

1 LATHAM & WATKINS LLP
Sadik Huseny (Bar No. 224659)
2 sadik.huseny@lw.com
Steven M. Bauer (Bar No. 135067)
3 steven.bauer@lw.com
Amit Makker (Bar No. 280747)
4 amit.makker@lw.com
Shannon D. Lankenau (Bar No. 294263)
5 shannon.lankenau@lw.com
6 505 Montgomery Street, Suite 2000
San Francisco, CA 94111
Telephone: 415.391.0600

7 LATHAM & WATKINS LLP
8 Melissa Arbus Sherry (admitted *pro hac vice*)
melissa.sherry@lw.com
9 Richard P. Bress (admitted *pro hac vice*)
rick.bress@lw.com
10 Anne W. Robinson (admitted *pro hac vice*)
anne.robinson@lw.com
11 Tyce R. Walters (admitted *pro hac vice*)
tyce.walters@lw.com
12 Gemma Donofrio (admitted *pro hac vice*)
gemma.donofrio@lw.com
13 555 Eleventh Street NW, Suite 1000
Washington, D.C. 20004
14 Telephone: 202.637.2200

LAWYERS' COMMITTEE FOR
CIVIL RIGHTS UNDER LAW
Kristen Clarke (*pro hac vice*)
kclarke@lawyerscommittee.org
Jon M. Greenbaum (Bar No. 166733)
jgreenbaum@lawyerscommittee.org
Ezra D. Rosenberg (*pro hac vice*)
erosenberg@lawyerscommittee.org
Dorian L. Spence (*pro hac vice to come*)
dspence@lawyerscommittee.org
Ajay P. Saini (*pro hac vice*)
asaini@lawyerscommittee.org
Maryum Jordan (Bar No. 325447)
mjordan@lawyerscommittee.org
Pooja Chaudhuri (Bar No. 314847)
pchaudhuri@lawyerscommittee.org
1500 K Street NW, Suite 900
Washington, D.C. 20005
Telephone: 202.662.8600
Facsimile: 202.783.0857

*Additional counsel and representation
information listed in signature block*

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

16 NATIONAL URBAN LEAGUE; LEAGUE OF
17 WOMEN VOTERS; BLACK ALLIANCE FOR
18 JUST IMMIGRATION; HARRIS COUNTY,
19 TEXAS; KING COUNTY, WASHINGTON;
CITY OF LOS ANGELES, CALIFORNIA;
20 CITY OF SALINAS, CALIFORNIA; CITY OF
SAN JOSE, CALIFORNIA; RODNEY ELLIS;
21 ADRIAN GARCIA; THE NATIONAL
ASSOCIATION FOR THE ADVANCEMENT
22 OF COLORED PEOPLE; CITY OF CHICAGO,
ILLINOIS; COUNTY OF LOS ANGELES,
23 CALIFORNIA; NAVAJO NATION; and GILA
RIVER INDIAN COMMUNITY,

24 Plaintiffs,

25 v.

26 WILBUR L. ROSS, JR., in his official capacity
as Secretary of Commerce; U.S. DEPARTMENT
OF COMMERCE; STEVEN DILLINGHAM, in
27 his official capacity as Director of the U.S.
Census Bureau; and U.S. CENSUS BUREAU,
28 Defendants.

CASE NO. 20-cv-5799-LHK

**SECOND AMENDED COMPLAINT
FOR DECLARATORY AND
INJUNCTIVE RELIEF**

INTRODUCTION AND SUMMARY

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 Bureau to compress eight and a half
5 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. This Second Amended Complaint concerns two related periods of time: (1)
8 Defendants’ announcement and initial implementation of the census “Replan” (which acceded to
9 improper political pressure and abandoned a decade of planning and analysis on how to conduct
10 a fair, complete, and accurate census), and (2) the last two months of litigation in this case,
11 (where Defendants’ conduct and ever-changing rationales, and Defendants’ new, misleading
12 reliance on its alleged “99% completion” rate, demonstrate that Defendants have violated the
13 federal government’s constitutional and statutory obligations to secure a fair, complete, and
14 accurate census).

15 3. Plaintiffs’ initial complaint focused on the Replan decision, announcement, and
16 initial implementation. Plaintiffs file this Second Amended Complaint, pursuant to Court order
17 and agreement between the parties, to show why recent developments require expedited
18 resolution on the merits and a final judgment of permanent injunctive and declaratory relief. In
19 short, Defendants have maintained their Replan scheme to cut in half the amount of time for
20 conducting the decennial census. Only expedited permanent relief from this Court can ensure a
21 fair, accurate, and complete 2020 Census.

22 4. The Defendants’ attempt to rush the census count poses a grave threat to the vital
23 functions that rely on census data, from reapportioning the United States House of
24 Representatives and redrawing state and local electoral districts, to equitably distributing over
25 \$1.5 trillion annually in federal funds that support basic needs such as food, health care, and
26 education. *See* George Washington University Institute of Public Policy, *Counting for Dollars*
27 *2020: The Role of the Decennial Census in the Geographic Distribution of Federal Funds, Brief*
28 *7: Comprehensive Accounting of Census-Guided Federal Spending* (April 2020). Undercounted

1 cities, counties, and municipalities will lose representation in Congress and tens of millions of
2 dollars in funding. And communities of color, threatened with a massive undercount, will lose
3 core political power and vital services. In contrast to these dire stakes, the immediate solution to
4 this problem is simple: set aside and permanently enjoin implementation of the impossibly-
5 shortened Replan, and allow the Census Bureau to implement the rest of the plan that it had
6 designed to fulfill its constitutional duties during the pandemic.

7 **(A) The Replan violated Defendants’ constitutional and statutory obligations to make**
8 **decisions that are reasonably related to achieving a fair and accurate count**

9 5. The Census Bureau’s staff spent most of the past decade developing a final
10 operational plan for the 2020 Census that reflected the Bureau’s understanding of the best
11 methods for counting everyone once and in the right place (the “Final Operational Plan”).

12 6. The COVID-19 pandemic upended all census field operations, many of which the
13 Bureau designed to enumerate populations that it has long struggled to count, including racial
14 and ethnic minorities, non-English speakers, and undocumented persons. Among the disrupted
15 census operations was the largest, most time-consuming operation undertaken to count the
16 country’s hard-to-count communities—the “Non-Response Follow Up” operation. During Non-
17 Response Follow Up, the Bureau sends its employees to knock on the doors of households that
18 have not yet responded to the census and perform other vital data-collecting functions.

19 7. The Bureau’s staff responded to the pandemic—and the impossibility of
20 conducting house visits during widespread lockdowns—by making necessary adjustments to the
21 timeline in the Final Operational Plan. This revised operational plan, the “COVID-19 Plan”
22 issued on April 13, 2020, was intended to ensure that hard-to-count communities would be
23 enumerated and the health and safety of Bureau employees and the public would be protected.
24 This plan adjusted the deadlines of, but did not shorten the time for, critical operations. Under
25 this plan—which experts and census stakeholders alike endorsed as a scientifically sound
26 approach for minimizing the pandemic’s potential damage to the accuracy of the count—the
27 Bureau extended its data-collection deadlines to October 31, 2020 and its data-processing
28 deadlines into the second quarter of 2021. Critically, the COVID-19 Plan delayed door-

1 knocking by three months, pushing it from May–July 2020 to August–October 2020. But the
2 COVID-19 Plan acknowledged that the Bureau must spend the same amount of time—around
3 eleven and a half weeks—on door-knocking, just as it had planned to do before the pandemic.
4 The COVID-19 Plan also incorporated the same methods and techniques contemplated in the
5 Final Operational Plan that the Bureau had spent years developing.

6 8. Indeed, the only respect in which the COVID-19 Plan altered the amount of time
7 devoted to operations set out in the Final Operational Plan was a requirement that the Bureau
8 spend *more* time than originally planned in *processing* the data it collected—that is, performing
9 the necessary, critical second part of its work, to transform over 100 million individual census
10 forms into high-quality, reliable, and legitimate data. This additional investment in data-
11 processing reflected daunting new challenges the COVID-19 pandemic posed to an accurate
12 count, including massive displacements of people that would introduce problems of duplicate
13 responses, responses without unique census identifiers, and other complex data issues.

14 9. The Department of Commerce and the Census Bureau also recognized that the
15 impact of COVID-19 had made it impossible to meet certain statutory deadlines for reporting
16 census results to Congress. Commerce Secretary Wilbur Ross and Census Bureau Director
17 Steven Dillingham announced that the Bureau was seeking relief from Congress to formally
18 extend two statutory deadlines: first, the deadline for reporting the state-population totals used to
19 calculate the congressional apportionment to the President, which Congress was asked to extend
20 from December 31, 2020 to April 30, 2021; and, second, the deadline for reporting redistricting
21 data to the states, which Congress was asked to extend from March 31, 2021, to July 31, 2021.
22 Commenting on the statutory-deadline extensions, President Trump publicly stated on April 13,
23 2020, “I don’t know that you even have to ask [Congress]. This is called an act of God. This is
24 called a situation that has to be. They have to give in. I think 120 days isn’t nearly enough.”
25 Hansi Lo Wang, *Trump Officials Ask to Delay Census Data for Voting Districts, House Seats*,
26 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)
27 [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).

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1 10. Recognizing that more time was necessary to complete an accurate census, and
2 consistent with the President’s statement, the Bureau proceeded immediately under its COVID-
3 19 Plan. The Bureau delayed its door-knocking operation to late summer, with the declared
4 intention of completing it by October 31, 2020. And understanding that a successful census is
5 dependent on thousands of public and private entities and individuals working together, the
6 Bureau publicized its definitive COVID-19 plan to the public, as well as to government and non-
7 profit partners involved in the years-long and multi-million-dollar public education campaign to
8 ensure public trust and encourage public participation in the census.

9 11. No one challenged the Bureau’s COVID-19 Plan or its extended timelines. All
10 understood that a more than three-month freeze caused by a global pandemic meant, by
11 definition, that a like amount of time (or more) was needed to knock on tens of millions of doors
12 and count everyone, once and in the right place.

13 12. And the Bureau was vocal about the need for additional time. Throughout the
14 summer, Bureau officials repeatedly stated that the pandemic had rendered it impossible for the
15 Bureau to complete a reasonably accurate count by December 31, 2020. Internally, everyone at
16 the Bureau stated and acted upon the same. To comply with its constitutional and statutory
17 obligations to conduct a fair, complete and accurate census, the Bureau continued collecting data
18 on the timelines set in the COVID-19 Plan, which extended the Bureau’s data processing into
19 2021.

20 13. But on August 3, everything suddenly changed. Nearly four months into
21 implementing its COVID-19 Plan—in the face of a pandemic that had only grown worse, and in
22 disregard of the Bureau’s constitutional and statutory duties to conduct an actual enumeration of
23 the entire population—Secretary Ross and Director Dillingham abruptly abandoned the COVID-
24 19 Plan. Without explanation, they announced a new “Replan” for the 2020 Census, including
25 shortening the Bureau’s data-collection operation by one month to September 30, 2020, and
26 requiring the Bureau to process and report the apportionment data to President Trump by
27 December 31, 2020. The Replan cut a crucial *four weeks* out from the 11.5 week data-collection
28 operation: over a third of the time required for and planned for that work. It cut *three months*

1 from the critical data-processing portion of the census— half the amount of time required for and
2 planned for that work. And it disregarded the Bureau’s own prior conclusions that such a mad
3 rush would render it impossible for the Bureau to fulfil its constitutional obligation to ensure
4 reasonable quality and accuracy of the 2020 Census.

5 14. In short, the Replan required the Bureau to complete eight and a half months of
6 data collection and data processing in half the time. It ignored the multi-month delay in census
7 data-collection that the COVID-19 pandemic caused. And it compelled a final date for
8 delivering census apportionment data to the President that Bureau officials have repeatedly
9 asserted they cannot meet with constitutional, fit-for-purpose data.

10 15. Defendants’ decision to abandon the COVID-19 Plan in favor of the Replan does
11 not satisfy the Supreme Court’s clear command that any decision relating to the census bear a
12 “reasonable relationship” to producing an accurate count. *See Wisconsin v. City of N.Y.*, 517
13 U.S. 1, 20 (1996). As demonstrated by Defendants’ own prior statements, the challenged
14 decision cannot be justified by any legitimate interest in conducting an accurate census, and in
15 fact will introduce several inaccuracies in the count, chief among them major undercounts of
16 communities of color.

17 16. The reason for this abrupt change of position was not apparent on the face of the
18 press release announcing the Replan or any other subsequently issued statements or publications
19 from the federal government. The Bureau has refused requests from Congress and at least one
20 Plaintiff in this action to provide one.

