge participates in the Cameras in the Courtroom Pilot Project. See General Order No. 65 and http://cand.uscourts.gov/cameras.. Signed by Clerk on 8/21/2020. (Attachments: # <u>1</u> Notice of Eligibility for Video Recording) (sfbS, COURT STAFF) (Filed on 8/21/2020) (Entered: 08/21/2020)
08/21/2020	<u>30</u>	SUMMONS Returned Executed by City of Los Angeles, California, Black Alliance For Just Immigration, City of Salinas, California, Rodney Ellis, League of Women Voters, City of San Jose, California, Harris County, Texas, National Urban League, Adrian Garcia, King County, Washington. Steven Dillingham served on 8/20/2020, answer due 10/19/2020; Wilbur L. Ross served on 8/20/2020, answer due 10/19/2020; U.S. Census Bureau served on 8/20/2020, answer due 10/19/2020; U.S. Department of Commerce served on 8/20/2020, answer due 10/19/2020. (Bauer, Steven) (Filed on 8/21/2020) (Entered: 08/21/2020)
08/21/2020	<u>31</u>	Order Requiring Appearance and Setting Case Management Conference. Signed by Judge Lucy H. Koh on 8/21/2020. (lhklc3, COURT STAFF) (Filed on 8/21/2020) (Entered: 08/21/2020)

08/24/2020	32	<p>CLERK'S NOTICE SETTING ZOOM INITIAL CASE MANAGEMENT CONFERENCE. Per 31 Order, an Initial Case Management Conference is SET for 8/26/2020 at 2:00 PM. This proceeding will be held via a Zoom webinar.</p> <p>Webinar Access: All counsel, members of the public, and media may access the webinar information at https://www.cand.uscourts.gov/lhk</p> <p>Court Appearances: Advanced notice is required of counsel or parties who wish to be identified by the court as making an appearance or will be participating in the argument at the hearing. A list of names and emails must be sent to the CRD at lhkcrd@cand.uscourts.gov no later than 8/25/2020 at 12:00pm noon PST.</p> <p>General Order 58. Persons granted access to court proceedings held by telephone or videoconference are reminded that photographing, recording, and rebroadcasting of court proceedings, including screenshots or other visual copying of a hearing, is absolutely prohibited.</p> <p>Zoom Guidance and Setup: https://www.cand.uscourts.gov/zoom/.</p> <p><i>(This is a text-only entry generated by the court. There is no document associated with this entry.)</i> (kedS, COURT STAFF) (Filed on 8/24/2020) (Entered: 08/24/2020)</p>
08/24/2020	33	NOTICE of Appearance by Daniel D. Mauler <i>on behalf of Defendants</i> (Mauler, Daniel) (Filed on 8/24/2020) (Entered: 08/24/2020)
08/25/2020	34	MOTION for leave to appear in Pro Hac Vice (Filing fee \$ 310, receipt number 0971-14856733.) filed by Black Alliance For Just Immigration, City of San Jose, California, Rodney Ellis, Adrian Garcia, Harris County, Texas, King County, Washington, League of Women Voters, National Urban League. (Attachments: # 1 Exhibit Certificate of Good Standing)(Rosenberg, Ezra) (Filed on 8/25/2020) (Entered: 08/25/2020)
08/25/2020	35	STIPULATION WITH PROPOSED ORDER <i>Regarding Preliminary Injunction Briefing Schedule, Page Counts, and Defendants' Response to Complaint</i> filed by Black Alliance For Just Immigration, City of Los Angeles, California, City of Salinas, California, City of San Jose, California, Rodney Ellis, Adrian Garcia, Harris County, Texas, King County, Washington, League of Women Voters, National Urban League. (Attachments: # 1 Declaration of Sadik Huseny, # 2 Proposed Order)(Huseny, Sadik) (Filed on 8/25/2020) (Entered: 08/25/2020)
08/25/2020	36	MOTION to Stay <i>and</i> , MOTION for Preliminary Injunction filed by Black Alliance For Just Immigration, City of Los Angeles, California, City of Salinas, California, City of San Jose, California, Rodney Ellis, Adrian Garcia, Harris County, Texas, King County, Washington, League of Women Voters, National Urban League. Motion Hearing set for 9/17/2020 01:30 PM in San Jose, Courtroom 8, 4th Floor before Judge Lucy H. Koh. Responses due by 9/8/2020. Replies due by 9/15/2020. (Attachments: # 1 Proposed Order, # 2 Declaration of John Thompson, # 3 Declaration of D. Sunshine Hillygus, Ph.D., # 4 Declaration of Dr. Thomas A. Louis, # 5 Declaration of Andrew J. Westall, # 6 Declaration of Maria de la Luz Garcia, # 7 Declaration of Umair A. Shah, # 8 Declaration of Adrian Garcia, # 9 Declaration of Jared R. Briggs, # 10 Declaration of Paul Wilden, # 11 Declaration of Elizabeth Soto, # 12 Declaration of Monica Gurmilan, # 13 Declaration of Dwight Dively, # 14 Declaration of Nana Gyamfi, # 15 Declaration of Celina Stewart, # 16 Declaration of Jeri Green, # 17 Declaration of Rodney Ellis)(Huseny, Sadik) (Filed on 8/25/2020) Modified on 10/5/2020 (lhkcl3, COURT STAFF). (Entered: 08/25/2020)
08/25/2020	37	Declaration of Sadik Huseny in Support of 36 MOTION to Stay <i>and</i> MOTION for Preliminary Injunction filed by Black Alliance For Just Immigration, City of Los Angeles,

		California, City of Salinas, California, City of San Jose, California, Rodney Ellis, Adrian Garcia, Harris County, Texas, King County, Washington, League of Women Voters, National Urban League. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3, # 4 Exhibit 4, # 5 Exhibit 5, # 6 Exhibit 6, # 7 Exhibit 7, # 8 Exhibit 8, # 9 Exhibit 9, # 10 Exhibit 10, # 11 Exhibit 11, # 12 Exhibit 12, # 13 Exhibit 13, # 14 Exhibit 14, # 15 Exhibit 15)(Related document(s) 36) (Huseny, Sadik) (Filed on 8/25/2020) (Entered: 08/25/2020)
08/25/2020	38	Order by Judge Lucy H. Koh granting 34 Motion for Pro Hac Vice. (lhklc3, COURT STAFF) (Filed on 8/25/2020) (Entered: 08/25/2020)
08/25/2020	39	NOTICE of Appearance by Michael Joseph Dundas (Dundas, Michael) (Filed on 8/25/2020) (Entered: 08/25/2020)
08/25/2020	40	NOTICE of Appearance by Kathleen Alice Kenealy (Kenealy, Kathleen) (Filed on 8/25/2020) (Entered: 08/25/2020)
08/25/2020	41	JOINT CASE MANAGEMENT STATEMENT filed by Black Alliance For Just Immigration, City of Los Angeles, California, City of Salinas, California, City of San Jose, California, Rodney Ellis, Adrian Garcia, Harris County, Texas, King County, Washington, League of Women Voters, National Urban League. (Huseny, Sadik) (Filed on 8/25/2020) (Entered: 08/25/2020)
08/25/2020	42	NOTICE of Appearance by Amit Makker <i>on behalf of Plaintiffs National Urban League; League of Women Voters; Black Alliance for Just Immigration; Harris County, Texas; King County, Washington; City of San Jose, California; Rodney Ellis and Adrian Garcia</i> (Makker, Amit) (Filed on 8/25/2020) (Entered: 08/25/2020)
08/25/2020	43	Order by Judge Lucy H. Koh granting 35 Stipulation Regarding Preliminary Injunction Briefing, Page Counts, and Defendants' Response to Complaint. (lhklc3, COURT STAFF) (Filed on 8/25/2020) (Entered: 08/25/2020)
08/25/2020	44	MOTION for leave to appear in Pro Hac Vice (Filing fee \$ 310, receipt number 0971-14860453.) filed by Black Alliance For Just Immigration, City of San Jose, California, Rodney Ellis, Adrian Garcia, Harris County, Texas, King County, Washington, League of Women Voters, National Urban League. (Attachments: # 1 Certificate of Good Standing) (Saini, Ajay) (Filed on 8/25/2020) (Entered: 08/25/2020)
08/26/2020	45	Case Management Order. Signed by Judge Lucy H. Koh on 8/26/2020. (lhklc3, COURT STAFF) (Filed on 8/26/2020) (Entered: 08/26/2020)
08/26/2020	46	Order by Judge Lucy H. Koh granting 44 Motion for Pro Hac Vice. (lhklc3, COURT STAFF) (Filed on 8/26/2020) (Entered: 08/26/2020)
08/26/2020	48	<p>Minute Entry for proceedings held before Judge Lucy H. Koh: Initial Case Management Conference held on 8/26/2020 from 2:02 PM - 3:24 PM (1 hour, 22 minutes). 45 Case Management Order memorializes all relevant information, deadlines, and rulings from the Conference.</p> <p>Further Case Management Conference SET for Monday, September 14, 2020 at 2:00 PM. The parties shall file their joint case management statement by September 11, 2020 at 5:00 PM.</p> <p>Total Time in Court: 1 hour, 22 minutes. Court Reporter: Lee-Anne Shortridge.</p> <p>Attorneys for Plaintiffs National Urban League; League of Women Voters; Black Alliance for Just Immigration; Harris County, Texas; King County, Washington; City of</p>

		<p>San Jose, California; Rodney Ellis; and Adrian Garcia: Melissa Sherry, Richard Bress, Ezra Rosenberg, Thomas Wolf, Ajay Saini, and Kelly Percival. Attorney for Plaintiff City of Los Angeles, California: Danielle Goldstein. Attorney for Plaintiff City of Salinas, California: Michael Mutalipassi. Attorneys for Defendants: Daniel Mauler and Brad Rosenberg.</p> <p>For transcript orders, please visit https://cand.uscourts.gov/transcripts</p> <p><i>(This is a text-only entry generated by the court. There is no document associated with this entry.)</i> (kedS, COURT STAFF) (Date Filed: 8/26/2020) (Entered: 08/27/2020)</p>
08/27/2020	47	TRANSCRIPT ORDER for proceedings held on 8/26/2020 before Judge Lucy H. Koh by Steven Dillingham, Wilbur L. Ross, U.S. Census Bureau, U.S. Department of Commerce, for Court Reporter Lee-Anne Shortridge. (Mauler, Daniel) (Filed on 8/27/2020) (Entered: 08/27/2020)
08/31/2020	49	NOTICE of Appearance by Julian Wolfe Kleinbrodt (Kleinbrodt, Julian) (Filed on 8/31/2020) (Entered: 08/31/2020)
08/31/2020	50	Brief re 36 MOTION to Stay <i>and</i> MOTION for Preliminary Injunction of <i>Amicus Curiae 12 Businesses and Business Organizations</i> filed by Cummins Inc., General Assembly Space, Inc., Knotel, Inc., Levi Strauss & Co., LivHOME, Inc., Lush Cosmetics LLC, Mara Hoffman Inc., Minneapolis Regional Chamber of Commerce, Postmates Inc., Univision Communications Inc., Workplace Options, LLC, Zendesk Inc.. (Related document(s) 36) (Kleinbrodt, Julian) (Filed on 8/31/2020) (Entered: 08/31/2020)
08/31/2020	51	MOTION for leave to appear in Pro Hac Vice (Filing fee \$ 310, receipt number 0971-14882496.) filed by Cummins Inc., General Assembly Space, Inc., Knotel, Inc., Levi Strauss & Co., LivHOME, Inc., Lush Cosmetics LLC, Mara Hoffman Inc., Minneapolis Regional Chamber of Commerce, Postmates Inc., Univision Communications Inc., Workplace Options, LLC, Zendesk Inc.. (Attachments: # 1 Exhibit Certificate of Good Standing)(Southwell, Alexander) (Filed on 8/31/2020) (Entered: 08/31/2020)
08/31/2020	52	Order by Judge Lucy H. Koh granting 51 Motion for Pro Hac Vice. (lhklc3, COURT STAFF) (Filed on 8/31/2020) (Entered: 08/31/2020)
08/31/2020	53	NOTICE of Appearance by Raphael N. Rajendra <i>on behalf of the County of Santa Clara, California and 19 Additional Local Governments and Officials</i> (Rajendra, Raphael) (Filed on 8/31/2020) (Entered: 08/31/2020)
08/31/2020	54	Brief of <i>Amici Curiae County of Santa Clara and 19 Additional Local Governments and Officials in Support of Plaintiffs' Motion for Preliminary Injunction</i> filed by County of Santa Clara. (Rajendra, Raphael) (Filed on 8/31/2020) (Entered: 08/31/2020)
08/31/2020	55	NOTICE of Appearance by Gavin Geraghty McCabe (McCabe, Gavin) (Filed on 8/31/2020) (Entered: 08/31/2020)
08/31/2020	56	Amicus Curiae APPEARANCE entered by Gavin Geraghty McCabe on behalf of State of New York. (McCabe, Gavin) (Filed on 8/31/2020) (Entered: 08/31/2020)
08/31/2020	57	Brief re 36 MOTION to Stay <i>and</i> MOTION for Preliminary Injunction <i>Amicus Brief in Support of Plaintiffs' Motion to Stay and for Preliminary Injunction on behalf of coalition of 32 States, Counties, Cities and U.S. Conference of Mayors</i> filed by State of New York. (Related document(s) 36) (McCabe, Gavin) (Filed on 8/31/2020) (Entered: 08/31/2020)
08/31/2020	58	Brief re 57 Brief, <i>Corrected version of Amicus Brief in Support of Plaintiffs' Motion to Stay and for Preliminary Injunction on behalf of coalition of 32 States, Counties, Cities</i>

		<i>and U.S. Conference of Mayors</i> filed by State of New York. (Related document(s) 57) (McCabe, Gavin) (Filed on 8/31/2020) (Entered: 08/31/2020)
09/01/2020	59	TRANSCRIPT ORDER for proceedings held on 08/26/2020 before Judge Lucy H. Koh by Black Alliance For Just Immigration, City of San Jose, California, Rodney Ellis, Adrian Garcia, Harris County, Texas, King County, Washington, League of Women Voters, National Urban League, for Court Reporter Lee-Anne Shortridge. (Lankenau, Shannon) (Filed on 9/1/2020) (Entered: 09/01/2020)
09/01/2020	60	STIPULATION <i>Regarding Plaintiffs' First Amended Complaint</i> filed by Black Alliance For Just Immigration, City of Los Angeles, California, City of Salinas, California, City of San Jose, California, Rodney Ellis, Adrian Garcia, Harris County, Texas, King County, Washington, League of Women Voters, National Urban League. (Huseny, Sadik) (Filed on 9/1/2020) (Entered: 09/01/2020)
09/01/2020	61	AMENDED COMPLAINT against Steven Dillingham, Wilbur L. Ross, U.S. Census Bureau, U.S. Department of Commerce. Filed by City of Salinas, California, League of Women Voters, National Urban League, Adrian Garcia, City of Los Angeles, California, Black Alliance For Just Immigration, Rodney Ellis, City of San Jose, California, Harris County, Texas, King County, Washington, Navajo Nation, The National Association for the Advancement of Colored People, City of Chicago, Illinois, County of Los Angeles, California, Gila River Indian Community. (Huseny, Sadik) (Filed on 9/1/2020) (Entered: 09/01/2020)
09/02/2020	62	NOTICE of Appearance by David Ilan Holtzman <i>on Behalf of the County of Los Angeles</i> (Holtzman, David) (Filed on 9/2/2020) (Entered: 09/02/2020)
09/02/2020	63	STATUS REPORT (<i>Defendants' Statement on Status of Field Operations</i>) by Steven Dillingham, Wilbur L. Ross, U.S. Census Bureau, U.S. Department of Commerce. (Mauler, Daniel) (Filed on 9/2/2020) (Entered: 09/02/2020)
09/03/2020	64	MOTION for leave to appear in Pro Hac Vice (Filing fee \$ 310, receipt number 0971-14896569.) filed by Gila River Indian Community. (Attachments: # 1 Exhibit Certificate of Good Standing)(Pongrace, Donald) (Filed on 9/3/2020) (Entered: 09/03/2020)
09/03/2020	65	Transcript of Proceedings held on 8-26-20, before Judge Lucy H. Koh. Court Reporter Lee-Anne Shortridge, telephone number e-mail: lee-anne_shortridge@cand.uscourts.gov. Per General Order No. 59 and Judicial Conference policy, this transcript may be viewed only at the Clerk's Office public terminal or may be purchased through the Court Reporter until the deadline for the Release of Transcript Restriction. After that date it may be obtained through PACER. Any Notice of Intent to Request Redaction, if required, is due no later than 5 business days from date of this filing. (Re 47 Transcript Order) Release of Transcript Restriction set for 12/2/2020. (Related documents(s) 47) (lasS, COURT STAFF) (Filed on 9/3/2020) (Entered: 09/03/2020)
09/03/2020	66	MOTION for Temporary Restraining Order filed by Black Alliance For Just Immigration, City of Chicago, Illinois, City of Los Angeles, California, City of Salinas, California, City of San Jose, California, County of Los Angeles, California, Rodney Ellis, Adrian Garcia, Gila River Indian Community, Harris County, Texas, King County, Washington, League of Women Voters, National Urban League, Navajo Nation, The National Association for the Advancement of Colored People. (Attachments: # 1 Proposed Order, # 2 Declaration of Amit Makker, # 3 Exhibits A-D to Makker Decl., # 4 Copy of First Amended Complaint [Dkt. 61], # 5 Copy of Motion for Stay and Preliminary Injunction and Expert and Fact Decl. [Dkt. 36], # 6 Copy of Huseny Decl. in support of Mot. for Stay and PI [Dkt. 37])(Sherry, Melissa) (Filed on 9/3/2020) (Entered: 09/03/2020)
09/04/2020	67	NOTICE by Steven Dillingham, Wilbur L. Ross, U.S. Census Bureau, U.S. Department

		of Commerce re 66 MOTION for Temporary Restraining Order (<i>Defendants' Notice of Intent to Respond Today to Plaintiffs' Motion for TRO</i>) (Mauler, Daniel) (Filed on 9/4/2020) (Entered: 09/04/2020)
09/04/2020	68	Order re: Communications with the Court. Signed by Judge Lucy H. Koh on 9/4/2020. (lhklc3, COURT STAFF) (Filed on 9/4/2020) (Entered: 09/04/2020)
09/04/2020	69	<p>**CLERK'S NOTICE SETTING HEARING ON 66 MOTION FOR TEMPORARY RESTRAINING ORDER**</p> <p>Pursuant to this notice, a hearing on 66 MOTION for Temporary Restraining Order is SET for today, September 4, 2020, at 3:00 PM before Judge Lucy H. Koh. This proceeding will be held via a Zoom webinar.</p> <p>Webinar Access: All counsel, members of the public, and media may access the webinar information at http s://www.cand.uscourts.gov/lhk</p> <p>General Order 58. Persons granted access to court proceedings held by telephone or videoconference are reminded that photographing, recording, and rebroadcasting of court proceedings, including screenshots or other visual copying of a hearing, is absolutely prohibited.</p> <p>Zoom Guidance and Setup: https://www.cand.uscourts.gov/zoom/.</p> <p>(<i>This is a text-only entry g enerated by the court. There is no document associated with this entry.</i>) (kedS, COURT STAFF) (Filed on 9/4/2020) (Entered: 09/04/2020)</p>
09/04/2020	70	NOTICE of Appearance by Alexander Sverdlov <i>for all Defendants</i> (Sverdlov, Alexander) (Filed on 9/4/2020) (Entered: 09/04/2020)
09/04/2020	71	NOTICE of Appearance by Lily E. Hough <i>on behalf of Plaintiff City of Chicago</i> (Hough, Lily) (Filed on 9/4/2020) (Entered: 09/04/2020)
09/04/2020	72	NOTICE of Appearance by Rafey Sarkis Balabanian <i>on behalf of Plaintiff City of Chicago</i> (Balabanian, Rafey) (Filed on 9/4/2020) (Entered: 09/04/2020)
09/04/2020	73	NOTICE of Appearance by Michael Andrew Zee (Zee, Michael) (Filed on 9/4/2020) (Entered: 09/04/2020)
09/04/2020	74	OPPOSITION/RESPONSE (re 66 MOTION for Temporary Restraining Order) filed byU.S. Department of Commerce. (Sverdlov, Alexander) (Filed on 9/4/2020) (Entered: 09/04/2020)
09/04/2020	75	<p>Minute Entry for proceedings held before Judge Lucy H. Koh: Hearing on 66 MOTION for Temporary Restraining Order held on 9/4/2020 via Zoom Videoconference.</p> <p>The Court SET a Case Management Conference on Tuesday, September 8, 2020 at 10:00 AM. The Further Case Management Conference will be held via Zoom Videoconference; details will be included in a Clerk's Notice on the docket.</p> <p>Total Time in Court: 51 minutes. Court Reporter: Summer Fisher.</p> <p>Attorneys for Plaintiffs National Urban League; League of Women Voters; Black Alliance for Just Immigration; Harris County, Texas; King County, Washington; City of San Jose, California; Rodney Ellis; and Adrian Garcia: Melissa Sherry, Richard Bress,</p>

		<p>Ezra Rosenberg, Thomas Wolf, Steven Bauer, and Sadik Huseny. Attorney for Plaintiff City of Los Angeles, California: Danielle Goldstein. Attorney for Plaintiff City of Salinas, California: Michael Mutalipassi. Attorney for Plaintiff City of Chicago, Illinois: Lily Hough. Attorney for Plaintiff Gila River Indian Community: Donald Pongrace. Attorneys for Defendants: Alexander Sverdlov and Andrew Zee.</p> <p>For transcript orders, please visit https://cand.uscourts.gov/transcripts <i>(This is a text-only entry generated by the court. There is no document associated with this entry.)</i> (kedS, COURT STAFF) (Date Filed: 9/4/2020) (Entered: 09/04/2020)</p>
09/04/2020	76	<p>NOTICE of Appearance by Michael David Mutalipassi <i>for plaintiff City of Salinas</i> (Mutalipassi, Michael) (Filed on 9/4/2020) (Entered: 09/04/2020)</p>
09/04/2020	77	<p>**CLERK'S NOTICE SETTING ZOOM CASE MANAGEMENT CONFERENCE**</p> <p>During the September 4, 2020 hearing on Plaintiffs' motion for temporary restraining order, the Court set a Further Case Management Conference for Tuesday, September 8, 2020 at 10:00 AM in San Jose, Courtroom 8, 4th Floor. This proceeding will be held via a Zoom webinar.</p> <p>Webinar Access: All counsel, members of the public, and media may access the webinar information at https://www.cand.uscourts.gov/lhk</p> <p>General Order 58. Persons granted access to court proceedings held by telephone or videoconference are reminded that photographing, recording, and rebroadcasting of court proceedings, including screenshots or other visual copying of a hearing, is absolutely prohibited.</p> <p>Zoom Guidance and Setup: https://www.cand.uscourts.gov/zoom/.< /p> <i>(This is a text-only entry generated by the court. There is no document associated with this entry.)</i> (kedS, COURT STAFF) (Filed on 9/4/2020) (Entered: 09/04/2020)</p>
09/04/2020	78	<p>TRANSCRIPT ORDER for proceedings held on 09/04/2020 before Judge Lucy H. Koh by Black Alliance For Just Immigration, City of San Jose, California, Rodney Ellis, Adrian Garcia, Harris County, Texas, King County, Washington, League of Women Voters, National Urban League, The National Association for the Advancement of Colored People, for Court Reporter Summer Fisher. (Makker, Amit) (Filed on 9/4/2020) (Entered: 09/04/2020)</p>
09/04/2020	79	<p>TRANSCRIPT ORDER for proceedings held on 9/4/2020 before Judge Lucy H. Koh by Steven Dillingham, Wilbur L. Ross, U.S. Census Bureau, U.S. Department of Commerce, for Court Reporter Summer Fisher. (Mauler, Daniel) (Filed on 9/4/2020) (Entered: 09/04/2020)</p>
09/04/2020	80	<p>Order re: Reply. Signed by Judge Lucy H. Koh on 9/4/2020. (lhklc3, COURT STAFF) (Filed on 9/4/2020) (Entered: 09/04/2020)</p>
09/04/2020	81	<p>OPPOSITION/RESPONSE (re 36 MOTION to Stay <i>and</i> MOTION for Preliminary Injunction) filed by Steven Dillingham, Wilbur L. Ross, U.S. Census Bureau, U.S. Department of Commerce. (Attachments: # 1 Declaration of Albert E. Fontenot, Jr.)(Zee, Michael) (Filed on 9/4/2020) (Entered: 09/04/2020)</p>
09/05/2020	82	<p>Transcript of Proceedings held on 09/04/2020, before Judge Lucy H. Koh. Court Reporter/Transcriber Summer Fisher, telephone number summer_fisher@cand.uscourts.gov. Per General Order No. 59 and Judicial Conference</p>

		policy, this transcript may be viewed only at the Clerk's Office public terminal or may be purchased through the Court Reporter/Transcriber until the deadline for the Release of Transcript Restriction. After that date it may be obtained through PACER. Any Notice of Intent to Request Redaction, if required, is due no later than 5 business days from date of this filing. (Re 78 Transcript Order,) Redaction Request due 9/28/2020. Redacted Transcript Deadline set for 10/6/2020. Release of Transcript Restriction set for 12/4/2020. (Related documents(s) 78) (Fisher, Summer) (Filed on 9/5/2020) (Entered: 09/05/2020)
09/05/2020	83	REPLY (re 66 MOTION for Temporary Restraining Order) filed byBlack Alliance For Just Immigration, City of San Jose, California, Rodney Ellis, Adrian Garcia, Harris County, Texas, King County, Washington, League of Women Voters, National Urban League, The National Association for the Advancement of Colored People. (Huseney, Sadik) (Filed on 9/5/2020) (Entered: 09/05/2020)
09/05/2020	84	Order by Judge Lucy H. Koh granting 66 Motion for Temporary Restraining Order. (lhklc3, COURT STAFF) (Filed on 9/5/2020) (Entered: 09/05/2020)
09/06/2020	85	Order by Judge Lucy H. Koh granting 64 Motion for Pro Hac Vice. (lhklc3, COURT STAFF) (Filed on 9/6/2020) (Entered: 09/06/2020)
09/08/2020	86	NOTICE by U.S. Department of Commerce re 84 Order on Motion for TRO <i>Defendants' Notice Regarding Compliance</i> (Sverdlov, Alexander) (Filed on 9/8/2020) (Entered: 09/08/2020)
09/08/2020	87	TRANSCRIPT ORDER for proceedings held on 9/8/2020 before Judge Lucy H. Koh by Black Alliance For Just Immigration, City of San Jose, California, Rodney Ellis, Adrian Garcia, Harris County, Texas, King County, Washington, League of Women Voters, National Urban League, The National Association for the Advancement of Colored People, for Court Reporter Ana Dub. (Makker, Amit) (Filed on 9/8/2020) (Entered: 09/08/2020)
09/08/2020	88	Brief <i>in Response to Court's Request at Conference</i> filed byU.S. Department of Commerce. (Attachments: # 1 Declaration of Brian DiGiacomo)(Sverdlov, Alexander) (Filed on 9/8/2020) (Entered: 09/08/2020)
09/08/2020	89	Brief <i>Plaintiffs Submission Regarding Administrative Record</i> filed byBlack Alliance For Just Immigration, City of Chicago, Illinois, City of San Jose, California, County of Los Angeles, California, Rodney Ellis, Adrian Garcia, Gila River Indian Community, Harris County, Texas, King County, Washington, National Urban League, Navajo Nation, The National Association for the Advancement of Colored People. (Huseney, Sadik) (Filed on 9/8/2020) (Entered: 09/08/2020)
09/08/2020	90	TRANSCRIPT ORDER for proceedings held on 9/8/2020 before Judge Lucy H. Koh by U.S. Department of Commerce, for Court Reporter Ana Dub. (Sverdlov, Alexander) (Filed on 9/8/2020) (Entered: 09/08/2020)
09/08/2020	91	Order to Respond to Defendants' Objections as to the Scope of the Administrative Record. Signed by Judge Lucy H. Koh on 9/8/2020. (lhklc3S, COURT STAFF) (Filed on 9/8/2020) (Entered: 09/08/2020)
09/08/2020	94	Minute Entry for proceedings held before Judge Lucy H. Koh: Further Case Management Conference held on 9/8/2020 from 10:03 AM - 10:14 AM; 10:18 AM - 11:13 AM; 11:30 AM - 12:00 PM (1 hour, 36 minutes). Total Time in Court: 1 hour, 36 minutes. Court Reporter: Ana Dub.

		<p>For Plaintiffs National Urban League; League of Women Voters; Black Alliance for Just Immigration; Harris County, TX; King County, Washington; City of San Jose, California; Rodney Ellis; Adrian Garcia; and NAACP: Melissa Sherry, Richard Bress, Steven Bauer, Ezra Rosenberg, Ajay Saini, Thomas Wolf, and Sadik Huseny.</p> <p>For Plaintiff Navajo Nation: Ezra Rosenberg and Thomas Wolf.</p> <p>For Plaintiff City of Los Angeles: Michael Dundas.</p> <p>For Plaintiff County of Los Angeles: David Holtzman.</p> <p>For Plaintiff City of Salinas: Michael Mutalipassi.</p> <p>For Plaintiff City of Chicago: Lily Hough.</p> <p>For Plaintiff Gila River Indian Community: Donald Pongrace.</p> <p>For Defendants: Alexander Sverdlov and Brad Rosenberg.</p> <p>For transcript orders, please visit https://cand.uscourts.gov/transcripts</p> <p><i>(This is a text-only entry generated by the court. There is no document associated with this entry.)</i> (kedS, COURT STAFF) (Date Filed: 9/8/2020) Modified on 9/9/2020 (kedS, COURT STAFF). (Entered: 09/09/2020)</p>
09/09/2020	92	<p>Statement re 88 Brief, 91 Order (<i>Plaintiffs' Submission Regarding Scope of Administrative Record</i>) by Black Alliance For Just Immigration, City of Chicago, Illinois, City of Los Angeles, California, City of Salinas, California, City of San Jose, California, County of Los Angeles, California, Rodney Ellis, Adrian Garcia, Gila River Indian Community, Harris County, Texas, King County, Washington, League of Women Voters, National Urban League, Navajo Nation, The National Association for the Advancement of Colored People. (Huseny, Sadik) (Filed on 9/9/2020) (Entered: 09/09/2020)</p>
09/09/2020	93	<p>Order re: Communications with the Court. Signed by Judge Lucy H. Koh on 9/9/2020. (lhklc3, COURT STAFF) (Filed on 9/9/2020) (Entered: 09/09/2020)</p>
09/09/2020	95	<p>MOTION for leave to appear in Pro Hac Vice <i>for Rebecca Hirsch</i> (Filing fee \$ 310, receipt number 0971-14921210.) filed by City of Chicago, Illinois. (Attachments: # 1 Certificate of Good Standing)(Hirsch, Rebecca) (Filed on 9/9/2020) (Entered: 09/09/2020)</p>
09/10/2020	96	<p>Order to Produce the Administrative Record. Signed by Judge Lucy H. Koh on 9/10/2020. (lhklc3S, COURT STAFF) (Filed on 9/10/2020) (Entered: 09/10/2020)</p>
09/10/2020	97	<p>CLERK'S NOTICE REGARDING SEPTEMBER 14, 2020 CASE MANAGEMENT CONFERENCE. The Further Case Management Conference remains as set on Monday, September 14, 2020 at 2:00 PM before Judge Lucy H. Koh. This proceeding will be held via a Zoom webinar.</p> <p>Webinar Access: All counsel, members of the public, and media may access the webinar information at https://www.cand.uscourts.gov/lhk</p> <p>Court Appearances: A dvanced notice is required of counsel or parties who wish to be identified by the court as making an appearance or will be participating in the argument at the hearing. A list of names and emails must be sent to the CRD at lhkcrd@cand.uscourts.gov no later than September 11, 2020 at 3:00 PM PST.</p> <p>General Order 58. Persons granted access to court proceedings held by telephone or videoconference are reminded that photographing, recording, and rebroadcasting of court proceedings, including screenshots or other visual copying of a hearing, is absolutely prohibited.</p> <p>Zoom Guidance and Setup: https://www.cand.uscourts.gov/zoom/.</p>