21 17. The announcement of the Replan did reference two developments that occurred
22 between the adoption of the COVID-19 Plan and the announcement of the Bureau’s intent to
23 adopt the Replan. But neither of these developments can justify Defendants’ actions.

24 18. First, the announcement referred to the Secretary of Commerce’s direction to the
25 Bureau to comply with the statutory deadline of December 31, 2020 for completing the
26 apportionment count. But this statutory deadline cannot justify an unconstitutional decision to
27 cut short crucial operations and fail to satisfy its constitutional obligation. A statutory deadline,
28 particularly one that was set without a global pandemic in mind, cannot override the federal

1 government’s constitutional duty to accomplish an accurate census; there is “nothing sacred in
2 the due date of the filing [of apportionment data], especially when the work of the Census
3 Bureau... is incomplete.” *Carey v. Klutznick*, 637 F. 2d 834, 837 (2d Cir. 1980). Moreover, the
4 Bureau was cognizant of this deadline even as it designed and implemented the COVID-19 Plan,
5 including delaying crucial field operations by several months. And Bureau officials have
6 repeatedly made clear that because of the impediments introduced by COVID-19, together with
7 the multi-month delay, it is *already* too late to satisfy these pre-COVID-19 deadlines.

8 19. Second, both the text of the Replan announcement and the timing of the decision
9 suggested that the federal government’s motivation for the Replan is to facilitate another illegal
10 act: suppressing the political power of communities of color by excluding undocumented people
11 from the final apportionment count. On July 21, 2020—just a few weeks earlier—President
12 Trump issued a Presidential Order titled “Memorandum Excluding Illegal Aliens From the
13 Apportionment Base Following the 2020 Census” (the “Apportionment Exclusion Order”)—
14 which expressly stated the President’s determination to exclude undocumented people from the
15 population count used for apportionment. To increase the chance that the President can fully
16 effectuate the Apportionment Exclusion Order, he must receive the population totals while he is
17 still in office, and he ordered the Secretary of Commerce to provide him with 2020 decennial
18 census information by December 31, 2020 to carry out his objective.

19 20. The President’s Apportionment Exclusion Order (currently being challenged as
20 unconstitutional and unlawful in a number of lawsuits filed in jurisdictions around the country,
21 including in this District) represents only the most recent of Defendants’ serial attempts to
22 manipulate the 2020 Census to suppress the political power of communities of color. These
23 attempts started with a campaign to introduce a historically unprecedented and untested
24 citizenship question onto the 2020 Census questionnaire to advantage—in the words of a
25 deceased Republican redistricting consultant—“Republicans and non-Hispanic whites.” Michael
26 Wines, *Deceased G.O.P. Strategist’s Hard Drives Reveal New Details on the Census Citizenship*
27 *Question*, N.Y. Times (May 30, 2019), [https://www.nytimes.com/2019/05/30/us/census-](https://www.nytimes.com/2019/05/30/us/census-citizenship-question-hofeller.html)
28 [citizenship-question-hofeller.html](https://www.nytimes.com/2019/05/30/us/census-citizenship-question-hofeller.html). Since the Supreme Court blocked the question, Defendants

1 have looked for other means to achieve that same end, including collecting data on citizenship
 2 from administrative records and, now, cutting the census short.

3 **(B) Defendants’ conduct since the Replan announcement and throughout this**
 4 **litigation, and the effects of the Replan on census data collection, demonstrate the**
 5 **need for expedited resolution of the merits of Plaintiffs’ claims**

6 21. Developments since the initial complaint was filed in this case have shown that
 7 Plaintiffs’ concerns in bringing this lawsuit were more than justified.

8 22. For context, it is important to see how exactly Defendants were characterizing
 9 these issues around the time Plaintiffs’ initial complaint was filed. On August 14, 2020,
 10 Secretary Ross wrote an op-ed aimed at bolstering confidence in the Replan:

<p>Willbur Ross</p> <p>The U.S. Census Bureau is well on its way to delivering a complete and accurate 2020 Census. I am proud to oversee this essential activity which is clearly outlined in the United States Constitution.</p> <p>Critics claim incorrectly that the Census Bureau is shortchanging the count. This is not an accurate depiction of the current state of the 2020 Census, which is on its way to delivering a successful count in every community across the nation.</p> <p>Last week, the Census Bureau announced an updated plan to complete data collection by September 30, 2020, in order to meet the statutory deadline of December 31, 2020.</p> <p>The Census Bureau’s plan adapts the important field operation that follows up with nonresponding households, and it increases the number of hours worked per week to accomplish the same amount of work in a shorter time period and meet the statutory deadline, without sacrificing quality.</p> <p>Under this plan, the Census Bureau will meet or exceed the standard for data collection set in previous decennial censuses.</p> <p>So, while the critics have said this plan is being “cut-off” too soon, in reality, it has been strengthened in order to get the complete and accurate count on time.</p> <p>Over 100 million households have already responded to the 2020 census across all our operations, ahead of our projections for this point.</p> <p>This week we fully engage the 2020 census’s important non-response follow-up operation, where census-takers go door-to-door to obtain responses from the just over 50 million households who have not yet responded.</p>	<p>FOR IMMEDIATE RELEASE Friday, August 14, 2020</p> <p>Office of Public Affairs (202) 482-4883 publicaffairs@doc.gov</p>
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25 23. Secretary’s Ross’s assertions about the quality and processes of the Replan were
 26 incorrect when made, and have proven to be definitively incorrect over time. In implementing
 27 the Replan, the Census Bureau had altered its non-response follow up (“NRFU”) processes and
 28 methods—including how it would measure a household unit as “complete” or “enumerated”—in

1 a manner that would increase speed but would sacrifice quality, weaken the data collection
2 process, and would not “meet or exceed the standard of data collection set in previous decennial
3 censuses.” U.S. Dept. of Commerce, *Op-Ed by Commerce Secretary Wilbur L. Ross: The*
4 *Census Bureau is Not Shortchanging the Count*, Aug. 14, 2020,
5 [https://www.commerce.gov/news/op-eds/2020/08/op-ed-commerce-secretary-wilbur-l-ross-](https://www.commerce.gov/news/op-eds/2020/08/op-ed-commerce-secretary-wilbur-l-ross-census-bureau-not-shortchanging-count)
6 [census-bureau-not-shortchanging-count](https://www.commerce.gov/news/op-eds/2020/08/op-ed-commerce-secretary-wilbur-l-ross-census-bureau-not-shortchanging-count) (“Ross Op-Ed”). The changes made by Defendants
7 would ensure that many communities across the nation would suffer in Defendants’ efforts to try
8 and get to a broad-brush “99% completion rate” metric for the census overall—yet Defendants
9 would still come nowhere close to meeting that “99% completion rate” under the Replan’s
10 deadlines. This is shown by, among other things, the following developments.

11 24. *Corroborating internal documents.* Internal documents and materials obtained
12 after the filing of the complaint demonstrate that in fact Plaintiffs’ allegations and concerns about
13 the Replan—and the constitutional and statutory failings regarding its announcement,
14 implementation, and threatened harms—were true. For instance, a presentation by the Bureau to
15 Secretary Ross on August 3, 2020—released during this litigation—identified a number of steps
16 the Bureau would need to take under the Replan to speed up the NRFU process. Many of these
17 steps were expected to decrease accuracy. AR DOC_0008779. The presentation also warned
18 that all of the activities outlined to speed up backend processing “represent abbreviated processes
19 or eliminated activities that will reduce accuracy.”

20 25. *Undisclosed plan to begin unprecedented wind-down of data collection on*
21 *September 11, 2020.* Unbeknownst to Plaintiffs, in furtherance of the September 30 operations
22 shutdown, Defendants had secretly planned to allow every census office in the nation to start
23 winding down and initiate closeout procedures beginning on September 11 at the discretion of
24 the regional director—regardless of how far along they were. In fact, Defendants had already
25 started to wind down in some undisclosed portions of the country. To put this issue in
26 perspective, as of September 11, approximately 9%, or approximately 13.5 million, of the
27 household units in the nation had not been counted. Despite this, each census office would have
28 become eligible for early closeout where, among other things, the office would become eligible

1 for such mechanisms as “pop count only” where census workers would cease trying to obtain full
2 demographic data from the household and instead seek only a “population count” alone. This
3 was an unprecedented and massive change from previous censuses, where such limiting closeout
4 procedures would generally not be implemented until roughly 1% or less of the housing units
5 were still to be counted.

6 26. Failure to reach minimum completion levels by the Replan’s September 30 data
7 collection deadline, even assuming the completion percentages were true. The data also show
8 that Defendants’ claims that they would have reached a 99% completion rate in every state by
9 the Replan’s new data-collection shutdown date of September 30 was also not correct. Even
10 assuming that the “completion” metrics being used by Defendants were materially identical to
11 the standards used in previous censuses, *16 states plus the District of Columbia* were below the
12 99% threshold on September 30, and millions of individuals would have been shut out of the
13 count if field operations had ceased then. U.S. Census Bureau, 2020 Census Housing Unit
14 Enumeration Progress by State, Sept. 30, 2020, [https://2020census.gov/content/dam/2020census/](https://2020census.gov/content/dam/2020census/news/daily-nrfu-rates/nrfu-rates-report-09-30.pdf)
15 [news/daily-nrfu-rates/nrfu-rates-report-09-30.pdf](https://2020census.gov/content/dam/2020census/news/daily-nrfu-rates/nrfu-rates-report-09-30.pdf)

16 27. The overall completion metrics, or even the state-by-state completion metrics,
17 also hide a bigger problem: differential undercounts at the local census CFS office level. As
18 Defendants themselves realized, in internal documents from September, numerous CFS areas
19 were far below target. In two Census ACOs (Shreveport, Louisiana and Window Rock,
20 Arizona), actual completion rates on September 28th were below 75% even though the targeted
21 completion rate was over 95%. Another 22 Census offices reported completion rates of under
22 90% on September 28th compared to a targeted completion rate of over 95%. There was also
23 very low completion rates in tribal lands.

24 28. No realistic ability to reach their claimed Oct 15 completion rates under the same
25 standards and processes used for previous censuses. The context of the 2020 data-collection
26 period, in addition to how it played out in practice, make clear that Defendants never had a
27 realistic ability to reach true 99% completion rates in every state by September 30 or even
28 October 15—let alone while trying to reach hard-to-count populations—without significant,

1 accuracy-reducing changes in the Bureau’s standards, processes and metrics. These changes
2 significantly altered and weakened NRFU and the Bureau’s measurement of it: a deliberate
3 sacrifice of accuracy for speed.

4 29. The 2010 Census scheduled 10 weeks of NRFU to resolve ~47,200,000 million
5 household units. See U.S. Dept. of Commerce, Office of Inspector General, *Census 2010: Final*
6 *Report to Congress* (June 2011) at 49. The 2020 Census Final Operational Plan scheduled 11.5
7 weeks of NRFU to resolve ~64,000,000 housing units. Thus, the Census was already planning to
8 be far more efficient, in 2020, than in 2010—because it added only 10 days more to handle an
9 additional ~17 million housing units. And it spent a decade honing these efficiencies,
10 conducting tests essentially every single year, and refining various advancements, including the
11 use of sophisticated software, assignment optimization, advancements in review technology, the
12 use of iPhones instead of paper technology, and so on.

13 30. With all of these advancements and tests, the Bureau projected enumerator
14 productivity to be around 1.55 resolved cases/hour: an enormous and self-identified “substantial
15 increase” over the 1.05 resolved cases per hour during the 2010 Census. U.S. Census Bureau,
16 *Final Census Test Proves Successful*, Sept. 5, 2018,
17 [https://www.census.gov/newsroom/blogs/director/2018/09/final-census-test-proves-](https://www.census.gov/newsroom/blogs/director/2018/09/final-census-test-proves-successful.html)
18 [successful.html](https://www.census.gov/newsroom/blogs/director/2018/09/final-census-test-proves-successful.html). And there was no indication that the Bureau could squeeze out greater
19 productivity from its enumerators, even using all of this new technology and software
20 optimization, while still reasonably maintaining accuracy.

21 31. In order to squeeze in 62 million housing unit enumerations into an 11.5 week
22 period, the Bureau also closely calculated the number of enumerators it would need, based on the
23 projected enumerator per-hour productivity and per-week workload. After a decade of study
24 preparing for the 2020 Census, Defendants had initially projected needing around 260,000
25 enumerators to perform NRFU operations. That number then increased to above 300,000
26 enumerators as a result of the COVID-19 pandemic.

27 32. The Bureau never hired and trained the more than 300,000 enumerators that
28 officials said they needed. Instead, they claim that enumerator productivity rates somehow

1 skyrocketed—during a once-in-a-century pandemic, and during a huge and wide array of natural
2 disasters—to a level they never could achieve after a decade of testing. Using all the same
3 technology and optimizations already built in, enumerator rates shot from 1.55 cases/hour to 2.32
4 cases/hour.