		(This is a text-only entry generated by the court. There is no document associated with this entry.) (kedS, COURT STAFF) (Filed on 9/10/2020) (Entered: 09/10/2020)
09/11/2020	98	Transcript of Zoom Videoconference Proceedings held on 9/8/2020, before Judge Lucy H. Koh. Court Reporter Ana M. Dub, CSR 7445, RDR, CRR, telephone number 415-290-1651; ana_dub@cand.uscourts.gov. Per General Order No. 59 and Judicial Conference policy, this transcript may be viewed only at the Clerk's Office public terminal or may be purchased through the Court Reporter until the deadline for the Release of Transcript Restriction. After that date, it may be obtained through PACER. Any Notice of Intent to Request Redaction, if required, is due no later than 5 business days from date of this filing. (Re 90 Transcript Order, 87 Transcript Order,) Release of Transcript Restriction set for 12/10/2020. (Related documents(s) 90 , 87) (amdS, COURT STAFF) (Filed on 9/11/2020) (Entered: 09/11/2020)
09/11/2020	99	JOINT CASE MANAGEMENT STATEMENT filed by Black Alliance For Just Immigration, City of Chicago, Illinois, City of Los Angeles, California, City of Salinas, California, City of San Jose, California, County of Los Angeles, California, Rodney Ellis, Adrian Garcia, Gila River Indian Community, Harris County, Texas, King County, Washington, League of Women Voters, National Urban League, Navajo Nation, The National Association for the Advancement of Colored People. (Huseny, Sadik) (Filed on 9/11/2020) (Entered: 09/11/2020)
09/12/2020	100	Order re: Communications with the Court. Signed by Judge Lucy H. Koh on 9/12/2020. (lhklc3, COURT STAFF) (Filed on 9/12/2020) (Entered: 09/12/2020)
09/12/2020	101	Order re: Briefing and Deadline for Production. Signed by Judge Lucy H. Koh on 9/12/2020. (lhklc3, COURT STAFF) (Filed on 9/12/2020) (Entered: 09/12/2020)
09/12/2020	102	NOTICE of Appearance by Donald R Pongrace (Pongrace, Donald) (Filed on 9/12/2020) (Entered: 09/12/2020)
09/12/2020	103	Order to Identify Key Documents in the Administrative Record. Signed by Judge Lucy H. Koh on 9/12/2020. (lhklc3, COURT STAFF) (Filed on 9/12/2020) (Entered: 09/12/2020)
09/13/2020	104	NOTICE by U.S. Department of Commerce re 96 Order <i>Notice of Filing Documents</i> (Attachments: # 1 Declaration of Brian D. DiGiacomo)(Sverdlov, Alexander) (Filed on 9/13/2020) (Entered: 09/13/2020)
09/13/2020	105	EXHIBITS re 104 Notice (Other) <i>Documents Produced in Response to the Court's September 10, 2020 Order</i> filed by U.S. Department of Commerce. (Attachments: # 1 Exhibit Part 2, # 2 Exhibit Part 3, # 3 Exhibit Part 4)(Related document(s) 104) (Sverdlov, Alexander) (Filed on 9/13/2020) (Entered: 09/13/2020)
09/13/2020	106	NOTICE by U.S. Department of Commerce re 105 Exhibits, 104 Notice (Other) <i>Notice of Corrected Index and Privilege Log</i> (Sverdlov, Alexander) (Filed on 9/13/2020) (Entered: 09/13/2020)
09/14/2020	107	RESPONSE re 100 Order by U.S. Department of Commerce. (Sverdlov, Alexander) (Filed on 9/14/2020) (Entered: 09/14/2020)
09/14/2020	108	RESPONSE re 100 Order <i>Plaintiffs Response to Courts Order Re: Communications with Court</i> by Black Alliance For Just Immigration, City of Chicago, Illinois, City of Los Angeles, California, City of Salinas, California, City of San Jose, California, County of Los Angeles, California, Rodney Ellis, Adrian Garcia, Gila River Indian Community, Harris County, Texas, King County, Washington, League of Women Voters, National Urban League, Navajo Nation, The National Association for the Advancement of Colored People. (Huseny, Sadik) (Filed on 9/14/2020) (Entered: 09/14/2020)

09/14/2020	109	RESPONSE re 101 Order by U.S. Department of Commerce. (Sverdlov, Alexander) (Filed on 9/14/2020) (Entered: 09/14/2020)
09/14/2020	110	RESPONSE re 103 Order by U.S. Department of Commerce. (Sverdlov, Alexander) (Filed on 9/14/2020) (Entered: 09/14/2020)
09/14/2020	111	RESPONSE re 101 Order <i>Plaintiffs' Response re: Briefing and Deadline Production</i> by Black Alliance For Just Immigration, City of Chicago, Illinois, City of Los Angeles, California, City of Salinas, California, City of San Jose, California, County of Los Angeles, California, Rodney Ellis, Adrian Garcia, Gila River Indian Community, Harris County, Texas, King County, Washington, League of Women Voters, National Urban League, Navajo Nation, The National Association for the Advancement of Colored People. (Attachments: # 1 Declaration of Anne W. Robinson, # 2 Annex A)(Robinson, Anne) (Filed on 9/14/2020) (Entered: 09/14/2020)
09/14/2020	112	Order re: Communications with the Court. Signed by Judge Lucy H. Koh on 9/14/2020. (lhklc3, COURT STAFF) (Filed on 9/14/2020) (Entered: 09/14/2020)
09/14/2020	113	Order re: Allegations of Potential Non-Compliance with Court's Temporary Restraining Order. Signed by Judge Lucy H. Koh on 9/14/2020. (lhklc3, COURT STAFF) (Filed on 9/14/2020) (Entered: 09/14/2020)
09/14/2020	114	RESPONSE re 103 Order <i>Plaintiffs' Response to Order to Identify Key Documents in Administrative Record</i> by Black Alliance For Just Immigration, City of Chicago, Illinois, City of Los Angeles, California, City of Salinas, California, City of San Jose, California, County of Los Angeles, California, Rodney Ellis, Adrian Garcia, Gila River Indian Community, Harris County, Texas, King County, Washington, League of Women Voters, National Urban League, Navajo Nation, The National Association for the Advancement of Colored People. (Huseny, Sadik) (Filed on 9/14/2020) (Entered: 09/14/2020)
09/14/2020	115	CLERK'S NOTICE SETTING ZOOM HEARING. Pursuant to 113 Order re: Allegations of Potential Non-Compliance with Court's Temporary Restraining Order, a hearing is SET for Tuesday, September 15, 2020 at 2:00 PM. This proceeding will be held via a Zoom webinar. Webinar Access: All counsel, members of the public, and media may access the webinar information at https://www.cand.uscourts.gov/lhk General Order 58. Persons granted access to court proceedings held by telephone or videoconference are reminded that photographing, recording, and rebroadcasting of court proceedings, including screenshots or other visual copying of a hearing, is absolutely prohibited. Zoom Guidance and Setup: https://www.cand.uscourts.gov/zoom/ . <i>(This is a text-only entry generated by the court. There is no document associated with this entry.)</i> (kedS, COURT STAFF) (Filed on 9/14/2020) (Entered: 09/14/2020)
09/14/2020	116	Order by Judge Lucy H. Koh granting 95 Motion for Pro Hac Vice. (lhklc3, COURT STAFF) (Filed on 9/14/2020) (Entered: 09/14/2020)
09/14/2020	117	NOTICE of Appearance by Rebecca Hirsch <i>on behalf of Plaintiff City of Chicago</i> (Hirsch, Rebecca) (Filed on 9/14/2020) (Entered: 09/14/2020)
09/14/2020	118	Minute Entry for proceedings held before Judge Lucy H. Koh: Further Case Management Conference held on 9/14/2020 from 2:09 PM - 3:44 PM; 4:30 PM - 5:02 PM (2 hours, 5 minutes).

		<p>Total Time in Court: 2 hours, 5 minutes. Court Reporter: Lee-Anne Shortridge.</p> <p>For Plaintiffs National Urban League; League of Women Voters; Black Alliance for Just Immigration; Harris County, TX; King County, Washington; City of San Jose, California; Rodney Ellis; Adrian Garcia; and NAACP: Melissa Sherry, Richard Bress, Steven Bauer, and Sadik Huseny. For Plaintiffs National Urban League; League of Women Voters; Black Alliance for Just Immigration; Harris County, TX; King County, Washington; City of San Jose, California; Rodney Ellis; Adrian Garcia; NAACP; and Navajo Nation: Ezra Rosenberg and Thomas Wolf.</p> <p>For Plaintiff City of Los Angeles: Michael Dundas. For Plaintiff County of Los Angeles: David Holtzman. For Plaintiff City of Salinas: Michael Mutalipassi. For Plaintiff City of Chicago: Lily Hough and Rebecca Hirsch. For Plaintiff Gila River Indian Community: Donald Pongrace. For Defendants: Alexander Sverdlov and Brad Rosenberg.</p> <p>For transcript orders, please visit https://cand.uscourts.gov/transcripts</p> <p><i>(This is a text-only entry generated by the court. There is no document associated with this entry.)</i> (kedS, COURT STAFF) (Date Filed: 9/14/2020) Modified on 9/16/2020 (kedS, COURT STAFF). (Entered: 09/14/2020)</p>
09/14/2020	119	Order re: Production of Inspector General Document Production. Signed by Judge Lucy H. Koh on 9/14/2020. (lhklc3, COURT STAFF) (Filed on 9/14/2020) (Entered: 09/14/2020)
09/14/2020	120	TRANSCRIPT ORDER for proceedings held on 09/14/2020 before Judge Lucy H. Koh by Black Alliance For Just Immigration, City of San Jose, California, Rodney Ellis, Adrian Garcia, Harris County, Texas, King County, Washington, League of Women Voters, National Urban League, The National Association for the Advancement of Colored People, for Court Reporter Lee-Anne Shortridge. (Makker, Amit) (Filed on 9/14/2020) (Entered: 09/14/2020)
09/14/2020	121	Statement <i>Plaintiffs' Listing of Plaintiffs and Corresponding Representation</i> by Black Alliance For Just Immigration, City of Chicago, Illinois, City of Los Angeles, California, City of Salinas, California, City of San Jose, California, County of Los Angeles, California, Rodney Ellis, Adrian Garcia, Gila River Indian Community, Harris County, Texas, King County, Washington, League of Women Voters, National Urban League, Navajo Nation, The National Association for the Advancement of Colored People. (Huseny, Sadik) (Filed on 9/14/2020) (Entered: 09/14/2020)
09/14/2020	122	RESPONSE re 119 Order by U.S. Department of Commerce. (Sverdlov, Alexander) (Filed on 9/14/2020) (Entered: 09/14/2020)
09/14/2020	123	Plaintiffs' Submission Regarding Production of OIG Documents by Black Alliance For Just Immigration, City of Chicago, Illinois, City of San Jose, California, Rodney Ellis, Adrian Garcia, Harris County, Texas, King County, Washington, League of Women Voters, National Urban League, Navajo Nation, The National Association for the Advancement of Colored People. (Huseny, Sadik) (Filed on 9/14/2020) Modified text on 9/15/2020 (dhmS, COURT STAFF). (Entered: 09/14/2020)
09/15/2020	124	Plaintiffs' Submission Regarding Production of OIG Documents [Corrected Docket Text] by Black Alliance For Just Immigration, City of Chicago, Illinois, City of San Jose, California, Rodney Ellis, Adrian Garcia, Harris County, Texas, King County,

		Washington, League of Women Voters, National Urban League, Navajo Nation, The National Association for the Advancement of Colored People. (Huseny, Sadik) (Filed on 9/15/2020) Modified on 9/15/2020 (dhmS, COURT STAFF). (Entered: 09/15/2020)
09/15/2020	125	TRANSCRIPT ORDER for proceedings held on 9/14/2020 before Judge Lucy H. Koh by U.S. Department of Commerce, for Court Reporter Lee-Anne Shortridge. (Sverdlov, Alexander) (Filed on 9/15/2020) (Entered: 09/15/2020)
09/15/2020	126	Transcript of Proceedings held on 9-14-20, before Judge Lucy H. Koh. Court Reporter Lee-Anne Shortridge, telephone number e-mail: lee-anne_shortridge@cand.uscourts.gov. Per General Order No. 59 and Judicial Conference policy, this transcript may be viewed only at the Clerk's Office public terminal or may be purchased through the Court Reporter until the deadline for the Release of Transcript Restriction. After that date it may be obtained through PACER. Any Notice of Intent to Request Redaction, if required, is due no later than 5 business days from date of this filing. (Re 120 Transcript Order,) Release of Transcript Restriction set for 12/14/2020. (Related documents(s) 120) (lasS, COURT STAFF) (Filed on 9/15/2020) (Entered: 09/15/2020)
09/15/2020	127	RESPONSE re 113 Order by U.S. Department of Commerce. (Attachments: # 1 Declaration of James T. Christy)(Sverdlov, Alexander) (Filed on 9/15/2020) (Entered: 09/15/2020)
09/15/2020	128	Order re: Document Production. Signed by Judge Lucy H. Koh on 9/15/2020. (lhklc3, COURT STAFF) (Filed on 9/15/2020) (Entered: 09/15/2020)
09/15/2020	129	Statement (<i>Plaintiffs' Statement Regarding Case Management Issues</i>) by Black Alliance For Just Immigration, City of Chicago, Illinois, City of Los Angeles, California, City of Salinas, California, City of San Jose, California, County of Los Angeles, California, Rodney Ellis, Adrian Garcia, Gila River Indian Community, Harris County, Texas, King County, Washington, League of Women Voters, National Urban League, Navajo Nation, The National Association for the Advancement of Colored People. (Sherry, Melissa) (Filed on 9/15/2020) (Entered: 09/15/2020)
09/15/2020	130	REPLY (re 36 MOTION to Stay <i>and</i> MOTION for Preliminary Injunction) filed by Black Alliance For Just Immigration, City of Chicago, Illinois, City of Los Angeles, California, City of Salinas, California, City of San Jose, California, County of Los Angeles, California, Rodney Ellis, Adrian Garcia, Gila River Indian Community, Harris County, Texas, King County, Washington, League of Women Voters, National Urban League, Navajo Nation, The National Association for the Advancement of Colored People. (Sherry, Melissa) (Filed on 9/15/2020) (Entered: 09/15/2020)
09/15/2020	131	Declaration of Sadik Huseny in Support of 130 Reply to Opposition/Response,, <i>re Plaintiffs' Motion for Stay and Preliminary Injunction</i> filed by Black Alliance For Just Immigration, City of Chicago, Illinois, City of Los Angeles, California, City of Salinas, California, City of San Jose, California, County of Los Angeles, California, Rodney Ellis, Adrian Garcia, Gila River Indian Community, Harris County, Texas, King County, Washington, League of Women Voters, National Urban League, Navajo Nation, The National Association for the Advancement of Colored People. (Attachments: # 1 Exhibit 16, # 2 Exhibit 17, # 3 Exhibit 18, # 4 Exhibit 19, # 5 Exhibit 20, # 6 Exhibit 21, # 7 Exhibit 22, # 8 Exhibit 23, # 9 Exhibit 23-B, # 10 Exhibit 24, # 11 Exhibit 25, # 12 Exhibit 26, # 13 Exhibit 27, # 14 Exhibit 28, # 15 Exhibit 29, # 16 Exhibit 30, # 17 Exhibit 31, # 18 Exhibit 32)(Related document(s) 130) (Huseny, Sadik) (Filed on 9/15/2020) (Entered: 09/15/2020)
09/15/2020	132	Order to Produce Inspector General Document Production. Signed by Judge Lucy H. Koh on 9/15/2020. (lhklc3, COURT STAFF) (Filed on 9/15/2020) (Entered: 09/15/2020)

09/15/2020	133	RESPONSE to the Court's Directive During September 15, 2020 Hearing by Steven Dillingham, Wilbur L. Ross, U.S. Census Bureau, U.S. Department of Commerce. (Attachments: # 1 Declaration of James T. Christy)(Zee, Michael) (Filed on 9/15/2020) (Entered: 09/15/2020)
09/15/2020	137	<p>Minute Entry for proceedings held before Judge Lucy H. Koh: Further Case Management Conference held on 9/15/2020 from 2:08 PM - 3:37 PM; 3:55 PM - 4:10 PM (1 hour, 45 minutes).</p> <p>The Court STAYED its September 10, 2020 Order to Produce the Administrative Record (ECF No. 96). The Court SET a Further Case Management Conference for Friday, September 18, 2020 at 10:00 AM. The Court also CONTINUED the hearing on Plaintiffs' 36 Motion for Stay and Preliminary Injunction from Thursday, September 17, 2020 to Tuesday, September 22, 2020 at 10:00 AM. Both the Further Case Management Conference and the Motion Hearing will be held via Zoom webinar. A Clerk's Notice will be issued before each hearing with the Zoom information; this Court's Zoom information can also be found anytime at cand.uscourts.gov/LHK and cand.uscourts.gov/zoom.</p> <p>Total Time in Court: 1 hour, 45 minutes. Court Reporter: Lee-Anne Shortridge.</p> <p>For Plaintiffs National Urban League; League of Women Voters; Black Alliance for Just Immigration; Harris County, TX; King County, Washington; City of San Jose, California; Rodney Ellis; Adrian Garcia; and NAACP: Melissa Sherry, Richard Bress, Steven Bauer, and Sadik Huseny. For Plaintiffs National Urban League; League of Women Voters; Black Alliance for Just Immigration; Harris County, TX; King County, Washington; City of San Jose, California; Rodney Ellis; Adrian Garcia; NAACP; and Navajo Nation: Ezra Rosenberg and Thomas Wolf. For Plaintiff City of Los Angeles: Michael Dundas. For Plaintiff County of Los Angeles: David Holtzman. For Plaintiff City of Salinas: Michael Mutalipassi. For Plaintiff City of Chicago: Rebecca Hirsch. For Plaintiff Gila River Indian Community: Donald Pongrace. For Defendants: Alexander Sverdlov and Brad Rosenberg.</p> <p>For transcript orders, please visit https://cand.uscourts.gov/transcripts</p> <p><i>(This is a text-only entry generated by the court. There is no document associated with this entry.)</i> (kedS, COURT STAFF) (Date Filed: 9/15/2020) (Entered: 09/16/2020)</p>
09/16/2020	134	TRANSCRIPT ORDER for proceedings held on 9/15/2020 before Judge Lucy H. Koh by U.S. Department of Commerce, for Court Reporter Lee-Anne Shortridge. (Sverdlov, Alexander) (Filed on 9/16/2020) (Entered: 09/16/2020)
09/16/2020	135	TRANSCRIPT ORDER for proceedings held on 09/15/2020 before Judge Lucy H. Koh by Black Alliance For Just Immigration, City of San Jose, California, Rodney Ellis, Adrian Garcia, Harris County, Texas, King County, Washington, League of Women Voters, National Urban League, The National Association for the Advancement of Colored People, for Court Reporter Lee-Anne Shortridge. (Lankenau, Shannon) (Filed on 9/16/2020) (Entered: 09/16/2020)
09/16/2020	136	NOTICE of Appearance by Pooja Chaudhuri (Chaudhuri, Pooja) (Filed on 9/16/2020) (Entered: 09/16/2020)
09/16/2020	138	TRANSCRIPT ORDER for proceedings held on 9/4/2020 before Judge Lucy H. Koh for