5 33. This wasn't an August miracle. Instead, the Replan resulted in a massive
6 decrease in in-person visits and a corresponding increase in the use of administrative records,
7 proxies, and changed information requirements (i.e., pop-counts). And it was those changes—
8 along with even more troubling charges of enumerators being told to act improperly and cut
9 corners, as discussed below—that led to the impossible jump in enumerator productivity.
10 Contrary to Secretary Ross's promises, the 2020 data collection process did not meet or exceed
11 the standards of the previous census, or strengthen those standards and processes. The math only
12 worked because it slashed prior standards.

13 34. The claimed 99% completion rates as of October 15 are misleading and fail to
14 measure up adequately to past censuses. Defendants' claim that they had reached completion
15 rates of 99% in every state of the country as of October 15, better than previous censuses, is
16 misleading and untrue. There are in fact glaring differences between the 2020 decennial
17 censuses and previous censuses.

18 35. First, the 99% completion metrics are inflated because Defendants appear to have
19 kept the denominator of total nationwide housing units to be enumerated artificially low. They
20 have done so by not including additional housing units identified through the NRFU process.
21 Specifically, Defendants' internal spreadsheets—through which they derive the daily completion
22 rate percentages—use a total housing unit number of ~149 million, while the Census Bureau has
23 itself said that the total number of housing units is ~152 million. On information and belief if
24 Defendants were to add, to the denominator, the additional housing units (identified through the
25 NRFU process or otherwise), the rates for the country overall would decrease below 99%. In
26 addition, depending on the location of the additional housing units artificially excluded, the
27 completion percentages for some states and local census offices might be significantly below
28 99%.

1 36. Second, Defendants’ October 15 completion rate metrics, provided on an
 2 October 21 media call by Bureau executives Albert Fontenot and Tim Olson, only relate to
 3 occupied housing units and provide no information about any units marked as vacant or deleted.
 4 See U.S. Census Bureau, *2020 Census Operational Press Briefing* (Oct. 21, 2020),
 5 [https://www.census.gov/newsroom/press-kits/2020/2020-census-operational-press-briefing-](https://www.census.gov/newsroom/press-kits/2020/2020-census-operational-press-briefing-october21.html)
 6 [october21.html](https://www.census.gov/newsroom/press-kits/2020/2020-census-operational-press-briefing-october21.html). This appears to be deliberate: Defendants have provided no data about the
 7 millions of housing units that are marked vacant or deleted from the registry—where they are,
 8 how they were characterized as such, or anything else. They have not even provided the overall
 9 number of NRFU housing units marked as vacant or deleted.

10 37. Third, Defendants’ decision to only provide limited information about NRFU
 11 results, restricted to occupied housing unit metrics, appears to be an effort to inflate the metrics
 12 so as to convey the image that the 2020 decennial census NRFU process resulted in numbers
 13 equivalent to or better than previous censuses, and particularly as to the number of enumerations
 14 resolved by in-person interviews. In fact, the numbers are far worse. Once again, on
 15 information and belief—and by reading between the lines and triangulating from other data
 16 Defendants have provided—the 2020 census data collection period has ended with what appears
 17 to be the following glaring results when compared to prior censuses:

- 18 • **Of the total housing units in the nation** (from Defendants’ Master
 19 Address File or MAF), which Defendants have stated equal
 20 ~152,000,000, Defendants have enumerated *over a quarter*—
 21 approximately 27%— through administrative records or proxies
 22 only. This is unprecedented in recent census history and is a
 23 dereliction of the Bureau’s duty and promise to count every person
 24 once and in the right place. And it cannot be understated: Plaintiffs
 25 estimate that *over **over 41 million households and anywhere from***
 26 ***~80 to 100 million people*** (assuming 2-3 persons per housing unit),
 27 have not been directly spoken with in this 2020 census.
- 28 • **Of the total housing units in the NRFU process**, which Defendants
 have stated equal ~64,000,000, Defendants have conducted in-
 person household enumeration of only ~36%, compared to ~47% in
 the 2010 Census. If Defendants had just matched the 2010 census, it
 appears that they would have conducted household in-person
 enumerations of *~7 million more housing units*.
- **Of the total occupied housing units in the NRFU process**, which
 on information and belief totals ~41,700,000, Defendants have
 conducted in-person household enumeration of only ~55%,

1 compared to ~75% in the 2010 Census. If Defendants had just
2 matched the 2010 census, it appears that they would have conducted
3 household in-person enumerations of ~8 million more housing units.
4 Additionally, it appears that Defendants enumerated far more
5 household units (perhaps millions more) via administrative records
6 then even they had previously estimated or considered—and
7 Defendants have not disclosed how they softened or altered their
8 administrative record protocols and standards to result in such a
9 significant increase.

10 38. From these limited numbers alone (never revealed directly by Defendants), it is
11 clear how Defendants have been able to claim they “finished” data collection with a “99%”
12 completion rate and reached such high “productivity” rates for census enumerators. They
13 stopped counting people live—in massive amounts—and simply changed the definition of
14 “complete” or “enumerated” when compared to other recent censuses. But word-play does not
15 change the substance or the massive constitutional failing of this sort of count.

16 39. Fourth, as indicated by the numerous Census employees who wrote to the Court,
17 the completion numbers themselves are riddled with potential problems, ranging from
18 enumerators pressured or told to provide false data or guesswork to enumerations being marked
19 complete after minimal or no visits. These issues are compounded by Defendants (1) not
20 providing any information on numbers/types of in-person visits, (2) not providing any
21 information on the specific sorts of administrative records or proxies used, and in what quantity,
22 (3) abandoning random re-interview quality control checks for large swaths of the data collection
23 period, and not providing any specific information regarding their re-interview quality control
24 checks, and (4) especially, not providing any information whatsoever by local CFS area, so as to
25 preclude the public and Plaintiffs from assessing how Defendants’ various efforts at rushing data
26 collection may have led to significant differential undercounts and other data-quality problems.

27 40. On August 14, Secretary Ross stated publicly that critics of the Replan had
28 nothing to fear, and that the Census Bureau would meet the September 30 data collection
deadline with a NRFU program stronger than before, equaling or surpassing accuracy metrics
from previous censuses. As the above indicates, this simply was not true. Plaintiffs have already
been able to deduce or ascertain some of Defendants’ significant failings in this respect, based on
limited information currently available, and on information and belief will be able to more fully

1 analyze the failings of the data collection portion of the 2020 Census upon receipt of the
2 information Defendants have yet to provide the public and Plaintiffs.

3 41. Defendants have admitted repeatedly that they cannot obtain an accurate and
4 constitutionally fit census through a data processing portion that must finish by the statutory
5 deadline of December 31. Throughout this litigation, Defendants unequivocally stated that data-
6 processing operations could not be shortened beyond the three months to which they were
7 compressed under the Replan, and data processing must therefore begin no later than October 1.
8 After the Court’s preliminary injunction order, Defendants announced a new drop-dead date of
9 October 6. But Defendants did *not* begin data-processing operations until October 16, at the
10 earliest—because data collection did not end until October 15.

11 42. Defendants’ statements that that they nonetheless intend to deliver census-based
12 apportionment numbers by December 31 or shortly thereafter, are therefore extremely troubling,
13 and an admission that the numbers will be definition be constitutionally and statutorily infirm.
14 As Defendants’ own statements—and a host of outside experts—make clear, the Bureau cannot
15 accomplish five months of data processing in ten weeks.

16 43. Defendants also repeatedly claimed that they were obligated to meet the
17 December 31 statutory deadline for reporting apportionment counts to the President. And they
18 repeatedly relied on this statutory reporting deadline as the only reason for adopting and
19 defending the Replan.

20 44. Defendants’ recent statements, however, suggest that they no longer view the
21 December 31 deadline as binding. There are good reasons to think that the new (not yet
22 revealed) target date will depend on the results of the upcoming election. If President Trump
23 does not win, Plaintiffs believe that the Secretary will ultimately submit his report *after* the
24 December 31 statutory deadline but *before* January 10—so that *this* President is able to
25 implement the Presidential Memorandum and submit that revised apportionment count before he
26 leaves office. The latest change in position only further confirms that the statutory deadline was
27 mere pretext. The true motivation for the severely truncated deadlines in the Replan is and has
28 always been a timeline that gives this President control over the final apportionment numbers.

* * *

1
2 45. Plaintiffs are local governments, civil rights and civic organizations, and
3 individuals whose communities will almost certainly be inaccurately represented and
4 underrepresented in the final census count if the administration succeeds in truncating the census.

5 46. Plaintiffs seek declaratory relief affirming that Defendants’ actions violate the
6 Enumeration Clause and the Administrative Procedure Act. Plaintiffs additionally seek to set
7 aside and enjoin implementation or effectuation of the illegal Replan, thereby permitting the
8 Bureau to implement and effectuate the preexisting COVID-19 Plan it carefully designed to
9 ensure a complete and accurate count. This relief will allow the Bureau to conduct the 2020
10 Census on the timeline and in the manner it has repeatedly asserted is necessary to complete a
11 full, fair, and accurate census

12 47. Without such relief, Plaintiffs and the communities they represent will suffer
13 irreparable harm for at least another decade, until the next census is conducted.

14 **JURISDICTION AND VENUE**

15 48. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331, 1346(a), and
16 1361.

17 49. Venue is proper in this judicial district under 28 U.S.C. § 1391(b)(2) and (e)(1).
18 Defendants are United States officers or agencies sued in their official capacities, a substantial
19 part of the events or omissions giving rise to this action have occurred or will occur in this
20 district, and one or more Plaintiffs reside in this district.

21 50. This Court may grant declaratory and injunctive relief under 28 U.S.C. §§ 2201
22 and 2202.

23 51. The proper intradistrict assignment for this action is the San Jose Division, in light
24 of the location of Plaintiffs City of San Jose and members of the League of Women Voters.

25 **PARTIES**

26 **I. Plaintiffs**

27 52. The National Urban League (“Urban League”) is a civil-rights organization with
28 over 90 affiliates serving 300 communities in 37 states and the District of Columbia. Founded in

1 1910, the Urban League is headquartered in New York City. The mission of the Urban League
2 is to help African Americans and others in underserved communities achieve their highest
3 human potential and secure economic self-reliance, parity, power, and civil rights.

4 53. For the 2020 Census, the Urban League has expended substantial resources
5 developing programs designed to encourage self-response and cooperation with Census Bureau
6 offices in historically undercounted communities. Specifically, the organization has engaged in
7 efforts to educate the public about the census through various methods, including virtual town
8 halls, production and distribution of toolkits, workshops for locally based get-out-the-count
9 organizations, and publication and upkeep of a website, www.MakeBlackCount.org, to
10 disseminate critical information about the census. The Urban League has also worked with
11 Census Bureau regional offices to encourage enumerator recruitment, and the organization uses
12 social media to encourage 2020 Census participation.

13 54. Plaintiff Black Alliance for Just Immigration (“BAJI”) is a nonprofit organization
14 organized and existing under the laws of California, with offices and members across the
15 country, including in Oakland, California, Miami, Florida, Atlanta, Georgia, and New York City.
16 BAJI collaborates with African Americans and Black immigrants to organize and advocate for
17 equal and just laws in their communities. BAJI campaigns to advance racial justice and provides
18 partner organizations with varied assistance—particularly on immigration policy—and it spends
19 significant resources educating its partner organizations, individuals, and other constituents
20 through presentations, workshops, publications, technical assistance, and trainings. BAJI is a
21 membership organization, and its members either pay dues or volunteer their time to support the
22 organization. Members also actively participate in BAJI’s self-governance and decision-making
23 at the local level.

24 55. For the 2020 Census, BAJI has worked to ensure non-responsive households in
25 Black and immigrant communities are counted. BAJI has hired additional staff dedicated to
26 engaging local communities on the census, and has engaged in outreach using social media and
27 mailers to bolster self-response. In addition, since the outbreak of the COVID-19 pandemic,
28 BAJI staff have regularly participated in webinars and virtual events to provide the public more

1 information about the census, with a specific focus on encouraging participation in Black and
2 immigrant communities.

3 56. The League of Women Voters is a nonprofit civic organization that encourages
4 informed and active participation in government. Founded in 1920, the League of Women
5 Voters is headquartered in Washington, D.C. The League of Women Voters has over 800 state
6 and local affiliates, located in all 50 states and in 764 specific communities, including affiliates
7 with members in San Francisco and Monterey County, California, Detroit, Michigan, Miami,
8 Florida, Philadelphia, Pennsylvania, and New York City. The League of Women Voters seeks to
9 empower voters and defend democracy. The League of Women Voters has over 65,000
10 members nationwide, and its members either pay dues or volunteer their time to support the
11 organization.