		Court Reporter Summer Fisher. (sp, COURT STAFF) (Filed on 9/16/2020) (Entered: 09/16/2020)
09/16/2020	139	First MOTION for leave to appear in Pro Hac Vice <i>Jason Searle</i> (Filing fee \$ 310, receipt number 0971-14949223.) filed by Navajo Nation. (Attachments: # 1 Certificate/Proof of Service NM Bar Certificate of Good Standing)(Searle, Jason) (Filed on 9/16/2020) (Entered: 09/16/2020)
09/16/2020	140	Order re: Privilege Disputes. Signed by Judge Lucy H. Koh on 9/16/2020. (lhklc3, COURT STAFF) (Filed on 9/16/2020) (Entered: 09/16/2020)
09/16/2020	141	Transcript of Proceedings held on 9-15-20, before Judge Lucy H. Koh. Court Reporter Lee-Anne Shortridge, telephone number e-mail: lee-anne_shortridge@cand.uscourts.gov. Per General Order No. 59 and Judicial Conference policy, this transcript may be viewed only at the Clerk's Office public terminal or may be purchased through the Court Reporter until the deadline for the Release of Transcript Restriction. After that date it may be obtained through PACER. Any Notice of Intent to Request Redaction, if required, is due no later than 5 business days from date of this filing. (Re 134 Transcript Order) Release of Transcript Restriction set for 12/15/2020. (Related documents(s) 134) (lasS, COURT STAFF) (Filed on 9/16/2020) (Entered: 09/16/2020)
09/17/2020	142	Order Extending Temporary Restraining Order for Defendants' Partial Production of the Administrative Record. Signed by Judge Lucy H. Koh on 9/17/2020. (lhklc3, COURT STAFF) (Filed on 9/17/2020) (Entered: 09/17/2020)
09/17/2020	143	JOINT CASE MANAGEMENT STATEMENT filed by Black Alliance For Just Immigration, City of Chicago, Illinois, City of Los Angeles, California, City of Salinas, California, City of San Jose, California, County of Los Angeles, California, Rodney Ellis, Adrian Garcia, Gila River Indian Community, Harris County, Texas, King County, Washington, League of Women Voters, National Urban League, Navajo Nation, The National Association for the Advancement of Colored People. (Huseny, Sadik) (Filed on 9/17/2020) (Entered: 09/17/2020)
09/17/2020	144	NOTICE of Appearance by Bradley A. Benbrook <i>as counsel for proposed intervenor, The State of Louisiana</i> (Attachments: # 1 Certificate/Proof of Service)(Benbrook, Bradley) (Filed on 9/17/2020) (Entered: 09/17/2020)
09/17/2020	145	MOTION for leave to appear in Pro Hac Vice (Filing fee \$ 310, receipt number 0971-14954912.) filed by The State of Louisiana. (Attachments: # 1 Certificate of Good Standing)(St. John, Joseph) (Filed on 9/17/2020) (Entered: 09/17/2020)
09/18/2020	146	NOTICE by The State of Louisiana <i>NOTICE OF INTENT TO INTERVENE AND REQUEST TO PARTICIPATE IN STATUS CONFERENCE</i> (Benbrook, Bradley) (Filed on 9/18/2020) (Entered: 09/18/2020)
09/18/2020	147	CLERK'S NOTICE CONFIRMING 9/18/2020 CASE MANAGEMENT CONFERENCE VIA ZOOM. The Further Case Management Conference remains as set on Friday, September 18, 2020 at 10:00 AM before Judge Lucy H. Koh. This proceeding will be held via a Zoom webinar. Webinar Access: All counsel, members of the public, and media may access the webinar information at https://www.cand.uscourts.gov/lhk General Order 58. Persons granted access to court proceedings held by telephone or videoconference are reminded that photographing, recording, and rebroadcasting of court proceedings, including screenshots or other visual copying of a hearing, is absolutely prohibited.

		<p>Zoom Guidance and Setup: https://www.cand.uscourts.gov/zoom/.</p> <p><i>(This is a text-only entry generated by the court. There is no document associated with this entry.)</i> (kedS, COURT STAFF) (Filed on 9/18/2020) (Entered: 09/18/2020)</p>
09/18/2020	148	<p>First MOTION for leave to appear in Pro Hac Vice (Filing fee \$ 310, receipt number 0971-14959122.) filed by Black Alliance For Just Immigration, City of San Jose, California, Rodney Ellis, Adrian Garcia, Harris County, Texas, King County, Washington, League of Women Voters, National Urban League, Navajo Nation, The National Association for the Advancement of Colored People. (Attachments: # 1 Certificate/Proof of Service Certificate of Good Standing)(Clarke, Kristen) (Filed on 9/18/2020) (Entered: 09/18/2020)</p>
09/18/2020	149	<p>PLAINTIFFS MEMORANDUM RE: PRIVILEGE DISPUTES re 140 Order , by Black Alliance For Just Immigration, City of Chicago, Illinois, City of Los Angeles, California, City of Salinas, California, City of San Jose, California, County of Los Angeles, California, Rodney Ellis, Adrian Garcia, Gila River Indian Community, Harris County, Texas, King County, Washington, League of Women Voters, National Urban League, Navajo Nation, The National Association for the Advancement of Colored People. (Huseny, Sadik) (Filed on 9/18/2020) Modified text on 9/21/2020 (dhmS, COURT STAFF). (Entered: 09/18/2020)</p>
09/18/2020	150	<p>RESPONSE re 140 Order <i>Defendants' Response to the Court's September 16, 2020 Order</i> by Steven Dillingham, Wilbur L. Ross, U.S. Census Bureau, U.S. Department of Commerce. (Attachments: # 1 Exhibit 1 - Census Bureau Personnel, # 2 Exhibit 2 - Commerce Department Personnel, # 3 Exhibit 3 - Census Bureau Organizational Chart, # 4 Exhibit 4 - Census Bureau Staff Roster)(Zee, Michael) (Filed on 9/18/2020) (Entered: 09/18/2020)</p>
09/18/2020	151	<p>Minute Entry for proceedings held before Judge Lucy H. Koh: Further Case Management Conference held on 9/18/2020 from 10:08 AM - 11:38 AM (1 hour, 30 minutes).</p> <p>Total Time in Court: 1 hour, 30 minutes. Court Reporter: Lee-Anne Shortridge.</p> <p>For Plaintiffs National Urban League; League of Women Voters; Black Alliance for Just Immigration; Harris County, TX; King County, Washington; City of San Jose, California; Rodney Ellis; Adrian Garcia; and NAACP: Melissa Sherry, Richard Bress, and Sadik Huseny.</p> <p>For Plaintiffs National Urban League; League of Women Voters; Black Alliance for Just Immigration; Harris County, TX; King County, Washington; City of San Jose, California; Rodney Ellis; Adrian Garcia; NAACP; and Navajo Nation: Ezra Rosenberg and Thomas Wolf.</p> <p>For Plaintiff City of Los Angeles: Michael Dundas.</p> <p>For Plaintiff County of Los Angeles: David Holtzman.</p> <p>For Plaintiff City of Salinas: Michael Mutalipassi.</p> <p>For Plaintiff City of Chicago: Rebecca Hirsch.</p> <p>For Plaintiff Gila River Indian Community: Donald Pongrace.</p> <p>For Defendants: Alexander Sverdlov and Brad Rosenberg.</p> <p>For transcript orders, please visit https://cand.uscourts.gov/transcripts</p> <p><i>(This is a text-only entry generated by the court. There is no document associated with this entry.)</i> (kedS, COURT STAFF) (Date Filed: 9/18/2020) (Entered: 09/18/2020)</p>

09/18/2020	152	<p>CLERK'S NOTICE CONFIRMING 9/22/2020 HEARING VIA ZOOM. The hearing on 36 MOTION to Stay and MOTION for Preliminary Injunction remains as set on Tuesday, September 22, 2020 at 10:00 AM before Judge Lucy H. Koh. This proceeding will be held via a Zoom webinar.</p> <p>Webinar Access: All counsel, members of the public, and media may access the webinar information at https://www.cand.uscourts.gov/lhk</p> <p>General Or der 58. Persons granted access to court proceedings held by telephone or videoconference are reminded that photographing, recording, and rebroadcasting of court proceedings, including screenshots or other visual copying of a hearing, is absolutely prohibited.</p> <p>Zoom Guidance and Setup: https://www.cand.uscourts.gov/zoom/.</p> <p><i>(This is a text-only entry generated by the court. There is no document associated with this entry.)</i> (kedS, COURT STAFF) (Filed on 9/18/2020) (Entered: 09/18/2020)</p>
09/18/2020	153	Order re: Privilege Declaration and Documents for In Camera Review. Signed by Judge Lucy H. Koh on 9/18/2020. (lhkcl3, COURT STAFF) (Filed on 9/18/2020) (Entered: 09/18/2020)
09/18/2020	154	NOTICE by Steven Dillingham, Wilbur L. Ross, U.S. Census Bureau, U.S. Department of Commerce re 132 Order Notice of Filing Documents in Response to Court's September 15, 2020 Order (Attachments: # 1 Declaration of Michael A. Cannon, # 2 Att A - Index and Privilege Log, # 3 1 of 37, # 4 2 of 37, # 5 3 of 37, # 6 4 of 37, # 7 5 of 37, # 8 6 of 37, # 9 7 of 37, # 10 8 of 37, # 11 9 of 37, # 12 10 of 37)(Zee, Michael) (Filed on 9/18/2020) (Entered: 09/18/2020)
09/18/2020	155	NOTICE by Steven Dillingham, Wilbur L. Ross, U.S. Census Bureau, U.S. Department of Commerce re 132 Order Notice of Filing Documents in Response to Court's September 15, 2020 Order (Parts 11-20) (Attachments: # 1 11 of 37, # 2 12 of 37, # 3 13 of 37, # 4 14 of 37, # 5 15 of 37, # 6 16 of 37, # 7 17 of 37, # 8 18 of 37, # 9 19 of 37, # 10 20 of 37)(Zee, Michael) (Filed on 9/18/2020) (Entered: 09/18/2020)
09/18/2020	156	NOTICE by Steven Dillingham, Wilbur L. Ross, U.S. Census Bureau, U.S. Department of Commerce re 132 Order Notice of Filing Documents in Response to Court's September 15, 2020 Order (Parts 21-30) (Attachments: # 1 21 of 37, # 2 22 of 37, # 3 23 of 37, # 4 24 of 37, # 5 25 of 37, # 6 26 of 37, # 7 27 of 37, # 8 28 of 37, # 9 29 of 37, # 10 30 of 37)(Zee, Michael) (Filed on 9/18/2020) (Entered: 09/18/2020)
09/18/2020	157	NOTICE by Steven Dillingham, Wilbur L. Ross, U.S. Census Bureau, U.S. Department of Commerce re 132 Order Notice of Filing Documents in Response to Court's September 15, 2020 Order (Parts 31-37) (Attachments: # 1 31 of 37, # 2 32 of 37, # 3 33 of 37, # 4 34 of 37, # 5 35 of 37, # 6 36 of 37, # 7 37 of 37)(Zee, Michael) (Filed on 9/18/2020) (Entered: 09/18/2020)
09/19/2020	158	AFFIDAVIT Declaration of Allyson Deitrick by Steven Dillingham, Wilbur L. Ross, U.S. Census Bureau, U.S. Department of Commerce. (Zee, Michael) (Filed on 9/19/2020) (Entered: 09/19/2020)
09/19/2020	159	AFFIDAVIT Declaration of Megan Heller by Steven Dillingham, Wilbur L. Ross, U.S. Census Bureau, U.S. Department of Commerce. (Zee, Michael) (Filed on 9/19/2020) (Entered: 09/19/2020)
09/19/2020	160	Order to Identify Key Documents in Defendants' September 18, 2020 Production. Signed by Judge Lucy H. Koh on 09/19/2020. (lhkcl2, COURT STAFF) (Filed on

		9/19/2020) (Entered: 09/19/2020)
09/19/2020	<u>161</u>	RESPONSE re <u>160</u> Order by U.S. Department of Commerce. (Sverdlov, Alexander) (Filed on 9/19/2020) (Entered: 09/19/2020)
09/19/2020	<u>162</u>	Statement (<i>Plaintiffs' Preliminary Identification of Potentially Key Documents in Defendants' September 18, 2020 Production</i>) by Black Alliance For Just Immigration, City of Chicago, Illinois, City of Los Angeles, California, City of Salinas, California, City of San Jose, California, County of Los Angeles, California, Rodney Ellis, Adrian Garcia, Gila River Indian Community, Harris County, Texas, King County, Washington, League of Women Voters, National Urban League, Navajo Nation, The National Association for the Advancement of Colored People. (Huseny, Sadik) (Filed on 9/19/2020) (Entered: 09/19/2020)
09/19/2020	<u>163</u>	ORDER on Procedures for In Camera Privilege Review by Magistrate Judges (Cousins, Nathanael) (Filed on 9/19/2020) (Entered: 09/19/2020)
09/19/2020	<u>164</u>	RESPONSE re <u>163</u> Order, <u>160</u> Order <i>Defendants' combined response</i> by U.S. Department of Commerce. (Sverdlov, Alexander) (Filed on 9/19/2020) (Entered: 09/19/2020)
09/19/2020	<u>165</u>	ORDER, Supplementing Procedures on Privilege Review, and Advancing One Deadline for Defendants to Confirm Earlier Production (Cousins, Nathanael) (Filed on 9/19/2020) (Entered: 09/19/2020)
09/19/2020	<u>166</u>	Statement (<i>Plaintiffs' Preliminary Identification of Potentially Key Documents in Defendants' September 18, 2020 Production - Integrated Second Set</i>) by Black Alliance For Just Immigration, City of Chicago, Illinois, City of Los Angeles, California, City of Salinas, California, City of San Jose, California, County of Los Angeles, California, Rodney Ellis, Adrian Garcia, Gila River Indian Community, Harris County, Texas, King County, Washington, League of Women Voters, National Urban League, Navajo Nation, The National Association for the Advancement of Colored People. (Huseny, Sadik) (Filed on 9/19/2020) (Entered: 09/19/2020)
09/19/2020	<u>167</u>	Order Re: Supplemental Preliminary Injunction Briefs, Identification of Key Documents, and General Accounting Office Production. Signed by Judge Lucy H. Koh on 9/19/2020. (lhklc2, COURT STAFF) (Filed on 9/19/2020) (Entered: 09/19/2020)
09/19/2020	<u>168</u>	RESPONSE re <u>165</u> Order <i>Defendants' Response to the Court's September 19, 2020 Order</i> by Steven Dillingham, Wilbur L. Ross, U.S. Census Bureau, U.S. Department of Commerce. (Zee, Michael) (Filed on 9/19/2020) (Entered: 09/19/2020)
09/19/2020	<u>169</u>	Order to Confirm Number of Documents in September 13 and 18, 2020 Productions. Signed by Judge Lucy H. Koh on 9/19/2020. (lhklc2, COURT STAFF) (Filed on 9/19/2020) (Entered: 09/19/2020)
09/19/2020	<u>170</u>	Statement (<i>Plaintiffs' Privilege Objections</i>) by Black Alliance For Just Immigration, City of Chicago, Illinois, City of Los Angeles, California, City of Salinas, California, City of San Jose, California, County of Los Angeles, California, Rodney Ellis, Adrian Garcia, Gila River Indian Community, Harris County, Texas, King County, Washington, League of Women Voters, National Urban League, Navajo Nation, The National Association for the Advancement of Colored People. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B) (Huseny, Sadik) (Filed on 9/19/2020) (Entered: 09/19/2020)
09/20/2020	<u>171</u>	Statement (<i>Plaintiffs' Preliminary Identification of Potentially Key Documents in Defendants' September 18, 2020 Production - Integrated Third Set</i>) by Black Alliance For Just Immigration, City of Chicago, Illinois, City of Los Angeles, California, City of