12 57. The League of Women Voters has engaged in significant efforts to ensure
13 historically undercounted communities are enumerated during the 2020 Non-Response Follow
14 Up operation. Prior to the outbreak of COVID-19 in the United States, the League of Women
15 Voters and its affiliates participated in public events across the country aimed at providing
16 information about the census to undercounted communities. Since March of this year, the
17 League of Women Voters has shifted to a digital public-education campaign, encouraging
18 education and participation through social media, email listservs, webinars, and blog posts.
19 Affiliates in Kansas, South Carolina and Maine have also participated in state Complete Count
20 Committees that seek to increase awareness of the 2020 Census, improve participation, and
21 coordinate with Census Bureau officials.

22 58. Harris County, Texas is a political subdivision of the State of Texas. With over
23 4.7 million residents, Harris County is the third largest county in the United States. The county's
24 population is over 43% Latino, 20% Black, over 7% Asian, and over 28% non-Hispanic White.
25 During the 2010 Census, 65.1% of households in Harris County self-responded to the census. As
26 of August 14, 2020, 58.3% of households in Harris County had self-responded to the 2020
27 Census. This response rate in Harris County was well below the national response rate on that
28 date, 63.6%.

1 59. For the 2020 Census, officials in Harris County have engaged in extensive efforts
2 to encourage participation in the County. County officials formed a Complete Count Committee
3 with city officials in Houston that engaged in public education about the census, and built
4 partnerships with local Census Bureau officials to coordinate outreach efforts. In addition, in
5 2019, the County approved a budget of nearly \$4 million dollars to conduct outreach during the
6 2020 Census. To that end, the County has contracted with vendors to conduct surveys about the
7 opinions and attitudes of non-responsive populations and develop a digital advertising campaign
8 on Facebook and Instagram to encourage 2020 Census participation. And the County receives
9 substantial federal funding tied to census data.

10 60. King County is a political subdivision of the State of Washington. Over 2.2
11 million people live in King County, making it the most populous county in Washington. As of
12 August 14, 2020, 26.1% of households in King County had not responded to the 2020 Census.
13 The county has large populations of historically undercounted communities. For instance,
14 according to the Department of Housing and Urban Development, King County had nearly
15 12,000 residents experiencing homelessness, the third highest total of any locale in the country.
16 The Seattle metro area, which includes King County, is estimated to have 140,000
17 undocumented immigrant residents.

18 61. King County worked in partnership with local cities to provide \$1.17 million to
19 community-based organizations serving historically undercounted communities. Specifically,
20 King County sought to fund organizations that work with communities that are Limited English
21 Proficient. Through this funding, these organizations have produced public education materials
22 related to the 2020 Census, and developed campaigns to get-out-the-count. And King County,
23 too, receives substantial federal funding tied to census data.

24 62. The City of Los Angeles, California is a municipal corporation organized and
25 existing under the laws of the State of California, and is a charter city pursuant to Article XI of
26 the California Constitution. The City of Los Angeles is home to roughly 4 million people, is the
27 second largest city in the United States, and is located in the county recognized by the Census
28 Bureau as the hardest to count in the nation. The city's population is a large contributor to the

1 County's hard-to-count status as more than half of the city's residents live in census tracts that
2 are hard to count. As of August 14, 2020, only 53.8% of the city's households had responded to
3 the 2020 Census—well below the statewide average of 65.1% and even further below the city's
4 own 2010 self-response rate of 68 percent.

5 63. As a result of its hard-to-count status, the City of Los Angeles has engaged in
6 years of planning and devoted significant resources to developing a strategy for an accurate
7 count, tailored to the unique challenges of the city's population. To fund these efforts, the city
8 has overseen distribution of roughly \$2 million dollars to community-based organizations and
9 the investment of almost \$1.5 million of both city general fund and grant money in its own
10 efforts. And the City of Los Angeles also receives substantial federal funding tied to census
11 data.

12 64. The City of Salinas, California is a political subdivision of the State of California.
13 Salinas is the most populous city in and the government seat of the County of Monterey. The
14 city is home to more than 150,000 people, including 38.5% of the county's "hard-to-count"
15 population. As of August 14, 2020, 57.2% of all households in Salinas have responded to the
16 2020 Census, which is 422nd out of all 482 California cities. The current response rate is 7.9
17 percentage points below California's statewide average for self-responses and more than 10
18 percentage points below Salinas's self-response rate from the 2010 Census.

19 65. Salinas has dedicated significant resources to funding and staffing its "Census
20 Action Team," which is composed of city staff and representatives from the County of
21 Monterey's "Complete Count Committee," as well as community-based organizations, school
22 districts, and local businesses. The city's population is more than 75% Latino, and more than 1
23 in 5 households have limited English-language proficiency. As part of its outreach, the Salinas
24 Census Action Team engages religious and community organizations, such as local food banks,
25 to assist with enumeration efforts in the Latino community and all communities of color as these
26 organizations are able to assist with trust and communication barriers that can make these groups
27 hard to count. The City of Salinas also receives substantial federal funding tied to census data.

28

1 66. The City of San Jose is a political subdivision of the State of California. San Jose
2 has over 1 million residents, making it the largest city in Northern California, and the tenth
3 largest city in the United States. San Jose’s population is 32% Latino, and 35% Asian, and
4 nearly 40% of residents are foreign born. As of August 14, 2020, 28% of households in San Jose
5 had not responded to the census. San Jose has large populations of historically undercounted
6 communities. For instance, according to the Department of Housing and Urban Development, in
7 2019, San Jose had over 6,000 residents experiencing homeless. In addition, the San Jose metro
8 area is estimated to have over 150,000 undocumented immigrant residents.

9 67. The City of San Jose has engaged in extensive public-education and get-out-the-
10 count efforts during the 2020 Census. San Jose has formed a Complete Count Committee with
11 Santa Clara County, and nearly 90 community-based organizations. The Committee focuses on
12 raising awareness of the census in historically undercounted communities. San Jose has
13 disseminated information about the census to the public through city departments and offices,
14 and has worked closely with the Census Bureau to recruit qualified bilingual enumerators. The
15 City of San Jose receives substantial federal funding tied to census data.

16 68. Plaintiff Rodney Ellis is the Commissioner for Precinct One on the Harris County
17 Commissioners Court. He is a resident and citizen of Harris County, where he is registered to
18 vote and regularly exercises his right to vote. Commissioner Ellis regularly drives on roads and
19 highways in Harris County.

20 69. Plaintiff Adrian Garcia is the Commissioner for Precinct Two on the Harris
21 County Commissioners Court. He is a life-long resident and citizen of Harris County, where he
22 is registered to vote and regularly exercises his right to vote. Commissioner Garcia also
23 regularly drives on roads and highways in Harris County.

24 70. The National Association for the Advancement of Colored People (“NAACP”) is
25 the nation’s oldest and largest grassroots-based civil rights organization. The NAACP is
26 headquartered in Baltimore, Maryland, and has over 2000 units across the country, including
27 units in all 50 states and the District of Columbia. The NAACP’s units are predominantly
28 located in states and metropolitan areas with large Black populations, and NAACP members are

1 more likely than the average resident of the United States to reside in a hard-to-count
2 community. The NAACP has membership and active units in cities like Detroit, Cleveland, and
3 Newark—all places where, as of August 28, 2020, the Census Bureau reported a lower than 50
4 percent self-response rate to the 2020 Census.

5 71. The NAACP has made considerable efforts—and expended significant
6 resources—to ensure that the 2020 Non-Response Follow Up operation successfully enumerates
7 hard-to-count communities. Prior to the outbreak of COVID-19, the NAACP and its units
8 launched a “Be Counted” campaign to inform NAACP membership and undercounted
9 communities about the 2020 Census. The NAACP and its local units participated in public
10 events around the country; the NAACP hosted townhalls and published materials and posts
11 describing the importance of the census and the historical undercount of Black communities; and
12 NAACP local units assumed leadership roles in a variety of Complete Count Committees. To
13 get out the count in the face of COVID-19, the NAACP has published a number of posts and
14 articles, hosted an all-online “Black Census Week,” partnered with CBS and other organizations
15 to create 2020 Census digital “PSAs,” and built new youth programming to make use of social
16 media.

17 72. The City of Chicago is a municipal corporation and home rule unit organized and
18 existing under the constitution and laws of the State of Illinois. With over 2.7 million residents,
19 Chicago is the third largest city in the United States. Chicago’s population is 30% Black, 29%
20 Latino, over 6.4% Asian, and over 32% non-Hispanic White. During the 2010 Census, 62.4% of
21 households in Chicago self-responded to the census. As of August 28, 2020, 58.1% of
22 households in Chicago had self-responded to the 2020 Census. This response rate was well
23 below the national response rate on that date, 64.7%.

24 73. For the 2020 Census, officials in the City of Chicago designated \$2.7 million for
25 promotion of census participation. Chicago established a complete count committee with
26 businesses and nonprofits to stimulate participation, provided grants to organizations engaging
27 with hard-to-count communities, and encouraged responses through public service
28 announcements on radio, social media, billboards and newspapers. In addition, Chicago has sent

1 paid staff into communities with low response rates to encourage participation, as well as engage
2 in phone banking and texting campaigns. Chicago receives federal funding under several federal
3 programs that allocate resources based on census-derived information, including the Community
4 Development Block Grant program, the Low Income Home Energy Assistance Program,
5 Workforce Innovation and Opportunity Act grants and others.

6 74. The County of Los Angeles is a political subdivision of the State of California.
7 The County of Los Angeles is the largest county in the nation, with more than 10 million
8 residents. It is also one of the country's most diverse counties, with millions of immigrants
9 calling it home. According to the U.S. Census Bureau, 34.2% of Los Angeles County residents
10 are foreign-born and 48.6% are of Latino descent. Given a high concentration of hard to count
11 populations, Los Angeles is among the hardest to count counties in the United States. As of
12 August 28, 2020, 62.2% of households in the County of Los Angeles, had responded to the 2020
13 Census, well below both the California average self-response rate of 66.9% and the national self-
14 response rate of 64.7% on that date.

15 75. To ensure a more accurate count in the 2020 Census, the County of Los Angeles
16 has engaged in significant expenditures. The County of Los Angeles instigated a notice
17 campaign to all residents informing them of the previous, October 31, 2020, Self-Response
18 deadline, and has had to reprint materials, distribute them to residents, and address any confusion
19 regarding the change in dates. The County of Los Angeles has also created an extensive
20 outreach and promotional campaign including but not limited to in-store signage at grocery
21 stores and pharmacies, print and digital advertising, and social media editorial calendars and
22 content. The County of Los Angeles developed these plans specifically incorporating the
23 October 31, 2020, Self-Response deadline under the COVID-19 Plan, and has had to revise these
24 campaigns to account for a new, shortened Self-Response deadline.

25 76. The Navajo Nation is the largest Indian Nation in the United States with a
26 reservation spanning 27,000 square miles across the states of Arizona, New Mexico, and Utah.
27 The 2010 Census recorded a population of 327,726 for the Navajo Nation. During the 2010
28 Census, 29.4% of households in the Navajo Nation responded to the census. As of August 28,

1 2020, only 18% of households in the Navajo Nation had self-responded to the 2020 Census.
2 Many households in Navajo Nation have limited access to regular mail, and internet. As a result,
3 the primary method for enumerating households in the Navajo Nation is through census field
4 operations.

5 77. For the 2020 Census, the Navajo Nation sought to ensure that every resident was
6 counted. To that end, the Navajo Nation engaged in outreach efforts such as posting public
7 service announcements on social media, radio, television and in newspapers. The Navajo Nation
8 also worked with advocates to speak at community events, and provide informational flyers
9 during food distribution events, during senior shopping hours at grocery stores, and at checkpoint
10 stops for those entering and leaving the Nation. Outreach was conducted in both English and
11 Diné. The Navajo Nation ultimately depends on accurate census data for a number of essential
12 government functions, including determining the appropriate location for healthcare facilities
13 and services on the reservation, and projecting population needs to assist in determination of
14 water rights claims. In addition, the Navajo Nation federal funding under several programs that
15 allocate resources on the basis of census-derived data, including the Tribal Transportation
16 Program which provides essential resources for maintenance of roads, bridges and airports on
17 reservations.

18 78. The Gila River Indian Community is a sovereign Indian nation composed of
19 members of the Pima and Maricopa Tribes, traditionally known as the Akimel O’otham and Pee-
20 Posh. It is organized and federally recognized pursuant to § 16 of the Indian Reorganization Act
21 of June 18, 1934, 25 U.S.C. § 5123. The Gila River Indian Reservation, an area of over 372,000
22 acres, is located in south-central Arizona south of Phoenix. Most of the reservation is rural, and
23 many households are identifiable only by a post office box. Also, many households lack access
24 to high-speed internet. Consequently, in-person interaction with census enumerators is critical to
25 ensuring an accurate census count of the Gila River Indian Community. As of August 28, 2020,
26 only 9.5% of households had self-responded to the 2020 Census.