		Salinas, California, City of San Jose, California, Rodney Ellis, Adrian Garcia, Gila River Indian Community, Harris County, Texas, King County, Washington, League of Women Voters, National Urban League, Navajo Nation, The National Association for the Advancement of Colored People. (Huseny, Sadik) (Filed on 9/20/2020) (Entered: 09/20/2020)
09/20/2020	172	RESPONSE re 170 Statement,, <i>Defendants' Response to Plaintiffs' Privilege Objections</i> by Steven Dillingham, Wilbur L. Ross, U.S. Census Bureau, U.S. Department of Commerce. (Attachments: # 1 Attachment A - Responses to Privilege Challenges, # 2 Attachment B - Supplement Privilege Information)(Zee, Michael) (Filed on 9/20/2020) (Entered: 09/20/2020)
09/20/2020	173	Order Continuing September 22, 2020 Preliminary Injunction Hearing from 10 a.m. to 2 p.m. Signed by Judge Lucy H. Koh on 9/20/2020. (lhklc2, COURT STAFF) (Filed on 9/20/2020) (Entered: 09/20/2020)
09/20/2020	174	ORDER AFTER IN CAMERA REVIEW AS TO ATTORNEY-CLIENT PRIVILEGE ASSERTED BY DEFENDANTS. Signed by Judge Nathanael Cousins, Judge Susan van Keulen, Judge Thomas S. Hixson. (lmh, COURT STAFF) (Filed on 9/20/2020) (Entered: 09/20/2020)
09/20/2020	175	DEFENDANTS NOTICE OF RELEASE OF DOCUMENTS PURSUANT TO THE COURTS SEPTEMBER 20, 2020, by Steven Dillingham, Wilbur L. Ross, U.S. Census Bureau, U.S. Department of Commerce re 174 Order (Attachments: # 1 Attachment A - Documents)(Zee, Michael) (Filed on 9/20/2020) Modified on 9/21/2020 to correct misspelling (dhmS, COURT STAFF). (Entered: 09/20/2020)
09/20/2020	176	Supplemental Brief <i>In Opposition to Plaintiffs' Motion for a Preliminary Injunction</i> filed by U.S. Department of Commerce. (Sverdlov, Alexander) (Filed on 9/20/2020) (Entered: 09/20/2020)
09/20/2020	177	RESPONSE re 169 Order by U.S. Department of Commerce. (Sverdlov, Alexander) (Filed on 9/20/2020) (Entered: 09/20/2020)
09/20/2020	178	Supplemental Brief <i>re Preliminary Injunction</i> filed by Black Alliance For Just Immigration, City of Chicago, Illinois, City of Los Angeles, California, City of Salinas, California, City of San Jose, California, County of Los Angeles, California, Rodney Ellis, Adrian Garcia, Gila River Indian Community, Harris County, Texas, King County, Washington, League of Women Voters, National Urban League, Navajo Nation, The National Association for the Advancement of Colored People. (Huseny, Sadik) (Filed on 9/20/2020) (Entered: 09/20/2020)
09/20/2020	179	FIRST ORDER AFTER IN CAMERA REVIEW AS TO DELIBERATIVE PROCESS PRIVILEGE ASSERTED BY DEFENDANTS. Signed by Judge Nathanael Cousins, Judge Susan van Keulen, Judge Thomas S. Hixson on 9/20/2020. (lmh, COURT STAFF) (Filed on 9/20/2020) (Entered: 09/20/2020)
09/20/2020	180	NOTICE by U.S. Department of Commerce re 179 Order (Sverdlov, Alexander) (Filed on 9/20/2020) (Entered: 09/20/2020)
09/20/2020	181	TRANSCRIPT ORDER for proceedings held on 9/18/2020 before Judge Lucy H. Koh by U.S. Department of Commerce, for Court Reporter Lee-Anne Shortridge. (Sverdlov, Alexander) (Filed on 9/20/2020) (Entered: 09/20/2020)
09/20/2020	182	SECOND ORDER AFTER IN CAMERA REVIEW AS TO DELIBERATIVE PROCESS PRIVILEGE ASSERTED BY DEFENDANTS; ADDENDUM ON FORMAT OF PRODUCTION. Signed by Judge Nathanael Cousins, Judge Susan van Keulen, Judge Thomas S. Hixson on 9/20/2020. (Attachments: # 1 Exhibit A, # 2

		Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E, # 6 Exhibit F, # 7 Exhibit G)(lmh, COURT STAFF) (Filed on 9/20/2020) (Entered: 09/20/2020)
09/20/2020	183	Order Re: Identification of Key Documents and Supplemental Preliminary Injunction Briefs. Signed by Judge Lucy H. Koh on 9/20/2020. (lhk1c2, COURT STAFF) (Filed on 9/20/2020) (Entered: 09/20/2020)
09/20/2020	184	THIRD ORDER AFTER IN CAMERA REVIEW AS TO DELIBERATIVE PROCESS PRIVILEGE ASSERTED BY DEFENDANTS. Signed by Judge Nathanael Cousins, Judge Susan van Keulen, Judge Thomas S. Hixson on 9/20/2020. (Attachments: # 1 Exhibit A 9.13, # 2 Exhibit B 9.18)(lmh, COURT STAFF) (Filed on 9/20/2020) (Entered: 09/21/2020)
09/21/2020	185	RESPONSE re 183 Order by U.S. Department of Commerce. (Attachments: # 1 Exhibit Part 1, # 2 Exhibit Part 2)(Sverdlov, Alexander) (Filed on 9/21/2020) (Entered: 09/21/2020)
09/21/2020	186	Statement re 183 Order (<i>Plaintiffs' Statement of Compliance with Dkt. 183</i>) by Black Alliance For Just Immigration, City of Chicago, Illinois, City of Los Angeles, California, City of Salinas, California, City of San Jose, California, County of Los Angeles, California, Rodney Ellis, Adrian Garcia, Gila River Indian Community, Harris County, Texas, King County, Washington, League of Women Voters, National Urban League, Navajo Nation, The National Association for the Advancement of Colored People. (Huseny, Sadik) (Filed on 9/21/2020) (Entered: 09/21/2020)
09/21/2020	187	<p>Per 173 Order, the hearing on 36 MOTION to Stay and MOTION for Preliminary Injunction remains as set on 9/22/2020, but will begin at 2:00 PM PT. This proceeding will be held via a Zoom webinar.</p> <p>Webinar Access: All counsel, members of the public, and media may access the webinar information at https://www.cand.uscourts.gov/lhk</p> <p>General Order 58. Persons granted access to court proceedings held by telephone or videoconference are reminded that photographing, recording, and rebroadcasting of court proceedings, including screenshots or other visual copying of a hearing, is absolutely prohibited.</p> <p>Zoom Guidance and Setup: https://www.cand.uscourts.gov/zoom/.</p> <p>(This is a text-only entry generated by the court. There is no document associated with this entry.) (kedS, COURT STAFF) (Filed on 9/21/2020) (Entered: 09/21/2020)</p>
09/21/2020	188	Statement (<i>Plaintiffs' Preliminary Identification of Potentially Key Documents in Defendants' September 18, 2020 Production - Integrated Fourth Set</i>) by Black Alliance For Just Immigration, City of Chicago, Illinois, City of Los Angeles, California, City of Salinas, California, City of San Jose, California, County of Los Angeles, California, Rodney Ellis, Adrian Garcia, Gila River Indian Community, Harris County, Texas, King County, Washington, League of Women Voters, National Urban League, Navajo Nation, The National Association for the Advancement of Colored People. (Huseny, Sadik) (Filed on 9/21/2020) (Entered: 09/21/2020)
09/21/2020	189	NOTICE by Black Alliance For Just Immigration, City of Chicago, Illinois, City of Los Angeles, California, City of Salinas, California, City of San Jose, California, County of Los Angeles, California, Rodney Ellis, Adrian Garcia, Gila River Indian Community, Harris County, Texas, King County, Washington, League of Women Voters, National Urban League, Navajo Nation, The National Association for the Advancement of Colored People (<i>Notice Regarding Just-Released Office of Inspector General Report;</i>

		<i>Request for Clarification Regarding Supplemental Briefing</i>) (Huseny, Sadik) (Filed on 9/21/2020) (Entered: 09/21/2020)
09/21/2020	190	Statement (<i>Plaintiffs' Preliminary Identification of Potentially Key Documents in Defendants' September 18, 2020 Production - Integrated Fifth Set</i>) by Black Alliance For Just Immigration, City of Chicago, Illinois, City of Los Angeles, California, City of Salinas, California, City of San Jose, California, County of Los Angeles, California, Rodney Ellis, Adrian Garcia, Gila River Indian Community, Harris County, Texas, King County, Washington, League of Women Voters, National Urban League, Navajo Nation, The National Association for the Advancement of Colored People. (Huseny, Sadik) (Filed on 9/21/2020) (Entered: 09/21/2020)
09/21/2020	191	RESPONSE re 167 Order by U.S. Department of Commerce. (Attachments: # 1 Declaration of Albert E. Fontenot, Jr.)(Sverdlov, Alexander) (Filed on 9/21/2020) (Entered: 09/21/2020)
09/21/2020	192	Transcript of Proceedings held on 9-18-20, before Judge Lucy H. Koh. Court Reporter Lee-Anne Shortridge, telephone number e-mail: lee-anne_shortridge@cand.uscourts.gov. Per General Order No. 59 and Judicial Conference policy, this transcript may be viewed only at the Clerk's Office public terminal or may be purchased through the Court Reporter until the deadline for the Release of Transcript Restriction. After that date it may be obtained through PACER. Any Notice of Intent to Request Redaction, if required, is due no later than 5 business days from date of this filing. (Re 181 Transcript Order) Release of Transcript Restriction set for 12/21/2020. (Related documents(s) 181) (lasS, COURT STAFF) (Filed on 9/21/2020) (Entered: 09/21/2020)
09/21/2020	193	TRANSCRIPT ORDER for proceedings held on 09/18/2020 before Judge Lucy H. Koh by Black Alliance For Just Immigration, City of San Jose, California, Rodney Ellis, Adrian Garcia, Harris County, Texas, King County, Washington, League of Women Voters, National Urban League, The National Association for the Advancement of Colored People, for Court Reporter Lee-Anne Shortridge. (Lankenau, Shannon) (Filed on 9/21/2020) (Entered: 09/21/2020)
09/21/2020	194	Order Re: Supplemental Preliminary Injunction Briefs and Production of Secretary Ross Documents. Signed by Judge Lucy H. Koh on 9/21/2020. (lhklc2, COURT STAFF) (Filed on 9/21/2020) (Entered: 09/21/2020)
09/21/2020	195	RESPONSE re 194 Order <i>Defendants' Response to Court's September 21, 2020 Order re: Secretary Ross Documents</i> by Steven Dillingham, Wilbur L. Ross, U.S. Census Bureau, U.S. Department of Commerce. (Attachments: # 1 Attachment A - Documents)(Zee, Michael) (Filed on 9/21/2020) (Entered: 09/21/2020)
09/22/2020	196	Supplemental Brief <i>in Opposition to Preliminary Injunction</i> filed by U.S. Department of Commerce. (Attachments: # 1 Declaration)(Sverdlov, Alexander) (Filed on 9/22/2020) (Entered: 09/22/2020)
09/22/2020	197	Supplemental Brief re 36 MOTION to Stay <i>and</i> MOTION for Preliminary Injunction filed by Black Alliance For Just Immigration, City of Chicago, Illinois, City of Los Angeles, California, City of Salinas, California, City of San Jose, California, County of Los Angeles, California, Rodney Ellis, Adrian Garcia, Gila River Indian Community, Harris County, Texas, King County, Washington, League of Women Voters, National Urban League, Navajo Nation, The National Association for the Advancement of Colored People. (Attachments: # 1 Attachment)(Related document(s) 36) (Huseny, Sadik) (Filed on 9/22/2020) (Entered: 09/22/2020)
09/22/2020	198	NOTICE by Steven Dillingham, Wilbur L. Ross, U.S. Census Bureau, U.S. Department of Commerce re 182 Order, 179 Order, 184 Order, 174 Order <i>Defendants' Notice of</i>

		<i>Filing Documents in Response to Court's Orders of September 20, 2020</i> (Attachments: # 1 1 of 23, # 2 2 of 23, # 3 3 of 23, # 4 4 of 23, # 5 5 of 23, # 6 6 of 23, # 7 7 of 23, # 8 8 of 23, # 9 9 of 23, # 10 10 of 23, # 11 11 of 23, # 12 12 of 23)(Zee, Michael) (Filed on 9/22/2020) (Entered: 09/22/2020)
09/22/2020	199	NOTICE by Steven Dillingham, Wilbur L. Ross, U.S. Census Bureau, U.S. Department of Commerce re 182 Order, 179 Order, 184 Order, 174 Order <i>Defendants' Notice of Filing Documents in Response to Court's Orders of September 20, 2020</i> (Attachments: # 1 13 of 23, # 2 14 of 23, # 3 15 of 23, # 4 16 of 23, # 5 17 of 23, # 6 18 of 23, # 7 19 of 23, # 8 20 of 23, # 9 21 of 23, # 10 22 of 23, # 11 23 of 23)(Zee, Michael) (Filed on 9/22/2020) (Entered: 09/22/2020)
09/22/2020	200	<p>Minute Entry for proceedings held before Judge Lucy H. Koh: Hearing on 36 MOTION to Stay and MOTION for Preliminary Injunction held on 9/22/2020 from 2:08 PM - 3:48 PM; 4:03 PM - 4:22 PM (1 hour, 59 minutes).</p> <p>The Court set a Further Case Management Conference for Monday, September 28, 2020 at 2:00 PM. This proceeding will be held via a Zoom webinar. Webinar Access: All counsel, members of the public, and media may access the webinar information at https://www.cand.uscourts.gov/lhk</p> <p>Total Time in Court: 1 hour, 59 minutes. Court Reporter: Irene Rodriguez.</p> <p>For Plaintiffs National Urban League; League of Women Voters; Black Alliance f or Just Immigration; Harris County, TX; King County, Washington; City of San Jose, California; Rodney Ellis; Adrian Garcia; and NAACP: Melissa Sherry, Richard Bress, Sadik Huseny, and Steven Bauer. For Plaintiffs National Urban League; League of Women Voters; Black Alliance for Just Immigration; Harris County, TX; King County, Washington; City of San Jose, California; Rodney Ellis; Adrian Garcia; NAACP; and Navajo Nation: Ezra Rosenberg and Thomas Wolf. For Plaintiff City of Los Angeles: Michael Dundas. For Plaintiff County of Los Angeles: David Holtzman. For Plaintiff City of Salinas: Michael Mutalipassi. For Plaintiff City of Chicago: Rebecca Hirsch. For Plaintiff Gila River Indian Community: Donald Pongrace. For Defendants: Alexander Sverdlov and Brad Rosenberg.</p> <p>For transcript orders, please visit https://cand.uscourts.gov/transcripts</p> <p><i>(This is a text-only entry generated by the court. There is no document associated with this entry.)</i> (kedS, COURT STAFF) (Date Filed: 9/22/2020) (Entered: 09/22/2020)</p>
09/22/2020	201	RESPONSE to Court Request During September 22, 2020, Hearing by U.S. Department of Commerce. (Sverdlov, Alexander) (Filed on 9/22/2020) (Entered: 09/22/2020)
09/22/2020	202	TRANSCRIPT ORDER for proceedings held on 09/22/2020 before Judge Lucy H. Koh by Black Alliance For Just Immigration, City of San Jose, California, Rodney Ellis, Adrian Garcia, Harris County, Texas, King County, Washington, League of Women Voters, National Urban League, The National Association for the Advancement of Colored People, for Court Reporter Irene Rodriguez. (Lankenau, Shannon) (Filed on 9/22/2020) (Entered: 09/22/2020)
09/22/2020	203	RESPONSE to Court Request During September 22, 2020 Hearing Regarding Historical Censuses by Black Alliance For Just Immigration, City of Chicago, Illinois, City of Los

		Angeles, California, City of Salinas, California, City of San Jose, California, County of Los Angeles, California, Rodney Ellis, Adrian Garcia, Gila River Indian Community, Harris County, Texas, King County, Washington, League of Women Voters, National Urban League, Navajo Nation, The National Association for the Advancement of Colored People. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E, # 6 Exhibit F, # 7 Exhibit G, # 8 Exhibit H, # 9 Exhibit I, # 10 Exhibit J) (Huseny, Sadik) (Filed on 9/22/2020) (Entered: 09/22/2020)
09/23/2020	204	MOTION to Intervene filed by The State of Louisiana. Responses due by 10/7/2020. Replies due by 10/14/2020. (Attachments: # 1 Declaration of Joseph S. St. John, # 2 Exhibit 1, # 3 Exhibit 2, # 4 Exhibit 3, # 5 Exhibit 4, # 6 Exhibit 5, # 7 Exhibit 6, # 8 Exhibit 7, # 9 Exhibit 8, # 10 Exhibit 9, # 11 Exhibit 10, # 12 Exhibit 11, # 13 Exhibit 12, # 14 Exhibit 13, # 15 Exhibit 14, # 16 Exhibit 15, # 17 Exhibit 16, # 18 Exhibit 17, # 19 Proposed Answer, # 20 Proposed Order)(St. John, Joseph) (Filed on 9/23/2020) (Entered: 09/23/2020)
09/23/2020	205	TRANSCRIPT ORDER for proceedings held on 9/22/2020 before Judge Lucy H. Koh by U.S. Department of Commerce, for Court Reporter Irene Rodriguez. (Sverdlov, Alexander) (Filed on 9/23/2020) (Entered: 09/23/2020)
09/23/2020	206	MOTION to Expedite filed by The State of Louisiana. (Attachments: # 1 Declaration of Joseph Scott St. John, # 2 Exhibit 1, # 3 Proposed Order)(St. John, Joseph) (Filed on 9/23/2020) (Entered: 09/23/2020)
09/24/2020	208	Order Granting Plaintiffs' Motion for Stay and Preliminary Injunction. Signed by Judge Lucy H. Koh on 9/24/2020. (lhklc3, COURT STAFF) (Filed on 9/24/2020) (Entered: 09/24/2020)
09/25/2020	209	CLERK'S NOTICE CONFIRMING 9/28/2020 CASE MANAGEMENT CONFERENCE VIA ZOOM. Pursuant to the Minute Entry at ECF No. 200, a Further Case Management Conference is set for Monday, September 28, 2020 at 2:00 PM. This proceeding will be held via a Zoom webinar. Webinar Access: All counsel, members of the public, and media may access the webinar information at https://www.cand.uscourts.gov/lhk General Order 58. Persons granted access to court proceedings held by telephone or videoconference are reminded that photographing, recording, and rebroadcasting of court proceedings, including screenshots or other visual copying of a hearing, is absolutely prohibited. Zoom Guidance and Setup: https://www.cand.uscourts.gov/zoom/ . <i>(This is a text-only entry generated by the court. There is no document associated with this entry.)</i> (kedS, COURT STAFF) (Filed on 9/25/2020) (Entered: 09/25/2020)
09/25/2020	210	NOTICE OF APPEAL to the 9th Circuit Court of Appeals filed by Defendants, Commerce Secretary Wilbur L. Ross, Jr., the U.S. Department of Commerce, the Director of the U.S. Census Bureau Steven Dillingham, and the U.S. Census Bureau. Appeal of Order 208 (Appeal fee FEE WAIVED.) (Sverdlov, Alexander) (Filed on 9/25/2020) Modified on 10/7/2020 to add names of all filers (dhms, COURT STAFF). (Entered: 09/25/2020)
09/25/2020	211	MOTION to Stay re 208 Order filed by Steven Dillingham, Wilbur L. Ross, U.S. Census Bureau, U.S. Department of Commerce. Responses due by 10/9/2020. Replies due by 10/16/2020. (Attachments: # 1 Proposed Order)(Zee, Michael) (Filed on 9/25/2020) (Entered: 09/25/2020)

09/25/2020	212	Order by Judge Lucy H. Koh denying 211 Motion to Stay Pending Appeal. (lhklc3, COURT STAFF) (Filed on 9/25/2020) (Entered: 09/25/2020)
09/25/2020	213	USCA Case Number 20-16868 Ninth Circuit for 210 Notice of Appeal filed by U.S. Department of Commerce. The schedule to be set. Preliminary Injunction Appeal. C.R. 3-3. (dhmS, COURT STAFF) (Filed on 9/25/2020) (Entered: 09/25/2020)
09/27/2020	214	Order re: Communications with the Court. Signed by Judge Lucy H. Koh on 9/27/2020. (lhklc2, COURT STAFF) (Filed on 9/27/2020) (Entered: 09/27/2020)
09/27/2020	215	Order re: Response to Allegation of Non-Compliance with Preliminary Injunction. Signed by Judge Lucy H. Koh on 9/27/2020. (lhklc2, COURT STAFF) (Filed on 9/27/2020) (Entered: 09/27/2020)
09/28/2020	216	Order by Judge Lucy H. Koh granting 139 Motion for Pro Hac Vice. (lhklc3, COURT STAFF) (Filed on 9/28/2020) (Entered: 09/28/2020)
09/28/2020	217	Order by Judge Lucy H. Koh granting 148 Motion for Pro Hac Vice. (lhklc3, COURT STAFF) (Filed on 9/28/2020) (Entered: 09/28/2020)
09/28/2020	218	RESPONSE re 215 Order (<i>Plaintiffs' Response to Allegation of Noncompliance with Preliminary Injunction</i>) by Black Alliance For Just Immigration, City of Chicago, Illinois, City of Los Angeles, California, City of Salinas, California, City of San Jose, California, County of Los Angeles, California, Rodney Ellis, Adrian Garcia, Gila River Indian Community, Harris County, Texas, King County, Washington, League of Women Voters, National Urban League, Navajo Nation, The National Association for the Advancement of Colored People. (Huseny, Sadik) (Filed on 9/28/2020) (Entered: 09/28/2020)
09/28/2020	219	RESPONSE re 215 Order by U.S. Department of Commerce. (Attachments: # 1 Declaration of James T. Christy)(Sverdlov, Alexander) (Filed on 9/28/2020) (Entered: 09/28/2020)
09/28/2020	220	Order re: Communications with the Court. Signed by Judge Lucy H. Koh on 9/28/2020. (lhklc3, COURT STAFF) (Filed on 9/28/2020) (Entered: 09/28/2020)
09/28/2020	221	Order re: Communications with the Court. Signed by Judge Lucy H. Koh on 9/28/2020. (lhklc3, COURT STAFF) (Filed on 9/28/2020) (Entered: 09/28/2020)
09/28/2020	222	Email from Gregory Dillon to the Courtroom Deputy dated 9/28/2020. (kedS, COURT STAFF) (Filed on 9/28/2020) (Entered: 09/28/2020)
09/28/2020	223	OPPOSITION/RESPONSE (re 206 MOTION to Expedite) (<i>Plaintiffs' Opposition to Motion to Shorten Time and to Expedite by States of Louisiana and Mississippi</i>) filed by Black Alliance For Just Immigration, City of Chicago, Illinois, City of Los Angeles, California, City of Salinas, California, City of San Jose, California, County of Los Angeles, California, Rodney Ellis, Adrian Garcia, Gila River Indian Community, Harris County, Texas, King County, Washington, League of Women Voters, National Urban League, Navajo Nation, The National Association for the Advancement of Colored People. (Attachments: # 1 Declaration of Sadik Huseny)(Huseny, Sadik) (Filed on 9/28/2020) (Entered: 09/28/2020)
09/28/2020	224	Order for Response to Email to the Courtroom Deputy. Signed by Judge Lucy H. Koh on 9/28/2020. (lhklc3, COURT STAFF) (Filed on 9/28/2020) (Entered: 09/28/2020)
09/28/2020	225	Order to Produce the Administrative Record. Signed by Judge Lucy H. Koh on 9/28/2020. (lhklc3, COURT STAFF) (Filed on 9/28/2020) (Entered: 09/28/2020)

09/28/2020	226	<p>Minute Entry for proceedings held before Judge Lucy H. Koh: Further Case Management Conference held on 9/28/2020 from 2:04 PM - 2:36 PM; 2:48 PM - 3:28 PM (1 hour, 12 minutes).</p> <p>Further Case Management Conference SET for Tuesday, September 29, 2020 at 3:00 PM. Total Time in Court: 1 hour, 12 minutes.</p> <p>Court Reporter: Irene Rodriguez.</p> <p>For Plaintiffs National Urban League; League of Women Voters; Black Alliance for Just Immigration; Harris County, TX; King County, Washington; City of San Jose, California; Rodney Ellis; Adrian Garcia; and NAACP: Melissa Sherry, Richard Bress, Sadik Huseny, and Steven Bauer.</p> <p>For Plaintiffs National Urban League; League of Women Voters; Black Alliance for Just Immigration; Harris County, TX; King County, Washington; City of San Jose, California; Rodney Ellis; Adrian Garcia; NAACP; and Navajo Nation: Ezra Rosenberg and Thomas Wolf.</p> <p>For Plaintiff Navajo Nation: Jason Searle.</p> <p>For Plaintiff City of Los Angeles: Danielle Goldstein.</p> <p>For Plaintiff City of Salinas: Michael Mutalipassi.</p> <p>For Plaintiff City of Chicago: Lily Hough.</p> <p>For Plaintiff County of Los Angeles: David Holtzman.</p> <p>For Plaintiff Gila River Indian Community: Donald Pongrace.</p> <p>For Defendants: Alexander Sverdlov and Brad Rosenberg.</p> <p><i>(This is a text-only entry generated by the court. There is no document associated with this entry.)</i> (kedS, COURT STAFF) (Date Filed: 9/28/2020) (Entered: 09/28/2020)</p>
09/28/2020	227	<p>CLERK'S NOTICE SETTING ZOOM CASE MANAGEMENT CONFERENCE.</p> <p>Pursuant to the Minute Entry at ECF No. 226, a Further Case Management Conference is set for Tuesday, September 29, 2020 at 3:00 PM before Judge Lucy H. Koh. This proceeding will be held via a Zoom webinar.</p> <p>Webinar Access: All counsel, members of the public, and media may access the webinar information at https://www.cand.uscourts.gov/lhk</p> <p>General Order 58. Persons granted access to court proceedings held by telephone or videoconference are reminded that photographing, recording, and rebroadcasting of court proceedings, including screenshots or other visual copying of a hearing, is absolutely prohibited.</p> <p>Zoom Guidance and Setup: https://www.cand.uscourts.gov/zoom/.</p> <p><i>(This is a text-only entry generated by the court. There is no document associated with this entry.)</i> (kedS, COURT STAFF) (Filed on 9/28/2020) (Entered: 09/28/2020)</p>
09/28/2020	228	<p>TRANSCRIPT ORDER for proceedings held on 09/28/2020 before Judge Lucy H. Koh by Black Alliance For Just Immigration, City of San Jose, California, Rodney Ellis, Adrian Garcia, Harris County, Texas, King County, Washington, League of Women Voters, National Urban League, The National Association for the Advancement of Colored People, for Court Reporter Irene Rodriguez. (Lankenau, Shannon) (Filed on 9/28/2020) (Entered: 09/28/2020)</p>
09/28/2020	229	<p>Order re: Communications with the Court. Signed by Judge Lucy H. Koh on 9/28/2020. (lhklc3, COURT STAFF) (Filed on 9/28/2020) (Entered: 09/28/2020)</p>
09/28/2020	230	<p>Email from Jeff Williams to court staff dated 9/28/2020. SEE ATTACHMENT #1 FOR READABLE VERSION. (kedS, COURT STAFF) (Filed on 9/28/2020) (Additional attachment(s) added on 9/29/2020: # 1 Readable Version) (kedS, COURT STAFF). Modified on 9/29/2020 (kedS, COURT STAFF). (Entered: 09/29/2020)</p>

09/29/2020	231	Email from Robert Cohen to court staff dated 9/29/2020. (kedS, COURT STAFF) (Filed on 9/29/2020) (Entered: 09/29/2020)
09/29/2020	232	RESPONSE re 225 Order by U.S. Department of Commerce. (Attachments: # 1 Exhibit Privilege Log, # 2 Declaration DiGiacomo Declaration)(Sverdlov, Alexander) (Filed on 9/29/2020) (Entered: 09/29/2020)
09/29/2020	233	EXHIBITS re 232 Response (Non Motion) filed by U.S. Department of Commerce. (Attachments: # 1 Exhibit Part 2, # 2 Exhibit Part 3)(Related document(s) 232) (Sverdlov, Alexander) (Filed on 9/29/2020) (Entered: 09/29/2020)
09/29/2020	234	NOTICE by Steven Dillingham, Wilbur L. Ross, U.S. Census Bureau, U.S. Department of Commerce <i>Notice of Filing of Declaration in Response to Directive at September 28, 2020 Case Management Conference</i> (Attachments: # 1 Declaration of James T. Christy, # 2 Attachments)(Zee, Michael) (Filed on 9/29/2020) (Entered: 09/29/2020)
09/29/2020	235	Email from TaMarra Cooley to court staff dated 9/29/2020. (kedS, COURT STAFF) (Filed on 9/29/2020) (Entered: 09/29/2020)
09/29/2020	236	ORDER CONCERNING DEFENDANTS' SEPTEMBER 29 PRIVILEGE LOG. Signed by Judge Nathanael Cousins, Judge Susan van Keulen, Judge Thomas S. Hixson on 9/29/2020. (lmh, COURT STAFF) (Filed on 9/29/2020) (Entered: 09/29/2020)
09/29/2020	237	Transcript of Proceedings held on 09/28/2020, before Judge Koh. Court Reporter Irene L. Rodriguez, email address Irene_Rodriguez@cand.uscourts.gov. Per General Order No. 59 and Judicial Conference policy, this transcript may be viewed only at the Clerk's Office public terminal or may be purchased through the Court Reporter until the deadline for the Release of Transcript Restriction. After that date it may be obtained through PACER. Any Notice of Intent to Request Redaction, if required, is due no later than 5 business days from date of this filing. Release of Transcript Restriction set for 12/28/2020. (irodS, COURT STAFF) (Filed on 9/29/2020) (Entered: 09/29/2020)
09/29/2020	238	Order for Response to Emails. Signed by Judge Lucy H. Koh on 9/29/2020. (lhklc2, COURT STAFF) (Filed on 9/29/2020) (Entered: 09/29/2020)
09/29/2020	239	NOTICE of Appearance by August Flentje (Flentje, August) (Filed on 9/29/2020) (Entered: 09/29/2020)
09/29/2020	240	RESPONSE re 236 Order by U.S. Department of Commerce. (Attachments: # 1 Exhibit Privilege Log)(Sverdlov, Alexander) (Filed on 9/29/2020) (Entered: 09/29/2020)
09/29/2020	241	TRANSCRIPT ORDER for proceedings held on 9/28/2020 before Judge Lucy H. Koh by U.S. Department of Commerce, for Court Reporter Irene Rodriguez. (Sverdlov, Alexander) (Filed on 9/29/2020) (Entered: 09/29/2020)
09/29/2020	242	RESPONSE re 236 Order (<i>Plaintiffs' Privilege Objections</i>) by Black Alliance For Just Immigration, City of Chicago, Illinois, City of Los Angeles, California, City of Salinas, California, City of San Jose, California, County of Los Angeles, California, Rodney Ellis, Adrian Garcia, Gila River Indian Community, Harris County, Texas, King County, Washington, League of Women Voters, National Urban League, Navajo Nation, The National Association for the Advancement of Colored People. (Huseny, Sadik) (Filed on 9/29/2020) (Entered: 09/29/2020)
09/29/2020	243	Statement re 225 Order (<i>Plaintiffs' Statement In Advance of the September 29, 2020 Hearing</i>) by Black Alliance For Just Immigration, City of Chicago, Illinois, City of Los Angeles, California, City of Salinas, California, City of San Jose, California, County of Los Angeles, California, Rodney Ellis, Adrian Garcia, Gila River Indian Community, Harris County, Texas, King County, Washington, League of Women Voters, National