27 79. The Gila River Indian Community had planned census-response rallies and
28 activities for 2020, as well as a door-to-door effort to make sure all individuals and households

1 on the Reservation are counted. But for the past five months the Gila River Indian Community
2 has been under shelter-in-place orders, making most of those efforts impossible. Federal funding
3 for the Gila River Indian Community is based largely on census numbers. An undercount will
4 result in significant underfunding of tribal programs, including Indian Health Service Funding,
5 Indian Housing Block Grants, the Tribal Transportation Program, Violence Against Women
6 Programs, Family Violence Prevention and Services Grants (for battered women shelters),
7 Native American Employment and Training programs, Head Start, Temporary Assistance to
8 Needy Families, and Special Programs for the Aging – tribal grants.

9 **II. Defendants**

10 80. Defendant Wilbur L. Ross is the Secretary of the U.S. Department of Commerce
11 and is sued in his official capacity. Secretary Ross oversees the U.S. Department of Commerce
12 and the Census Bureau. Congress has delegated the responsibility for carrying out the decennial
13 census to the Secretary of Commerce. 13 U.S.C. § 141(a).

14 81. Defendant U.S. Department of Commerce is a cabinet agency within the
15 Executive Branch responsible for administering the decennial census.

16 82. Defendant Steven Dillingham is the Director of the U.S. Census Bureau and is
17 sued in his official capacity.

18 83. Defendant U.S. Census Bureau is an agency within the Department of Commerce
19 responsible for planning and administering the decennial census. 13 U.S.C. § 2.

20 **ALLEGATIONS**

21 **III. Defendants' Constitutional and Statutory Obligations**

22 84. Under the United States Constitution, the federal government must conduct an
23 “actual Enumeration” of the population once every ten years. U.S. Const. art. I, § 2.

24 85. The population totals produced by the decennial enumeration are used to
25 apportion congressional representatives to the various states. *Id.* Census figures are also used in
26 state and local redistricting and in the distribution of federal funds to communities across the
27 United States.

28

1 86. The Enumeration Clause requires that decisions relating to the census bear a
2 “reasonable relationship” to the constitutional purpose of the enumeration. *Wisconsin*, 517 U.S.
3 at 20.

4 87. Similarly, the Census Act imposes a mandatory duty on the Secretary of
5 Commerce 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. 2551, 2569 (2019) (citation omitted).

8 88. Consequently, the Secretary of Commerce and the Census Bureau are
9 constitutionally and statutorily obligated to make decisions in conducting the census that are
10 reasonably related to achieving a fair and accurate calculation of the population of the United
11 States.

12 **IV. The Census Bureau’s Pre-COVID-19 Operational Plans for the 2020 Census**

13 89. For the 2020 Census, the Census Bureau spent the better part of a decade
14 designing operations to fulfill its constitutional and statutory mandate, including: soliciting and
15 incorporating feedback from seasoned experts, advisors, and community groups; testing various
16 features of its data-collection and data-processing operations; and ensuring that its decisions for
17 conducting the census reflected sound, scientifically based judgment.

18 90. To this end, the Bureau created an operational plan to guide its efforts, including
19 its efforts to collect data from census respondents and to process that data into usable forms for
20 constitutionally and statutorily mandated purposes, including reapportionment and redistricting.

21 91. On December 31, 2018, the Bureau promulgated the final version of its
22 operational plan, which the Bureau called “Version 4.0” (hereinafter referred to as the “Final
23 Operational Plan”). *See* U.S. Census Bureau, Final Operational Plan (Dec. 2018),
24 [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)
25 [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
26 for the 2020 Census is to “count everyone once, only once, and in the right place.”

27 92. Under the Paperwork Reduction Act, the Office of Management and Budget must
28 review and approve the plans for any federal survey, including the decennial census, to ensure

1 that those surveys meet government standards, minimize respondent burden, and maximize the
2 utility of the collected information. 44 U.S.C. § 3504(c).

3 93. The Office of Management and Budget formally reviewed and approved the
4 Census Bureau’s pre-COVID-19 plans for the decennial census, including the Final Operational
5 Plan.

6 94. The Final Operational Plan includes over 200 pages of detailed and transparent
7 conclusions for achieving the 2020 Census’s objective of an accurate count.

8 95. The Final Operational Plan reflects the conclusions of various experts including
9 survey methodologists, statisticians, demographers, geographers, linguists, and mathematicians.

10 96. The Final Operational Plan states that it “reflects and supports evidence-based
11 decision-making” about the operations necessary to gather and process census responses from
12 every household in the country.

13 97. The Final Operational Plan states that it was “informed through research, testing,
14 and analysis conducted from 2012 through 2018.”

15 98. The Bureau conducted at least fifteen tests between 2012 and December 31, 2018,
16 when it published its Final Operational Plan.

17 99. Career Bureau staff developed the Final Operational Plan following substantial
18 consultation with outside experts and census stakeholders, including members of the Census
19 Scientific Advisory Committee and the National Advisory Committee.

20 100. The Census Bureau also produced a series of “detailed operational plans,” which
21 supplement the Final Operational Plan, and provide more parameters for the individual
22 operations that, together, comprise the 2020 Census.

23 101. The detailed operational plans likewise reflect the conclusions of various subject-
24 matter experts regarding how to complete an accurate count.

25 102. The Bureau’s Final Operational Plan contains several major categories of
26 operations. Two of those categories are particularly important for purposes of this lawsuit: data-
27 collection and data-processing.

28

1 103. “Data-collection” refers to operations through which the Bureau obtains
2 information from and about all the people living in the United States.

3 104. “Data-processing” refers to operations through which the Bureau fills in any gaps
4 in the personal information that it collects from people, transforms the resulting data into usable
5 forms, checks those results for accuracy and other aspects of data quality, and publishes those
6 results, among other things.

7 105. The Bureau must thoroughly, fully, and correctly perform both categories of
8 operations—collection and processing—to achieve its stated goal of counting everyone once,
9 only once, and in the right place.

10 **A. Census Data Collection**

11 106. During the census, the Bureau attempts both to determine the number of people in
12 the country and their characteristics, such as their race and ethnicity.

13 107. Although the Census Bureau planned to deploy many methods during the 2020
14 Census to collect counts and characteristics from households around the country, the Bureau
15 contemplated, in both the Final Operational Plan, and in the supplemental detailed operational
16 plans, that three methods would account for the overwhelming majority of census responses: the
17 “Self-Response” method; the “Update Leave” method; and the “Non-Response Follow Up”
18 method. *See* U.S. Census Bureau, *2020 Census Detailed Operational Plan for: 18. Non-*
19 *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)
20 [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)
21 [plan_v20.pdf](https://www2.census.gov/programs-surveys/decennial/2020/program-management/planning-docs/NRFU-detailed-operational-plan_v20.pdf).

22 108. The Self-Response method was the “primary methodology for the 2020 Census.”
23 Under this method, heads of households would provide their 2020 Census responses directly to
24 the Census Bureau by mailing back a paper census form, filling out a digital form on the
25 Bureau’s online census portal, or calling into telephone hotlines to provide their responses to
26 Bureau employees operating those hotlines.

27 109. The Update Leave method was the methodology for reaching housing units that
28 could not receive physical mail or did not have verifiable mailing addresses. Under this method,

1 Bureau employees would travel throughout both rural and urban areas, leaving invitations to
2 participate and paper census questionnaires at these housing units, so that the people living in
3 those locations could respond themselves.

4 110. The Self-Response method and the Update Leave method are crucial for obtaining
5 accurate information about the number of people in the country and their characteristics, because
6 data people report about themselves and the members of their housing units is the highest quality
7 data that the census collects.

8 111. But for the tens of millions of households that do not report their personal data
9 through the Self-Response or Update Leave method, the Bureau's next-best source of personal
10 data is data it collects directly from people through the Non-Response Follow Up method.

11 112. As part of the Non-Response Follow Up method, the Bureau sends its employee
12 enumerators directly to housing units so that they can attempt to speak with a person occupying
13 each unit and obtain information about everyone who should be counted in that unit.

14 113. The Bureau requires enumerators to record their responses for each household
15 through iPhones that the Bureau specifically contracted and customized for this purpose. The
16 enumerators' iPhones include software designed to lead enumerators consistently and reliably to
17 solicit information from people at their doors. The enumerators' iPhones also include software
18 to ensure that any data collected from housing units remains confidential as it is being
19 transmitted to the Bureau. The limited supply of these customized iPhones places a limit on the
20 number of enumerators that the Bureau can deploy in the field.

21 114. The Bureau's Detailed Operational Plan for Non-Response Follow Up, which
22 supplements the Final Operational Plan, sets out a specific protocol for conducting Non-
23 Response Follow Up.

24 115. Under the Detailed Operational Plan, each housing unit assigned for a visit from
25 an enumerator was eligible for up to six "contact days." A "contact day" could include more
26 than one attempted contact per day.

27 116. The Bureau concluded it could pursue less than six contact days only under
28 certain scenarios.

1 117. One scenario that would allow the Bureau to pursue fewer than six contact days
2 was the existence of high-quality administrative records for the housing unit. The Census
3 Bureau has collected data from federal administrative agencies, such as the Social Security
4 Administration, the Internal Revenue Service, and the Department of Housing and Urban
5 Renewal, among others, as well as data from states, which it uses to provide information about
6 the count and characteristics of non-responsive households.

7 118. If the Bureau had located administrative data from more than one source of
8 federal and/or state administrative records and concluded that those records contained accurate
9 demographic data for the occupants of a housing unit, the Bureau’s enumerators would attempt
10 only one contact with that unit. If—during that contact attempt—the enumerator did not succeed
11 in finding a live person at the unit, then the Bureau would use the information in the
12 administrative records to fill in the census responses for that unit during the data-processing
13 phase of the 2020 Census.

14 119. A second scenario that would allow the Bureau to pursue less than six contact
15 days would arise if the Bureau identified a proxy—a person such as a neighbor or landlord that
16 the enumerator could ask for information about the occupants of the housing unit in question.
17 After a third failed contact attempt, a unit would become eligible for being counted through
18 proxy.

19 120. Proxies can produce many types of data. For instance, proxies are useful for
20 helping the Bureau identify whether a housing unit is vacant—and thus should be marked
21 “vacant” in the Master Address File that the Bureau uses to keep track of the overwhelming
22 majority of housing units that it must enumerate—or non-existent—and thus should be deleted
23 from the Master Address File. For the 2020 Census, the Bureau was planning to use
24 administrative records, such as the United States Postal Service’s directory of non-deliverable
25 addresses, to identify vacant housing, but proxies are generally more accurate for this purpose.
26 Finally, proxies provide vital data for other operations that the Bureau undertakes during its data-
27 processing phase, described further below.

28

1 121. If the Bureau is unable to enumerate a household after six contact days, in most
2 cases, it will resort to less accurate methods for determining the count and characteristics of the
3 household during its data-processing phase, described below.

4 122. The Bureau performs several other vital operations in addition to door-knocking
5 during the Non-Response Follow Up period, including a series of operations to ensure the quality
6 of the data that it collects in the field.

7 123. During the Non-Response Follow Up process, the Bureau: follows up with people
8 who self-responded to the census online but did not enter their unique census identification
9 number to ensure that they are counted in the right place (a process known as “Field
10 Verification”); and corrects information reported erroneously or omitted from previously
11 submitted census forms (a process known as “Coverage Improvement”).

12 124. In addition, the Bureau re-collects census responses in select instances to ensure
13 that the original submissions were accurate (a process known as “Self-Response Quality
14 Assurance”). This operation protects against enumerators falsifying the information that they
15 provide to the Bureau. Specifically, the Bureau conducts quality control reinterviews of a
16 sample of households. This component is designed to deter and detect cases where enumerators
17 have provided false information about the housing units they are assigned to canvass.

18 125. Quality control reinterviews are part of a broader set of protocols that the Bureau
19 has developed to guard against factors that endanger the accuracy of the count. Non-Response
20 Follow Up is thus important not only for collecting information, but also for ensuring that the
21 information that is collected is accurate. These two components—gathering data and ensuring its
22 accuracy—must both occur for the Bureau to get a fair and accurate count.

23 126. The Bureau anticipated that approximately 60% of housing units nationally would
24 respond to the 2020 Census through Self-Response and Update Leave, potentially making up to
25 40% of housing units targets for Non-Response Follow Up.

26 127. A Non-Response Follow Up universe of 40% of the housing units in the country
27 would have been the largest follow up universe on a percentage basis since at least 1970.

28

1 128. The Census Bureau did not anticipate that the Non-Response Follow Up universe
2 in 2020 would mirror the demographic makeup of the nation’s population as a whole.

3 129. Instead, the Census Bureau anticipated that the Non-Response Follow Up
4 universe in 2020 would contain a disproportionate number of people who belong to communities
5 that the Bureau calls “hard-to-count.”

6 130. The Final Operational Plan describes hard-to-count populations as including, but
7 not limited to, the following populations: young children; highly mobile persons; racial and
8 ethnic minorities; non-English speakers; low-income persons; persons experiencing
9 homelessness; undocumented immigrants; persons who have distrust in the government; lesbian,
10 gay, bisexual, transgender, and questioning/queer (LGBTQ) persons; persons with mental and
11 physical disabilities; and persons who do not live in traditional housing.

12 131. Historically, these populations have had low self-response rates and have, thus,
13 made up disproportionate shares of households that must receive contact days during Non-
14 Response Follow Up.

15 132. Consequently, the Final Operational Plan acknowledges, “[t]he NRFU Operation
16 is entirely about hard-to-count populations.”

17 133. The Final Operational Plan also acknowledges that hard-to-count populations may
18 require more outreach than the Non-Response Follow Up method would normally provide, and
19 the Bureau designed its Final Operational Plan accordingly.

20 134. The Final Operational Plan states that “[w]hile most cases receive a maximum of
21 six attempts, cases in hard-to-count areas may receive more than six attempts to achieve a
22 consistent response rate for all geographic areas.”

23 135. Accurate data about the size, location, and characteristics of communities of color
24 is necessary to equitably distribute political power through congressional reapportionment and
25 redistricting at the state and local levels, enforce civil-rights laws that affect basic needs like
26 housing and employment, and conduct effective research, including on pressing issues like
27 public health.

28

1 **B. Census Data Processing**

2 136. After collection activities are complete, the Census Bureau must process the data.

3 137. Census data-processing cannot begin until census data-collection concludes.

4 138. Census data is unusable for its intended purposes until it has been processed.

5 139. The Census Bureau’s data-processing operations transform tens of millions of
6 census responses into usable products, including the population totals used to reapportion seats in
7 the U.S. House of Representatives and to create electoral districts.

8 140. The Bureau uses its data-processing operations to, among other things, ensure that
9 data received from different data-collection methods are all in a single format allowing them to
10 be processed together.

11 141. The Bureau uses its data-processing operations to “unduplicate responses”—
12 meaning to resolve conflicts of information among multiple forms attributable to the same
13 housing unit.

14 142. The Bureau uses its data-processing operations to help determine the final status
15 of a housing unit—such as vacant or inhabited—and determine the total number of people that
16 should be attributed to any apparently inhabited unit that was not counted through Self-
17 Response, Update Leave, or Non-Response Follow Up.

18 143. The Bureau also uses its data-processing operations to help ensure that Bureau
19 data products accurately report respondents’ characteristics, such as age, race, and ethnicity.

20 144. The Bureau uses administrative records and statistical imputation during the data-
21 processing phase to fill in both missing people and their characteristics. But administrative
22 records—especially low-quality administrative records—and statistical imputation are generally
23 less accurate than self-response data.

24 145. For many households, administrative data provides only low quality information,
25 replete with inaccuracies and incomplete information. This is especially the case for particular
26 communities that are underrepresented in administrative records, including communities of
27 color, immigrants, and low-income families. Use of this low-quality data to fill in missing
28 information for non-responsive households produces less accurate information.

1 146. Imputation involves the Bureau using information from surrounding responsive
2 households to infer the count and characteristics of a non-responsive household. Imputation thus
3 assumes the existence of other data points gathered through other data-collection methods—such
4 as self-response, proxies, and administrative records—and generates more accurate results when
5 it can be triangulated against those data points. The processes that the Bureau uses to collect and
6 process self-response data, proxy data, and administrative records are thus critical and
7 inextricably linked to the Bureau’s ability to impute data accurately.

8 147. At various phases of the Bureau’s data-processing operations, Census Bureau
9 personnel must review the quality of files in-process before those files can be sent to the
10 subsequent steps in the data-processing operation. These reviews include personnel with
11 subject-matter expertise from several different divisions of the Bureau.

12 148. The Bureau’s data-processing operations help ensure that people are not missed,
13 that other people are not counted multiple times, and that people’s characteristics are accurately
14 reported. These processes help eliminate or reduce undercounts, among other kinds of data-
15 quality issues.

16 **C. The Final Operational Plan’s Timeline for the 2020 Census**

17 149. The Bureau’s Final Operational Plan called for data-collection to run from
18 January 21, 2020, to July 31, 2020, for a total of more than six months.

19 150. In that window, the Self Response method was scheduled to run from March 12,
20 2020 to July 31, 2020, and the Update Leave method was scheduled for March 15, 2020 to
21 April 17, 2020.

22 151. The Bureau also scheduled several special operations to occur early in its census
23 taking process. The Service-Based Enumeration, which counts people experiencing
24 homelessness, was scheduled for March 30, 2020 to April 1, 2020, and Group Quarters
25 Enumeration, which counts people living in group housing such as nursing homes, was
26 scheduled from April 2, 2020 to June 5, 2020.

27 152. The Bureau scheduled the Non-Response Follow Up method to run from May 13,
28 2020 to July 31, 2020, for a total of approximately eleven and a half weeks.

1 153. The Bureau scheduled up to five months—from July 31, 2020 to December 31,
2 2020—to process census data for the congressional reapportionment report.

3 154. The Bureau also scheduled an additional three months—from January 1, 2021 to
4 March 30, 2021—to process census data for redistricting.

5 155. The Bureau’s timelines for implementing the Final Operational Plan reflect the
6 Bureau’s scientifically informed understanding of the time necessary to complete its operations
7 and generate an accurate count.

8 **V. The Census Bureau’s COVID-19 Plan**

9 **A. The COVID-19 Pandemic Disrupts the 2020 Census**

10 156. On January 21, 2020, the Bureau began 2020 Census data-collection in remote
11 Alaska.

12 157. On March 10, 2020, the Bureau began to accept self-responses on its website.

13 158. Shortly thereafter, many parts of the nation rapidly began to shut down due to the
14 COVID-19 pandemic.

15 159. The Census Bureau quickly concluded that it could not continue to engage in
16 operations safely. On March 18, 2020, the Bureau announced that it would suspend all field
17 operations for two weeks in order to “help protect the health and safety of the American public.”
18 Press Release, U.S. Census Bureau, *U.S. Census Bureau Director Steven Dillingham on*
19 *Operational Updates* (Mar. 18, 2020), [https://www.census.gov/newsroom/press-](https://www.census.gov/newsroom/press-releases/2020/operational-update.html)
20 [releases/2020/operational-update.html](https://www.census.gov/newsroom/press-releases/2020/operational-update.html).

21 160. On March 28, 2020, the Bureau announced yet another two-week suspension until
22 April 15, 2020, as the coronavirus pandemic made it impossible to engage in operations.

23 161. The suspension disrupted several field operations, including Update/Leave
24 method, the Service Based Enumeration counting people experiencing homelessness, and the
25 Group Quarters Enumeration counting people living in group housing.

26 162. In addition, the Bureau halted all hiring and training of the hundreds of thousands
27 of enumerators it needs to conduct Non-Response Follow Up. This included halting any and all
28 background checks and fingerprinting of enumerators that were conditionally hired at that time.

1 163. The Bureau also decreased office staff at regional centers responsible for
2 processing mail-in self-response forms and at the Bureau’s call centers.

3 **B. Changes to the Final Operational Plan in the COVID-19 Plan**

4 164. On April 13, 2020, the Bureau issued an adjustment to its Final Operational Plan
5 to account for the long-term impact of the COVID-19 pandemic. The new plan included a
6 shifted timeline for data-collection and data-processing operations that corresponded with the
7 delays in operations that the pandemic has caused (the “COVID-19 Plan”).

8 165. Adjustments to plans approved by the Office of Management and Budget under
9 the Paperwork Reduction Act must be re-submitted for approval. 44 U.S.C. § 3507(h)(3). The
10 Census Bureau submitted the COVID-19 Plan to the Office of Management and Budget on
11 April 30, 2020. The changes were approved on May 11, 2020.

12 166. The COVID-19 Plan was designed to “[e]nsure a complete and accurate count of
13 all communities,” “[p]rotect the health and safety of the American public and Census Bureau
14 employees,” and “[i]mplement guidance from federal, state, and local authorities regarding
15 COVID-19.” Press Release, U.S. Census Bureau, *2020 Census Operational Adjustments Due to*
16 *COVID-19 Fact Sheet* (Apr. 27, 2020).

17 167. The COVID-19 Plan reflected the conclusions of various experts for how best to
18 proceed with completing an accurate count during the current pandemic. These experts include
19 survey methodologists, statisticians, demographers, geographers, linguists, and mathematicians.

20 168. Under the COVID-19 Plan, the Bureau suspended 2020 Census field operations
21 for several months, including those operations that were designed to ensure a full count of
22 traditionally undercounted communities.

23 169. The COVID-19 Plan provided that the Bureau would start the nationwide Non-
24 Response Follow Up operation on August 11, 2020, and continue the door-knocking process
25 through October 31, 2020.

26 170. Thus, the COVID-19 Plan delayed the start of most door-knocking by three
27 months while maintaining the same amount of time spent undertaking the process—
28 approximately eleven and a half weeks—as the Final Operational Plan had required.

1 171. Under the COVID-19 Plan, the Bureau also delayed the start of other operations
2 that enumerate traditionally undercounted populations, including the enumeration of the
3 country’s homeless population, which the Bureau shifted from March 30, 2020 to September 22,
4 2020.

5 172. And the COVID-19 Plan permitted households to submit self-response data to the
6 Bureau until October 31, 2020, extending the deadline under which private persons were able to
7 submit their responses to be counted by more than one month.

8 173. The Bureau also granted itself one additional month to process data under its
9 COVID-19 Plan, extending the data-processing leg of its operations to nine months given the
10 pandemic. Under this plan, the Bureau would have up to six months to process the data for the
11 apportionment count (between October 31, 2020 and April 30, 2021) and three months to process
12 the data for redistricting (between April 30, 2021 and July 31, 2021).

13 174. The Bureau’s timelines for implementing the COVID-19 Plan reflect a
14 scientifically informed understanding of the time necessary to appropriately and fully complete
15 its operations and generate an accurate count.

16 **C. Expert and Stakeholder Response to the COVID-19 Plan**

17 175. The Census Bureau solicited feedback on the COVID-19 Plan from relevant area
18 experts and interested stakeholders, including state and local governments and national and
19 community-based non-profit partners.

20 176. For instance, four former Census Bureau Directors—who served under both
21 Democratic and Republican administrations—issued a statement saying that they had “discussed
22 these operational and schedule adjustments with senior career leadership at the Census Bureau.”
23 Press Release, Vincent Barabba et al., *Statement by Former U.S. Census Bureau Directors* (Apr.
24 14, 2020), [https://www.documentcloud.org/documents/6838166-Statement-by-Former-Census-
25 Bureau-Directors-04.html](https://www.documentcloud.org/documents/6838166-Statement-by-Former-Census-Bureau-Directors-04.html).

26 177. These four former Census Bureau Directors further asserted: “Based on (1) our
27 extensive experience in planning, executing, and often adjusting operations of previous decennial
28 censuses, and (2) our firm conclusion that the extension of the field operations reflect careful

1 analysis by the technical, scientific, and operational staff at the Census Bureau, we support the
2 decision and urge Congress to act in concert with it.” Press Release, Vincent Barabba et al.,
3 *Statement by Former U.S. Census Bureau Directors* (Apr. 14, 2020),
4 [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)
5 [Directors-04.html](https://www.documentcloud.org/documents/6838166-Statement-by-Former-Census-Bureau-Directors-04.html).

6 178. Prominent civil-rights groups endorsed the COVID-19 Plan. Vanita Gupta,
7 President and CEO of The Leadership Conference on Civil and Human Rights and The
8 Leadership Conference Education Fund, stated that her organization “support[ed] the Census
9 Bureau’s updated timeline.” Press Release, Leadership Conference Education Fund, *Census*
10 *Timeline Must Protect Health, Ensure Fair Count* (Apr. 13, 2020),
11 <https://civilrights.org/edfund/2020/04/13/census-timeline-must-protect-health-ensure-fair-count/>.

12 **D. Implementation of the COVID-19 Plan**

13 179. When announcing the COVID-19 Plan, Secretary Ross and Director Dillingham
14 issued a statement indicating that the Bureau requested that Congress extend by 120 days the
15 December 31, 2020 statutory deadline for reporting the state-population totals to the President
16 for purposes of calculating the state apportionments, and extend by 120 days the March 30, 2021
17 statutory deadline for delivering redistricting data to the states.