		Urban League, Navajo Nation, The National Association for the Advancement of Colored People. (Sherry, Melissa) (Filed on 9/29/2020) (Entered: 09/29/2020)
09/29/2020	244	NOTICE by Steven Dillingham, Wilbur L. Ross, U.S. Census Bureau, U.S. Department of Commerce re 221 Order, 220 Order, 229 Order, 224 Order <i>Notice of Filing in Response to the Court's Orders of September 28, 2020</i> (Attachments: # 1 Declaration of James T. Christy)(Zee, Michael) (Filed on 9/29/2020) (Entered: 09/29/2020)
09/29/2020	245	TRANSCRIPT ORDER for proceedings held on 9/29/2020 before Judge Lucy H. Koh by U.S. Department of Commerce, for Court Reporter Irene Rodriguez. (Sverdlov, Alexander) (Filed on 9/29/2020) (Entered: 09/29/2020)
09/29/2020	246	RESPONSE (<i>Plaintiffs' Response to Orders Re: Communications with the Court [Dkts. 220, 221, 224, 229]</i>) by Black Alliance For Just Immigration, City of Chicago, Illinois, City of Los Angeles, California, City of Salinas, California, City of San Jose, California, Rodney Ellis, Adrian Garcia, Gila River Indian Community, Harris County, Texas, King County, Washington, League of Women Voters, National Urban League, Navajo Nation, The National Association for the Advancement of Colored People. (Huseny, Sadik) (Filed on 9/29/2020) (Entered: 09/29/2020)
09/29/2020	247	TRANSCRIPT ORDER for proceedings held on 9/29/2020 before Judge Lucy H. Koh by Black Alliance For Just Immigration, City of San Jose, California, Rodney Ellis, Adrian Garcia, Harris County, Texas, King County, Washington, League of Women Voters, National Urban League, The National Association for the Advancement of Colored People, for Court Reporter Irene Rodriguez. (Lankenau, Shannon) (Filed on 9/29/2020) (Entered: 09/29/2020)
09/29/2020	248	Email from Jared Hautamaki to court staff dated 9/29/2020. (kedS, COURT STAFF) (Filed on 9/29/2020) (Entered: 09/29/2020)
09/29/2020	249	Email to court staff dated 9/29/2020. (kedS, COURT STAFF) (Filed on 9/29/2020) (Entered: 09/29/2020)
09/29/2020	250	Email from Zoltan Boka to court staff dated 9/29/2020. (kedS, COURT STAFF) (Filed on 9/29/2020) (Entered: 09/29/2020)
09/29/2020	251	RESPONSE re 242 Response (Non Motion),, <i>Defendants' Response to Plaintiffs' Privilege Objections</i> by Steven Dillingham, Wilbur L. Ross, U.S. Census Bureau, U.S. Department of Commerce. (Zee, Michael) (Filed on 9/29/2020) (Entered: 09/29/2020)
09/29/2020	252	Email from Paul Costa to court staff dated 9/29/2020. (kedS, COURT STAFF) (Filed on 9/29/2020) (Entered: 09/29/2020)
09/29/2020	253	ORDER AFTER IN CAMERA REVIEW OF DOCUMENTS IDENTIFIED ON DEFENDANTS' SEPTEMBER 29 PRIVILEGE LOG. Signed by Judge Nathanael Cousins on 9/29/2020. (lmh, COURT STAFF) (Filed on 9/29/2020) (Entered: 09/29/2020)
09/29/2020	254	Email to court staff dated 9/29/2020. (kedS, COURT STAFF) (Filed on 9/29/2020) (Entered: 09/29/2020)
09/29/2020	255	Order for Response to Emails. Signed by Judge Lucy H. Koh on September 29, 2020. (kedS, COURT STAFF) (Filed on 9/29/2020) (Entered: 09/29/2020)
09/29/2020	256	RESPONSE re 253 Order by U.S. Department of Commerce. (Attachments: # 1 Exhibit) (Sverdlov, Alexander) (Filed on 9/29/2020) (Entered: 09/29/2020)
09/29/2020	257	Email to court staff dated 9/29/2020. (kedS, COURT STAFF) (Filed on 9/29/2020) (Entered: 09/29/2020)

09/29/2020	<u>258</u>	Order for Response to Email. Signed by Judge Lucy H. Koh on 9/29/2020. (lhk1c2, COURT STAFF) (Filed on 9/29/2020) (Entered: 09/29/2020)
09/29/2020	264	<p>Minute Entry for proceedings held before Judge Lucy H. Koh: Further Case Management Conference held on 9/29/2020 from 3:09 PM - 3:30 PM; 4:08 - 4:27 PM (40 minutes).</p> <p>Plaintiffs shall file any motion to compel by September 30, 2020 by 11:00 AM Pacific Time. A hearing on the anticipated motion is SET for Friday, October 2, 2020 at 3:00 PM before Judge Lucy H. Koh via Zoom videoconference.</p> <p>Total Time in Court: 40 minutes.</p> <p>Court Reporter: Irene Rodriguez.</p> <p>For Plaintiffs National Urban League; League of Women Voters; Black Alliance for Just Immigration; Harris County, TX; King County, Washington; City of San Jose, California; Rodney Ellis; Adrian Garcia; and NAACP: Melissa Sherry, Richard Bress, Sadik Huseny, and Steven Bauer.</p> <p>For Plaintiffs National Urban League; League of Women Voters; Black Alliance for Just Immigration; Harris County, TX; King County, Washington; City of San Jose, California; Rodney Ellis; Adrian Garcia; NAACP; and Navajo Nation: Ezra Rosenberg and Thomas Wolf.</p> <p>For Plaintiff Navajo Nation: Jason Searle.</p> <p>For Plaintiff City of Los Angeles: Danielle Goldstein.</p> <p>For Plaintiff City of Salinas: Michael Mutalipassi.</p> <p>For Plaintiff City of Chicago: Rebecca Hirsch.</p> <p>For Plaintiff County of Los Angeles: David Holtzman.</p> <p>For Plaintiff Gila River Indian Community: Donald Pongrace.</p> <p>For Defendants: Alexander Sverdlov, August Flentje, and Brad Rosenberg.</p> <p>For transcript orders, please visit https://cand.uscourts.gov/transcripts <i>(This is a text-only entry generated by the court. There is no document associated with this entry.)</i> (kedS, COURT STAFF) (Date Filed: 9/29/2020) (Entered: 09/30/2020)</p>
09/30/2020	<u>260</u>	RESPONSE re <u>238</u> Order by U.S. Department of Commerce. (Attachments: # <u>1</u> Declaration)(Sverdlov, Alexander) (Filed on 9/30/2020) (Entered: 09/30/2020)
09/30/2020	<u>261</u>	RESPONSE <i>(Plaintiffs' Response to Order for Response to Emails [Dkt. 238])</i> by Black Alliance For Just Immigration, City of Chicago, Illinois, City of Los Angeles, California, City of Salinas, California, City of San Jose, California, Rodney Ellis, Adrian Garcia, Gila River Indian Community, Harris County, Texas, King County, Washington, League of Women Voters, National Urban League, Navajo Nation, The National Association for the Advancement of Colored People. (Huseny, Sadik) (Filed on 9/30/2020) (Entered: 09/30/2020)
09/30/2020	<u>262</u>	Email from Joshua Harkins dated 9/30/2020. (kedS, COURT STAFF) (Filed on 9/30/2020) (Entered: 09/30/2020)
09/30/2020	<u>263</u>	Order for Response to Email. Signed by Judge Lucy H. Koh on September 30, 2020. (kedS, COURT STAFF) (Filed on 9/30/2020) (Entered: 09/30/2020)
09/30/2020	<u>265</u>	MOTION to Compel <i>and for Sanctions</i> filed by Black Alliance For Just Immigration, City of Chicago, Illinois, City of Los Angeles, California, City of Salinas, California, City of San Jose, California, County of Los Angeles, California, Rodney Ellis, Adrian Garcia, Gila River Indian Community, Harris County, Texas, King County, Washington, League of Women Voters, National Urban League, Navajo Nation, The National Association for the Advancement of Colored People. Motion Hearing set for 10/2/2020 03:00 PM in San Jose, Courtroom 8, 4th Floor before Judge Lucy H. Koh. Responses due by 10/1/2020. Replies due by 10/2/2020. (Huseny, Sadik) (Filed on 9/30/2020) Modified on 10/5/2020 (lhk1c3, COURT STAFF). (Entered: 09/30/2020)

09/30/2020	266	RESPONSE re 258 Order, 263 Order, 255 Order by U.S. Department of Commerce. (Attachments: # 1 Declaration)(Sverdlov, Alexander) (Filed on 9/30/2020) (Entered: 09/30/2020)
09/30/2020	267	RESPONSE (<i>Plaintiffs' Response to Order for Response to Emails [Dkt. 255]</i>) by Black Alliance For Just Immigration, City of Chicago, Illinois, City of Los Angeles, California, City of Salinas, California, City of San Jose, California, County of Los Angeles, California, Rodney Ellis, Adrian Garcia, Gila River Indian Community, Harris County, Texas, King County, Washington, League of Women Voters, National Urban League, Navajo Nation, The National Association for the Advancement of Colored People. (Huseney, Sadik) (Filed on 9/30/2020) (Entered: 09/30/2020)
09/30/2020	268	Email to court staff dated 9/30/2020. (kedS, COURT STAFF) (Filed on 9/30/2020) (Entered: 09/30/2020)
09/30/2020	269	Order For Response to Email. Signed by Judge Lucy H. Koh on September 30, 2020. (kedS, COURT STAFF) (Filed on 9/30/2020) (Entered: 09/30/2020)
09/30/2020	270	Email from Marcus Pun to court staff dated 9/30/2020. (kedS, COURT STAFF) (Filed on 9/30/2020) (Entered: 09/30/2020)
09/30/2020	271	Email from Jan Rice to court staff dated 9/30/2020. (kedS, COURT STAFF) (Filed on 9/30/2020) (Entered: 09/30/2020)
09/30/2020	272	Email to court staff dated 9/30/2020. (kedS, COURT STAFF) (Filed on 9/30/2020) (Entered: 09/30/2020)
09/30/2020	273	Email from Anthony Smith to court staff dated 9/30/2020. (kedS, COURT STAFF) (Filed on 9/30/2020) (Entered: 09/30/2020)
09/30/2020	274	Order for Response to Emails. Signed by Judge Lucy H. Koh on September 30, 2020. (kedS, COURT STAFF) (Filed on 9/30/2020) (Entered: 09/30/2020)
09/30/2020	275	RESPONSE (<i>Plaintiffs' Response to Order for Response to Emails [Dkts. 258, 263, 269]</i>) by Black Alliance For Just Immigration, City of Chicago, Illinois, City of Los Angeles, California, City of Salinas, California, City of San Jose, California, County of Los Angeles, California, Rodney Ellis, Adrian Garcia, Gila River Indian Community, Harris County, Texas, King County, Washington, League of Women Voters, National Urban League, Navajo Nation, The National Association for the Advancement of Colored People. (Huseney, Sadik) (Filed on 9/30/2020) (Entered: 09/30/2020)
09/30/2020	276	Email from Bob Ross to court staff dated 9/30/2020. (kedS, COURT STAFF) (Filed on 9/30/2020) (Entered: 09/30/2020)
09/30/2020	277	FILED ORDER of USCA for PUBLICATION (JOHNNIE B. RAWLINSON, MORGAN B. CHRISTEN and PATRICK J. BUMATAY) (Dissent by Judge Bumatay) Because the status quo would be upended, rather than preserved, if an administrative stay is issued, the governments request for an immediate administrative stay is denied. Appellees response to the emergency motion is due October 2, 2020. Appellants optional reply is due by October 3, 2020, as to 210 Notice of Appeal filed by U.S. Department of Commerce. (dhmS, COURT STAFF) (Filed on 9/30/2020) (Entered: 09/30/2020)
09/30/2020	278	RESPONSE re 269 Order by U.S. Department of Commerce. (Attachments: # 1 Declaration)(Sverdlov, Alexander) (Filed on 9/30/2020) (Entered: 09/30/2020)
09/30/2020	279	MOTION for Temporary Restraining Order <i>Pending Ruling on Plaintiffs' Motion to Compel and for Sanctions</i> filed by Black Alliance For Just Immigration, City of Chicago, Illinois, City of Los Angeles, California, City of Salinas, California, City of San Jose, California, County of Los Angeles, California, Rodney Ellis, Adrian Garcia, Gila River

		Indian Community, Harris County, Texas, King County, Washington, League of Women Voters, National Urban League, Navajo Nation, The National Association for the Advancement of Colored People. (Attachments: # 1 Proposed Order)(Huseny, Sadik) (Filed on 9/30/2020) Modified on 10/5/2020 (lhklc3, COURT STAFF). (Entered: 09/30/2020)
09/30/2020	280	Order Re: Opposition to Temporary Restraining Order. Signed by Judge Lucy H. Koh on 9/30/2020. (lhklc2, COURT STAFF) (Filed on 9/30/2020) (Entered: 09/30/2020)
09/30/2020	281	Email from Gregory Dillon to court staff dated 9/30/2020. (Attachments: # 1 Declaration) (kedS, COURT STAFF) (Filed on 9/30/2020) (Entered: 09/30/2020)
09/30/2020	282	RESPONSE (<i>Plaintiffs' Response to Order for Response to Emails [Dkt. 274]</i>) by Black Alliance For Just Immigration, City of Chicago, Illinois, City of Los Angeles, California, City of Salinas, California, City of San Jose, California, County of Los Angeles, California, Rodney Ellis, Adrian Garcia, Gila River Indian Community, Harris County, Texas, King County, Washington, League of Women Voters, National Urban League, Navajo Nation, The National Association for the Advancement of Colored People. (Huseny, Sadik) (Filed on 9/30/2020) (Entered: 09/30/2020)
09/30/2020	283	RESPONSE re 274 Order <i>Response to the Court's Order</i> by Steven Dillingham, Wilbur L. Ross, U.S. Census Bureau, U.S. Department of Commerce. (Attachments: # 1 Declaration of James T. Christy)(Zee, Michael) (Filed on 9/30/2020) (Entered: 09/30/2020)
10/01/2020	284	OPPOSITION/RESPONSE (re 279 MOTION for Temporary Restraining Order <i>Pending Ruling on Plaintiffs' Motion to Compel and for Sanctions</i>) filed by U.S. Department of Commerce. (Attachments: # 1 Declaration)(Sverdlov, Alexander) (Filed on 10/1/2020) (Entered: 10/01/2020)
10/01/2020	285	Email from Stefanie Villalobos to court staff dated 10/1/2020. (kedS, COURT STAFF) (Filed on 10/1/2020) (Entered: 10/01/2020)
10/01/2020	286	OPPOSITION/RESPONSE (re 265 MOTION to Compel <i>and for Sanctions</i>) filed by U.S. Department of Commerce. (Sverdlov, Alexander) (Filed on 10/1/2020) (Entered: 10/01/2020)
10/01/2020	287	Email from Jeff Williams to court staff dated 10/1/2020. (kedS, COURT STAFF) (Filed on 10/1/2020) (Entered: 10/01/2020)
10/01/2020	288	Order re: Clarification of Stay and Preliminary Injunction. Signed by Judge Lucy H. Koh on 10/1/20. (lhklc3, COURT STAFF) (Filed on 10/1/2020) (Entered: 10/01/2020)
10/02/2020		***Set Deadlines/Hearings per 288 Order: Further Case Management Conference set for 10/6/2020 02:00 PM in San Jose, Courtroom 8, 4th Floor. (amkS, COURT STAFF) (Filed on 10/2/2020) (Entered: 10/02/2020)
10/02/2020	289	Order Compelling Defendants' Response. Signed by Judge Lucy H. Koh on 10/2/2020. (lhklc3, COURT STAFF) (Filed on 10/2/2020) (Entered: 10/02/2020)
10/02/2020	290	NOTICE by U.S. Department of Commerce re 288 Order ; <i>Notice of Compliance</i> (Attachments: # 1 Declaration of James T. Christy)(Sverdlov, Alexander) (Filed on 10/2/2020) (Entered: 10/02/2020)
10/02/2020	291	Order Compelling Defendants' Response. Signed by Judge Lucy H. Koh on 10/2/2020. (lhklc2, COURT STAFF) (Filed on 10/2/2020) (Entered: 10/02/2020)