18 180. That same day, President Trump suggested this request was unnecessary, stating:

19 181. “I don’t know that you even have to ask them. This is called an act of God. This
20 is called a situation that has to be. They have to give in. I think 120 days isn’t nearly enough.”
21 Hansi Lo Wang, *Trump Officials Ask to Delay Census Data for Voting Districts, House Seats*,
22 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)
23 [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).

24 182. Indeed, the Census Bureau did not wait for Congress to act before beginning
25 implementation of the COVID-19 Plan. And the Bureau continued implementation of the
26 COVID-19 Plan for over three months through the end of July 2020.

27 183. During the entirety of this period of time, the Bureau implemented the COVID-19
28 Plan and did not indicate any concern, or act in a manner indicating any concern, that Congress

1 had not passed an extension of the December 31, 2020 deadline. Nor did the Bureau change any
2 of its processes, or put in place any alternative plans, should Congress not act.

3 184. In all respects, the Bureau acted as if the COVID-19 plan was not contingent in
4 any respect on Congress acting. Instead, the Bureau itself recognized that it would be impossible
5 to fulfil its constitutional and statutory duties to produce fair and accurate apportionment
6 numbers to the President by December 31, 2020, and simply implemented the COVID-19 Plan
7 and its timelines.

8 185. For instance, on May 27, 2020, Tim Olson, head of field operations for the 2020
9 Census, stated during a May 26, 2020 webinar organized by the National Congress of American
10 Indians that, “[w]e have passed the point where we could even meet the current legislative
11 requirement of December 31st. We can’t do that anymore.” Nat’l Conf. of Am. Indians, *2020*
12 *Census Webinar: American Indian/Alaska Native*, YouTube (May 26, 2020),
13 <https://www.youtube.com/watch?v=F6IyJMtDDgY&feature=youtu.be&t=4689>.

14 186. Similarly, on July 8, 2020, Al Fontenot, Jr., Associate Director for Decennial
15 Census Programs and a top Census Bureau official, affirmed that the Bureau is “past the window
16 of being able to get” accurate counts to the President by December 31, 2020. U.S. Census
17 Bureau, *Operational Press Briefing – 2020 Census Update* at 21 (July 8, 2020),
18 [https://www.census.gov/content/dam/Census/newsroom/press-kits/2020/news-briefing-program-](https://www.census.gov/content/dam/Census/newsroom/press-kits/2020/news-briefing-program-transcript-july8.pdf)
19 [transcript-july8.pdf](https://www.census.gov/content/dam/Census/newsroom/press-kits/2020/news-briefing-program-transcript-july8.pdf).

20 187. In line with the Bureau’s full implementation of the COVID-19 plan, Bureau field
21 operations remained suspended through May 2020, and the Bureau only began re-opening a few
22 limited operations, such as the Update Leave method, on a phased basis through mid-June 2020,
23 over two months after the operation was originally planned to occur in the Final Operational
24 Plan.

25 188. The Bureau did not undertake any Non-Response Follow Up operations in most
26 of the country between May 13, 2020 and July 31, 2020, the timeframe originally set out in the
27 Final Operational Plan.

28 189. Instead, while the Bureau “soft-launched” door-knocking in select regions of the

1 country in mid-July 2020, the COVID-19 Plan did not call for door-knocking across the country
2 until August 11, 2020, at the earliest.

3 190. The Bureau ultimately opened six area census offices for Non-Response Follow
4 Up on July 16, 2020, six more on July 23, 2020, thirty-five on July 30, 2020, and forty additional
5 offices on August 6, 2020.

6 191. The remaining 161 stateside offices remained unopened until August 9, 2020,
7 including offices in many states and localities with relatively low response rates such as the
8 entire southeastern United States, Texas, New Mexico, Arizona, and Southern California.

9 192. All along the Bureau continually communicated to the public, and to important
10 local partners, including local governments and national and community based non-profit
11 organizations, that self-responses would be accepted until October 31, 2020, and that Non-
12 Response Follow Up would continue until at least that date.

13 193. Census partners, stakeholders, and state and local governments relied on the new
14 deadlines set forth in the COVID-19 Plan to redirect their outreach efforts.

15 194. For example, Plaintiffs Urban League and BAJI, publicized the October 31, 2020
16 deadline, letting their constituents, members and local organizations know that households had
17 until that time to self-respond. Urban League representatives informed coalition partners
18 participating in the Black Census Roundtable of the new deadlines, and spoke of the deadlines on
19 webinars and other public events. Officials at BAJI publicized the deadlines at public events,
20 including webinars in July 2020, and as part of the organization's social media campaign.

21 195. Similarly, officials in City of Los Angeles, Harris County, King County, City of
22 San Jose, and City of Salinas, publicized the new deadline while conducting 2020 Census
23 outreach efforts.

24 196. These public education efforts were significant because they were directed at the
25 general public and at local non-profits that do not primarily work on census issues. The latter
26 often rely on information about the census provided by Plaintiff national non-profits and local
27 governments when communicating with their constituents. Plaintiffs, by disseminating the
28

1 October 31, 2020 deadline for nearly three months to the public, were largely successful in
2 spreading the understanding that communities had until at least that time to complete the count.

3 197. For example, the City of Los Angeles announced this date on its own social media
4 platforms and in a social media toolkit that it developed for partner organizations. Los Angeles
5 is deeply concerned that residents had already received information about the October 31, 2020
6 self-response date and, as a result, failed to respond before the newly shortened deadline,
7 especially given the Bureau's own minimal efforts at explanation and outreach around the new
8 deadline.

9 **VI. The Census Bureau's Sudden Replan**

10 **A. The Announcement of the Replan**

11 198. On August 3, 2020, at the behest of the Secretary of Commerce, Director
12 Dillingham abruptly and without explanation abandoned the COVID-19 Plan and announced the
13 Replan.

14 199. The Replan drastically shortened the timelines for multiple operations set out in
15 the COVID-19 Plan.

16 200. The Replan took the form of a short press release on the Census Bureau's website.
17 The press release included a statement from Director Dillingham, which did not provide an
18 explanation for Defendants' decision to suddenly abandon the COVID-19 Plan that the Bureau
19 had adopted and implemented for approximately three and a half months. Nor did it provide any
20 specifics as to why the Bureau no longer believed the timelines called for in the COVID-19 Plan
21 were necessary to ensure an accurate count.

22 201. The statement noted that the Bureau was taking this action at the direction of the
23 Secretary of Commerce. But the Secretary made no statement explaining his reason for giving
24 this directive.

25 202. The Director's statement was largely silent on specific adjustments the Bureau
26 would need to make in order to reengineer its field operations to meet its new, artificially
27 compressed schedule. The statement included proposals for enumerator "awards" and
28

1 maximizing enumerators’ phone and tablet usage, but it did not provide any details about
2 adjustments to the detailed operations provided in the Final Operational Plan.

3 203. The only adjustments announced under the Replan were severely truncated
4 timelines for conducting data-collection and data-processing operations.

5 204. Under the Replan, data-collection was set to end on September 30, 2020, one
6 month earlier than contemplated in the Bureau’s COVID-19 Plan.

7 205. While the Bureau’s pre-COVID-19 Final Operational Plan provided 79 days for
8 the nationwide door-knocking stage of the census, and the COVID-19 Plan provided 81 days, the
9 Replan provided just 52 days of nationwide door-knocking.

10 206. The Replan also cut post-collection data processing for the apportionment report
11 from up to 5 months as originally provided in the Final Operational Plan, and up to 6 months as
12 provided in the COVID-19 Plan, to less than 3 months.

13 207. The Replan also shortened the time under which households could self-respond,
14 providing that self-responses delivered after September 30, 2020—which would have been
15 timely under the October 31, 2020 deadline then in effect by the Bureau—would no longer be
16 counted.

17 208. While the Replan required the Bureau to accelerate its operations to complete the
18 2020 Census by the same deadline contemplated in the Final Operational Plan, it ignored the
19 multiple-month pause in operations, beginning in mid-March 2020, caused by the initial outbreak
20 of COVID-19 in the United States.

21 209. The decision to rescind the COVID-19 Plan and adopt the Replan was announced
22 without consultation with important stakeholders.

23 210. As noted above, as late as July 8, 2020, senior Bureau officials were still publicly
24 confirming that it was impossible to complete an accurate count by December 31, 2020.

25 211. Internally, senior Bureau officials were saying the same thing—but even more
26 starkly.

27 212. For example, in mid-April 2020, internally the Bureau acknowledged that “[t]he
28 reality is that we can’t make the [December 31, 2020] deadline as of right now.”

1 213. Similarly, on or around May 8, 2020, internally the Bureau acknowledged that
2 even if they “could snap restart everywhere,” which was not possible due to COVID-19 closure
3 in various states, the Bureau still could not meet the statutory deadlines. Likewise, the Bureau
4 acknowledged that even if the Bureau could restart operations on May 8, “which it cannot,”
5 “apportionment counts could not be delivered until January 31, 2021.”

6 214. On July 21, 2020, the same day President Trump issued his Apportionment
7 Exclusion Order, Bureau staff shared internally an “Elevator Speech” summary with the “High
8 Level Message” that “[c]urtailing census operations will result in a census that is of unacceptable
9 quality.”

10 215. On July 23, 2020, Tim Olson, head of field operations for the 2020 Census, said
11 internally that the Bureau “need[ed] to sound the alarm to realities on the ground,” which showed
12 that “it is ludicrous to think we can complete 100% of the nation’s data collection earlier than
13 10/31 and any thinking person who would believe we can deliver apportionment by 12/31 has
14 either a mental deficiency or a political motivation.”

15 216. Just an hour later, the “Elevator Speech” was updated to further highlight that
16 “[s]hortening the time period to meet the original statutory deadlines for apportionment and
17 redistricting will result in a census that has fatal data quality flaws that are unacceptable for a
18 Constitutionally-mandated national activity.”

19 217. In addition, until July 30, 2020, just four days before the Bureau announced its
20 decision to abandon the COVID-19 Plan, the Bureau was informing respondents on its website
21 that it would engage in Non-Response Follow-Up until October 31, 2020 and that non-
22 responsive households would have until that date to self-respond. Those references were deleted
23 from the website on or about July 31, 2020 and were replaced with the shortened timeframe after
24 the August 3, 2020 announcement.

25 218. An official at the Government Accountability Office confirmed that Bureau
26 officials told his office that they were given “hours rather than days or weeks” to adjust their
27 plans to finish counting by September 2020. Hansi Lo Wang, *‘Not Enough Time’: Census*
28 *Workers Fear Rushing Count Could Botch Results*, NPR (Aug. 11, 2020),

1 [https://www.npr.org/2020/08/11/901202892/not-enough-time-census-workers-fear-rushing-](https://www.npr.org/2020/08/11/901202892/not-enough-time-census-workers-fear-rushing-count-could-botch-results)
2 [count-could-botch-results.](https://www.npr.org/2020/08/11/901202892/not-enough-time-census-workers-fear-rushing-count-could-botch-results)

3 219. While the Census Bureau’s decisions, even during the COVID-19 emergency,
4 have often involved consultations with scientific advisory committees, the Committee on
5 National Statistics in the National Academies of Science, other external experts and local
6 government officials, and the thousands of organizations partnering with the Bureau to conduct
7 crucial outreach to historically undercounted communities, no such consultation was made
8 before the Bureau announced its abandonment of the COVID-19 Plan.

9 220. Census stakeholders immediately denounced the Replan, including stakeholders
10 who had endorsed the COVID-19 Plan.

11 221. The same four former Census Bureau Directors who endorsed the COVID-19
12 Plan issued a statement saying that “our expert opinion is that failing to extend the deadlines to
13 April 30, 2021 will result in seriously incomplete enumerations in many areas across our
14 country.” Press Release, Former Census Bureau Directors, *On the Importance of Extending the*
15 *2020 Census Statutory Deadlines to Achieve a Fair and Accurate Enumeration of the United*
16 *States* (Aug. 4, 2020), [https://www.documentcloud.org/documents/7013550-Aug-4-2020-](https://www.documentcloud.org/documents/7013550-Aug-4-2020-Statement-By-Former-U-S-Census-Bureau.html)
17 [Statement-By-Former-U-S-Census-Bureau.html](https://www.documentcloud.org/documents/7013550-Aug-4-2020-Statement-By-Former-U-S-Census-Bureau.html).