10/02/2020	292	RESPONSE re 289 Order by U.S. Department of Commerce. (Attachments: # 1 Declaration)(Sverdlov, Alexander) (Filed on 10/2/2020) (Entered: 10/02/2020)
10/03/2020	293	NOTICE of Appearance by Stephen Ehrlich <i>on behalf of Defendants</i> (Ehrlich, Stephen) (Filed on 10/3/2020) (Entered: 10/03/2020)
10/03/2020	294	Emails to Court Staff dated 10/2/2020 and 10/3/2020. (lhklc2, COURT STAFF) (Filed on 10/3/2020) (Entered: 10/03/2020)
10/04/2020	295	NOTICE by Steven Dillingham, Wilbur L. Ross, U.S. Census Bureau, U.S. Department of Commerce <i>Notice of Filing Documents in Response to Court's September 10, 2020 Order and Directive at September 28, 2020 Case Management Conference</i> (Attachments: # 1 Attachment A - Index, # 2 Attachment B - Privilege Log, # 3 Declaration of Megan Heller, # 4 1 of 5, # 5 2 of 5, # 6 3 of 5, # 7 4 of 5, # 8 5 of 5)(Zee, Michael) (Filed on 10/4/2020) (Entered: 10/04/2020)
10/05/2020	296	ORDER of USCA as to 210 Notice of Appeal filed by U.S. Department of Commerce. Appellants and appellees shall appear by telephone for oral argument on the pending emergency motion to stay the district courts September 24, 2020 order on Monday, October 5, 2020 at 9:00 a.m. PDT. The argument will be live-streamed and shall take place in courtroom 4 in San Francisco. Only one attorney for each side shall be permitted to argue, and each side will be permitted 20 minutes of argument time. Call-in instructions will be provided to the appearing parties. (dhmS, COURT STAFF) (Filed on 10/5/2020) (Entered: 10/05/2020)
10/05/2020	297	CLERK'S NOTICE CONFIRMING 10/6/2020 CASE MANAGEMENT CONFERENCE VIA ZOOM. A Further Case Management Conference is set for Tuesday, October 6, 2020 at 2:00 PM. This proceeding will be held via a Zoom webinar. Webinar Access: All counsel, members of the public, and media may access the webinar information at https://www.cand.uscourts.gov/lhk General Order 58. Persons granted access to court proceedings held by telephone or videoconference are reminded that photographing, recording, and rebroadcasting of court proceedings, including screenshots or other visual copying of a hearing, is absolutely prohibited. Zoom Guidance and Setup: https://www.cand.uscourts.gov/zoom/ . <i>(This is a text-only entry generated by the court. There is no document associated with this entry.)</i> (kedS, COURT STAFF) (Filed on 10/5/2020) (Entered: 10/05/2020)
10/05/2020	298	RESPONSE re 291 Order by Steven Dillingham, Wilbur L. Ross, U.S. Census Bureau, U.S. Department of Commerce. (Attachments: # 1 Twelfth Declaration of James T. Christy)(Ehrlich, Stephen) (Filed on 10/5/2020) (Entered: 10/05/2020)
10/05/2020	299	ORDER on Procedures for In Camera Review of Documents on October 4 Privilege Log. Signed by Judge Nathanael Cousins, Judge Thomas S. Hixson, Judge Susan van Keulen on 10/5/2020. (lmh, COURT STAFF) (Filed on 10/5/2020). (Entered: 10/05/2020)
10/05/2020	300	RESPONSE to Court's October 1, 2020 Order by Steven Dillingham, Wilbur L. Ross, U.S. Census Bureau, U.S. Department of Commerce. (Attachments: # 1 Declaration of Steven Dillingham, # 2 Attachments)(Zee, Michael) (Filed on 10/5/2020) (Entered: 10/05/2020)
10/05/2020	301	Email from Steven Anderson to court staff on October 4, 2020. (lhklc2, COURT STAFF) (Filed on 10/5/2020) (Entered: 10/05/2020)

10/05/2020	302	Order Compelling Defendants' Response. Signed by Judge Lucy H. Koh on 10/5/2020. (lhklc2, COURT STAFF) (Filed on 10/5/2020) (Entered: 10/05/2020)
10/05/2020	303	Order by Judge Lucy H. Koh granting 145 Motion for Pro Hac Vice. (lhklc3, COURT STAFF) (Filed on 10/5/2020) (Entered: 10/05/2020)
10/05/2020	304	RESPONSE re 299 Order (<i>Plaintiffs' Privilege Objections</i>) by Black Alliance For Just Immigration, City of Chicago, Illinois, City of Los Angeles, California, City of Salinas, California, City of San Jose, California, County of Los Angeles, California, Rodney Ellis, Adrian Garcia, Gila River Indian Community, Harris County, Texas, King County, Washington, League of Women Voters, National Urban League, Navajo Nation, The National Association for the Advancement of Colored People. (Attachments: # 1 Proposed Order)(Huseney, Sadik) (Filed on 10/5/2020) (Entered: 10/05/2020)
10/05/2020	305	RESPONSE re 304 Response (Non Motion),, 299 Order by Steven Dillingham, Wilbur L. Ross, U.S. Census Bureau, U.S. Department of Commerce. (Attachments: # 1 Declaration of Megan Heller)(Ehrlich, Stephen) (Filed on 10/5/2020) (Entered: 10/05/2020)
10/06/2020	306	ORDER AFTER IN CAMERA REVIEW of Documents Identified on Defendants' October 4 Privilege Log. Signed by Judge Nathanael Cousins and Judge Thomas S. Hixson on 10/6/2020. (lmh, COURT STAFF) (Filed on 10/6/2020). (Entered: 10/06/2020)
10/06/2020	307	RESPONSE re 302 Order by Steven Dillingham, Wilbur L. Ross, U.S. Census Bureau, U.S. Department of Commerce. (Attachments: # 1 Thirteenth Declaration of James T. Christy)(Ehrlich, Stephen) (Filed on 10/6/2020) (Entered: 10/06/2020)
10/06/2020	308	RESPONSE re 306 Order <i>Defendants' Response to Court's October 6, 2020 Order</i> by Steven Dillingham, Wilbur L. Ross, U.S. Census Bureau, U.S. Department of Commerce. (Attachments: # 1 Documents)(Zee, Michael) (Filed on 10/6/2020) (Entered: 10/06/2020)
10/06/2020	309	Letter from Brett Pruit to Court Staff on October 6, 2020. (lhklc1S, COURT STAFF) (Filed on 10/6/2020) (Entered: 10/06/2020)
10/06/2020	310	<p>Minute Entry for proceedings held before Judge Lucy H. Koh: Further Case Management Conference held on 10/6/2020 from 2:03 PM - 3:11 PM (1 hour, 8 minutes). Further Case Management Conference SET for 10/16/2020 at 1:30 PM via Zoom videoconference.</p> <p>Total Time in Court: 1 hour, 8 minutes.</p> <p>Court Reporter: Summer Fisher.</p> <p>For Plaintiffs National Urban League; League of Women Voters; Black Alliance for Just Immigration; Harris County, TX; King County, Washington; City of San Jose, California; Rodney Ellis; Adrian Garcia; and NAACP: Melissa Sherry, Sadik Huseny, and Steven Bauer.</p> <p>For Plaintiffs National Urban League; League of Women Voters; Black Alliance for Just Immigration; Harris County, TX; King County, Washington; City of San Jose, California; Rodney Ellis; Adrian Garcia; NAACP; and Navajo Nation: Ezra Rosenberg and Thomas Wolf.</p> <p>For Plaintiff Navajo Nation: Jason Searle.</p> <p>For Plaintiff City of Los Angeles: Danielle Goldstein.</p> <p>For Plaintiff City of Salinas: Michael Mutalipassi.</p> <p>For Plaintiff City of Chicago: Rebecca Hirsch.</p> <p>For Plaintiff County of Los Angeles: David Holtzman.</p> <p>For Plaintiff Gila River Indian Community: Donald Pongrace.</p> <p>For Defendants: August Flentje and Brad Rosenberg.</p> <p>For transcript orders, please visit https://cand.uscourts.gov/transcripts. (<i>This is a text-only</i></p>

		<i>entry generated by the court. There is no document associated with this entry.)</i> (kedS, COURT STAFF) (Date Filed: 10/6/2020) (Entered: 10/06/2020)
10/06/2020	311	TRANSCRIPT ORDER for proceedings held on 10/6/2020 before Judge Lucy H. Koh by Black Alliance For Just Immigration, City of San Jose, California, Rodney Ellis, Adrian Garcia, Harris County, Texas, King County, Washington, League of Women Voters, National Urban League, The National Association for the Advancement of Colored People, for Court Reporter Summer Fisher. (Lankenau, Shannon) (Filed on 10/6/2020) (Entered: 10/06/2020)
10/07/2020	312	TRANSCRIPT ORDER for proceedings held on October 6, 2020 before Judge Lucy H. Koh by Steven Dillingham, Wilbur L. Ross, U.S. Census Bureau, U.S. Department of Commerce, for Court Reporter Summer Fisher. (Zee, Michael) (Filed on 10/7/2020) (Entered: 10/07/2020)
10/07/2020	313	Order re: Communications with the Court. Signed by Judge Lucy H. Koh on 10/7/2020. (lhklc3, COURT STAFF) (Filed on 10/7/2020) (Entered: 10/07/2020)
10/07/2020	314	Transcript of Proceedings held on 10/06/2020, before Judge Lucy H. Koh. Court Reporter/Transcriber Summer Fisher, telephone number summer_fisher@cand.uscourts.gov. Per General Order No. 59 and Judicial Conference policy, this transcript may be viewed only at the Clerk's Office public terminal or may be purchased through the Court Reporter/Transcriber until the deadline for the Release of Transcript Restriction. After that date it may be obtained through PACER. Any Notice of Intent to Request Redaction, if required, is due no later than 5 business days from date of this filing. (Re 312 Transcript Order) Redaction Request due 10/28/2020. Redacted Transcript Deadline set for 11/9/2020. Release of Transcript Restriction set for 1/5/2021. (Related documents(s) 312) (Fisher, Summer) (Filed on 10/7/2020) (Entered: 10/07/2020)
10/07/2020	315	Email to court staff dated 10/7/2020. (kedS, COURT STAFF) (Filed on 10/7/2020) (Entered: 10/07/2020)
10/07/2020	316	Email from Jeff Williams to court staff dated 10/7/2020. (kedS, COURT STAFF) (Filed on 10/7/2020) (Entered: 10/07/2020)
10/07/2020	317	Email from Jesse Granato to court staff dated 10/7/2020. (kedS, COURT STAFF) (Filed on 10/7/2020) (Entered: 10/07/2020)
10/07/2020	318	Email from Dan Weisman to court staff dated 10/7/2020. (kedS, COURT STAFF) (Filed on 10/7/2020) (Entered: 10/07/2020)
10/07/2020	319	Email to court staff dated 10/7/2020. (kedS, COURT STAFF) (Filed on 10/7/2020) (Entered: 10/07/2020)
10/07/2020	320	USCA ORDER for PUBLICATION (SUSAN P. GRABER, WILLIAM A. FLETCHER and MARSHA S. BERZON) as to 210 Notice of Appeal filed by Defendants, Commerce Secretary Wilbur L. Ross, Jr., the U.S. Department of Commerce, the Director of the U.S. Census Bureau Steven Dillingham, and the U.S. Census Bureau. To the extent that the district court enjoined the Defendants from attempting to meet the December 31 date, that injunction is stayed pending appeal. Emergency Motion for a Stay DENIED IN PART and GRANTED IN PART. (dhmS, COURT STAFF) (Filed on 10/7/2020) (Entered: 10/07/2020)
10/07/2020	321	OPPOSITION/RESPONSE (re 204 MOTION to Intervene) filed by Black Alliance For Just Immigration, City of Chicago, Illinois, City of Los Angeles, California, City of Salinas, California, City of San Jose, California, County of Los Angeles, California, Rodney Ellis, Adrian Garcia, Gila River Indian Community, Harris County, Texas, King

		County, Washington, League of Women Voters, National Urban League, Navajo Nation, The National Association for the Advancement of Colored People. (Huseney, Sadik) (Filed on 10/7/2020) (Entered: 10/07/2020)
10/07/2020	322	Order Compelling Defendants' Response. Signed by Judge Lucy H. Koh on 10/7/2020. (lhklc2, COURT STAFF) (Filed on 10/7/2020) (Entered: 10/07/2020)
10/08/2020	323	RESPONSE <i>to the Court's October 6, 2020 Order</i> by Steven Dillingham, Wilbur L. Ross, U.S. Census Bureau, U.S. Department of Commerce. (Attachments: # 1 Declaration of Albert E. Fontenot, Jr.)(Ehrlich, Stephen) (Filed on 10/8/2020) (Entered: 10/08/2020)
10/09/2020	324	Email from William Polmanteer to court staff dated 10/9/220. (kedS, COURT STAFF) (Filed on 10/9/2020) (Entered: 10/09/2020)
10/09/2020	325	Email from Peter Singer to court staff dated 10/8/2020. (kedS, COURT STAFF) (Filed on 10/9/2020) (Entered: 10/09/2020)
10/09/2020	326	RESPONSE re 322 Order by Steven Dillingham, Wilbur L. Ross, U.S. Census Bureau, U.S. Department of Commerce. (Attachments: # 1 Fourteenth Declaration James T. Christy)(Ehrlich, Stephen) (Filed on 10/9/2020) (Entered: 10/09/2020)
10/09/2020	327	Email to court staff dated 10/9/2020. (kedS, COURT STAFF) (Filed on 10/9/2020) (Entered: 10/09/2020)
10/09/2020	328	Emails from Peter Singer to court staff dated 10/9/2020. (kedS, COURT STAFF) (Filed on 10/9/2020) (Entered: 10/09/2020)
10/09/2020	329	RESPONSE <i>to Court's Instruction During October 6, 2020 Case Management Conference</i> by Steven Dillingham, Wilbur L. Ross, U.S. Census Bureau, U.S. Department of Commerce. (Attachments: # 1 1 of 2, # 2 2 of 2)(Zee, Michael) (Filed on 10/9/2020) (Entered: 10/09/2020)
10/09/2020	330	NOTICE by Gila River Indian Community <i>of Filing of Declaration of Sheila Valenzuela</i> (Attachments: # 1 Declaration of Sheila Valenzuela)(Pongrace, Donald) (Filed on 10/9/2020) (Entered: 10/09/2020)
10/09/2020	331	Statement (<i>Plaintiffs' Preliminary Identification of Potentially Key Documents in Defendants' October 4, 2020 Production</i>) by Black Alliance For Just Immigration, City of Chicago, Illinois, City of Los Angeles, California, City of Salinas, California, City of San Jose, California, County of Los Angeles, California, Rodney Ellis, Adrian Garcia, Gila River Indian Community, Harris County, Texas, King County, Washington, League of Women Voters, National Urban League, Navajo Nation, The National Association for the Advancement of Colored People. (Attachments: # 1 Key Documents)(Huseney, Sadik) (Filed on 10/9/2020) (Entered: 10/09/2020)
10/12/2020	332	Email from Christopher Burns to court staff. (lhklc3, COURT STAFF) (Filed on 10/12/2020) Modified on 10/12/2020 (kedS, COURT STAFF). (Entered: 10/12/2020)
10/12/2020	333	Email from Daniel Bachmann to court staff dated 10/10/2020. (kedS, COURT STAFF) (Filed on 10/12/2020) (Entered: 10/12/2020)
10/12/2020	334	Email to court staff dated 10/12/2020. (kedS, COURT STAFF) (Filed on 10/12/2020) (Entered: 10/12/2020)
10/12/2020	335	Email from Hari Naidu to the Court dated 10/12/2020. (kedS, COURT STAFF) (Filed on 10/12/2020) (Entered: 10/12/2020)
10/13/2020	336	Email from John Rogers to court staff dated 10/13/2020. (kedS, COURT STAFF) (Filed on 10/13/2020) (Entered: 10/13/2020)

10/13/2020	337	Order Compelling Defendants' Response. Signed by Judge Lucy H. Koh on 10/13/2020. (lhklc2, COURT STAFF) (Filed on 10/13/2020) (Entered: 10/13/2020)
10/13/2020	338	Email from Chase Springer to court staff dated 10/13/2020. (kedS, COURT STAFF) (Filed on 10/13/2020) (Entered: 10/13/2020)
10/13/2020	339	Order re: United States Supreme Court's Stay and Case Management Conference. Signed by Judge Lucy H. Koh on 10/13/2020. (lhklc3, COURT STAFF) (Filed on 10/13/2020) Modified on 10/13/2020 (lhklc3, COURT STAFF). (Entered: 10/13/2020)
10/13/2020		***Set Deadlines/Hearings per 339 Order: Further Case Management Conference CONTINUED from 10/16/2020 to 10/27/2020 at 1:30 PM via Zoom webinar. All counsel, members of the public, and media may access the webinar information at https://www.cand.uscourts.gov/lhk . (kedS, COURT STAFF) (Filed on 10/13/2020) (Entered: 10/13/2020)
10/15/2020	340	RESPONSE re 337 Order by U.S. Department of Commerce. (Attachments: # 1 Declaration Fifteenth Declaration of James Christy)(Sverdlov, Alexander) (Filed on 10/15/2020) (Entered: 10/15/2020)
10/16/2020	341	STIPULATION WITH PROPOSED ORDER <i>Regarding Deadlines Related to Second Amended Complaint</i> filed by Black Alliance For Just Immigration, City of Chicago, Illinois, City of Los Angeles, California, City of Salinas, California, City of San Jose, California, County of Los Angeles, California, Rodney Ellis, Adrian Garcia, Gila River Indian Community, Harris County, Texas, King County, Washington, League of Women Voters, National Urban League, Navajo Nation, The National Association for the Advancement of Colored People. (Attachments: # 1 Declaration of Sadik Huseny, # 2 Proposed Order)(Huseny, Sadik) (Filed on 10/16/2020) (Entered: 10/16/2020)
10/20/2020	342	Order by Judge Lucy H. Koh granting 341 Stipulation re: Deadlines Related to Second Amended Complaint.(lhklc2, COURT STAFF) (Filed on 10/20/2020) (Entered: 10/20/2020)

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