18 222. These four former Census Bureau Directors further asserted: “The Census Bureau
19 will not be able to carry out the NRFU fully and will be forced to take steps such as fewer in-
20 person visits and rely instead on the use of administrative records or statistical techniques on a
21 much larger scale tha[n] in previous census. The end result will be under-representation of those
22 persons that NRFU was expected to reach and, at even greater rates for traditionally hard-to-
23 count populations and over-representation of all other populations with potentially extreme
24 differential undercounts.” Press Release, Former Census Bureau Directors, *On the Importance*
25 *of Extending the 2020 Census Statutory Deadlines to Achieve a Fair and Accurate Enumeration*
26 *of the United States* (Aug. 4, 2020), [https://www.documentcloud.org/documents/7013550-Aug-](https://www.documentcloud.org/documents/7013550-Aug-4-2020-Statement-By-Former-U-S-Census-Bureau.html)
27 [4-2020-Statement-By-Former-U-S-Census-Bureau.html](https://www.documentcloud.org/documents/7013550-Aug-4-2020-Statement-By-Former-U-S-Census-Bureau.html).

28

1 223. The President of the American Statistical Association, the world’s largest
2 professional organization of statisticians, issued a statement saying “[t]here is no scientific
3 rationale to curtail the data-collection period for this constitutionally mandated activity, and the
4 premature cessation of census enumeration will produce flawed counts.” Letter from Rob
5 Santos, President of the American Statistical Association, to Mitch McConnell, U.S. Senate
6 Majority Leader (Apr. 5, 2020), [https://www.amstat.org/asa/files/pdfs/POL-](https://www.amstat.org/asa/files/pdfs/POL-CensusSenateAugust.pdf)
7 [CensusSenateAugust.pdf](https://www.amstat.org/asa/files/pdfs/POL-CensusSenateAugust.pdf).

8 224. Nearly 450 nonpartisan philanthropic organizations who “rely on accurate census
9 data to help identify community needs and to prioritize grantmaking” issued a letter to Secretary
10 Ross and Director Dillingham urging the Bureau to revert to its COVID-19 Plan. Letter from
11 U.S. Philanthropy Leaders to Wilbur Ross, Secretary of the U.S. Dep’t of Commerce (Aug. 5,
12 2020), [https://funderscommittee.org/wp-content/uploads/2020/08/Letter-Philanthropic-Leaders-](https://funderscommittee.org/wp-content/uploads/2020/08/Letter-Philanthropic-Leaders-on-Census-Being-Cut-Short-8-5.pdf)
13 [on-Census-Being-Cut-Short-8-5.pdf](https://funderscommittee.org/wp-content/uploads/2020/08/Letter-Philanthropic-Leaders-on-Census-Being-Cut-Short-8-5.pdf).

14 225. Prominent civil-rights groups condemned the Replan. Vanita Gupta, President
15 and CEO of The Leadership Conference on Civil and Human Rights and The Leadership
16 Conference Education Fund, stated that “[c]urtailing operations is an obvious ploy to guarantee
17 the Census Bureau won’t be able to finish counting millions of people—especially those hit
18 hardest by the pandemic.” Press Release, Leadership Conference on Civil and Human Rights,
19 *Trump Plans to Sabotage 2020 Census by Cutting Short Operations* (July 31, 2020),
20 [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/)
21 [operations/](https://civilrights.org/2020/07/31/trump-plans-to-sabotage-2020-census-by-cutting-short-operations/).

22 226. And the Census Bureau’s own field workers repeatedly confirmed the
23 impossibility of this new timeline, explaining that the Replan means that the count—in effect for
24 the next 10 years—will not be accurate. For example, the Replan caused a census field
25 supervisor in Florida to respond: “It just doesn’t seem logical to push this with all of these odds
26 against us. You’re looking at all this and you’re just thinking, ‘Are we working on the same
27 team?’” “It does not feel like we have the same mission in mind. We’re trying to get a complete
28 count. I’m not sure everyone on the team has the same mission.” *See, e.g.,* Hansi Lo Wang,

1 *'Not Enough Time': Census Workers Fear Rushing Count Could Botch Results*, NPR (Aug. 11,
2 2020), [https://www.npr.org/2020/08/11/901202892/not-enough-time-census-workers-fear-](https://www.npr.org/2020/08/11/901202892/not-enough-time-census-workers-fear-rushing-count-could-botch-results)
3 [rushing-count-could-botch-results](https://www.npr.org/2020/08/11/901202892/not-enough-time-census-workers-fear-rushing-count-could-botch-results). A census field supervisor in California said, "I know for the
4 next 10 years, it won't be an accurate count. I don't know what we can do about it." *Id.*

5 **B. The Replan Failed to Appropriately Account for Key Factors Affecting the**
6 **Data Collection Period**

7 227. The Replan failed to account for several important factors affecting the 2020
8 Census Non-Response Follow Up operation. These factors are discussed below as of the time of
9 the Replan decision and initial weeks of implementation. Section VII below discusses how these
10 unexamined and unanalyzed problems later led, in practice, to a fundamentally flawed and
11 inaccurate data collection period, in violation of Defendants' constitutional and statutory
12 obligations.

13 228. *First, the Replan did not adequately account for the large number of households*
14 *in the Non-Response Follow Up universe.*

15 229. Under the Replan, the Census Bureau had to count approximately the same
16 number of households during Non-Response Follow Up as it anticipated counting in its pre-
17 COVID-19 Final Operational Plan, but with four weeks fewer than provided in that plan to
18 complete the operation. In other words, the Bureau had to complete the same amount of work in
19 just 65% of the time it had originally scheduled to complete that work.

20 230. As of the beginning of the NRFU period in all regions, over 37% of households
21 nationwide were non-responsive, and several states had even higher percentages of households in
22 the Non-Response Follow Up universe, including New Mexico (46.1%), South Carolina
23 (42.4%), Texas (41.3%), and Georgia (40.8%).

24 231. While soft-launches of Non-Response Follow Up began in select locations in
25 mid-July 2020, the operation did not begin in any of these states, with large amounts of non-
26 responsive households, until August 9, 2020.

27 232. Within states, and in particular cities and localities, there were even higher Non-
28 Response Follow Up workloads. For instance, in Plaintiff Harris County, as of August 18

1 enumerators still had to visit over 41% of households. In the City of Los Angeles, over 46% of
2 households remained for enumeration as of August 18. The self-response rate in Los Angeles at
3 that time was approximately 14 percentage points below the final self-response rate the City
4 attained during the 2010 Census. Counting in these jurisdictions also did not begin until
5 August 9, 2020.

6 233. Moreover, given the time constraints placed by the Replan, counting was to be
7 conducted while these and many other jurisdictions struggled to control a surge in COVID-19
8 cases.

9 234. While the Bureau announced on August 11, 2020 that it was “training census
10 takers to follow up with households by phone” in light of the pandemic, that change in Non-
11 Response Follow Up operations was not anticipated in the Final Operational Plan. Press
12 Release, U.S. Census Bureau, *Door-to-Door Visits Begin Nationwide for 2020 Census* (Aug. 11,
13 2020), [https://www.census.gov/newsroom/press-releases/2020/door-to-door-visits-begin-](https://www.census.gov/newsroom/press-releases/2020/door-to-door-visits-begin-nationwide.html)
14 [nationwide.html](https://www.census.gov/newsroom/press-releases/2020/door-to-door-visits-begin-nationwide.html).

15 235. Given the traditionally low response rates for phone surveys in the wireless era,
16 following up by phone was unlikely to materially increase response rates.

17 236. A recent Bureau survey running in parallel with the 2020 Census demonstrates the
18 difficulty in obtaining responses via phone or email. This past spring, the Bureau began
19 conducting a “Household Pulse Survey” to measure household experiences under the COVID-19
20 pandemic. This survey solicited participation through emails and text messages. Over the first
21 twelve weeks of this survey, response rates were meager, ranging from 1.3% to 3.8%.

22 237. Second, the Replan did not account for the staffing challenges of the Bureau,
23 many of which are directly related to the ongoing pandemic.

24 238. As demonstrated in the soft-launch of NRFU in select locales, the Bureau was
25 already experiencing staffing shortages and retention problems with enumerators.

26 239. In the midst of the ongoing pandemic, prospective enumerators, many of whom
27 are elderly and at high risk of contracting a severe COVID-19 related illness, were less willing to
28 engage in the required door-to-door canvassing.

1 240. Indeed, Tim Olson, head of field operations for the 2020 Census, stated at a
2 July 8, 2020 press briefing that “[a]bout a third of our [enumerator] applicants [are] older persons
3 considered high risk of the virus.” U.S. Census Bureau, *Operational Press Briefing – 2020*
4 *Census Update* at 21 (July 8, 2020), [https://www.census.gov/content/dam/Census/
5 newsroom/press-kits/2020/news-briefing-program-transcript-july8.pdf](https://www.census.gov/content/dam/Census/newsroom/press-kits/2020/news-briefing-program-transcript-july8.pdf).

6 241. And Deborah Stempowski, the Census Bureau’s Assistant Director for Decennial
7 Programs, noted the Bureau’s difficulty retaining enumerators in early August 2020, confirming
8 that potential enumerators were “a little hesitant because of the COVID environment.” Mike
9 Schneider, *Census Bureau Drop-Outs Complicate Door-Knocking Efforts*, Associated Press
10 (Aug. 8, 2020), [https://www.usnews.com/news/us/articles/2020-08-08/census-bureau-drop-outs-
11 complicate-door-knocking-efforts](https://www.usnews.com/news/us/articles/2020-08-08/census-bureau-drop-outs-complicate-door-knocking-efforts).

12 242. In testimony before Congress on July 28, 2020, Director Dillingham confirmed
13 that the Bureau believed that “the pandemic is estimated to increase the number of no shows to
14 training sessions, as well as the number of employees who complete training but decline to show
15 up for work.” *Id.*

16 243. According to reports from census-operations staff working in the field, these
17 predictions came to pass. One census field supervisor working in the mid-Atlantic noted that,
18 given the new rushed timeline and lack of sufficient staff, “[w]e’re just sending bodies out
19 regardless of whether they’re ready or not.” Hansi Lo Wang, *‘Not Enough Time’: Census*
20 *Workers Fear Rushing Count Could Botch Results*, NPR (Aug. 11, 2020), [https://www.npr.org/
21 2020/08/11/901202892/not-enough-time-census-workers-fear-rushing-count-could-botch-results](https://www.npr.org/2020/08/11/901202892/not-enough-time-census-workers-fear-rushing-count-could-botch-results).

22 244. In addition to enumerator low-count and hesitancy, another source of staffing
23 issues involved delays in processing background checks on enumerator applicants and in
24 enumerator onboarding.

25 245. A June 2020 GAO report on the 2020 Census delays COVID-19 has caused, and
26 the risks the pandemic has exacerbated, noted that the Bureau “will have to quickly hire and
27 onboard sufficient staff to conduct its operations” to reach adequate staffing levels. U.S. Gov’t
28

1 Accountability Office, *COVID-19 Presents Delays and Risks to Census Count* (June 2020),
2 <https://www.gao.gov/assets/710/707456.pdf>.

3 246. That same report also noted that, once potential enumerators accept a job offer
4 from the Bureau, the new hires “must wait a minimum of 60 days before they can begin training,
5 a time period during which they must complete fingerprinting and a background check.” *Id.*

6 247. Reports from hired enumerators confirm that the Bureau faced these technical
7 challenges as well, under the compressed timeline. One hire in Boulder, Colorado noted that he
8 lost six potential days of door-knocking because he was unable to complete the Bureau’s online
9 training module.

10 248. Thus, under the Replan, the Bureau was not able to hire and train sufficient
11 enumerators.

12 249. Even if it were possible for the Bureau to hire all of the enumerators it would
13 need, the Bureau would also need time and funding to obtain additional equipment for any
14 additional enumerators it hires beyond its initial estimates of equipment. For example, the
15 Bureau would need more of the iPhones discussed above that the Bureau specifically contracted
16 and customized for 2020 Census enumerators.

17 250. With fewer enumerators in the field, in addition to training and equipment issues,
18 the Bureau was unable to ensure that non-responsive households would receive the requisite
19 number of visits, as contemplated in the Final Operational Plan, and the Bureau would therefore
20 be required to cut corners and reduce the quality of the count so as to meet the Replan’s
21 truncated timeline.

22 251. Thus, instead of providing additional enumerators, the Bureau’s Replan was likely
23 to result in a smaller number of enumerators shouldering larger-than-planned workloads.
24 Increasing workloads for enumerators over a short period of time can result in errors and
25 inaccuracies in counting but it cannot make up for the time lost to the Replan.

26 252. *Third, the Replan failed to account for factors relevant to efficient enumeration,*
27 *such as the time when enumerators visit households.*

28 253. For instance, under the Final Operational Plan, enumerators were to visit

1 households at specific times of day and on specific days of the week, depending on when
2 residents were likely to answer.

3 254. Under the Replan, enumerators were under pressure to complete their work in a
4 tightly constrained timeframe. As a result, ensuring that non-responsive households receive the
5 requisite number of enumerator visits at the most opportune times for enumeration became
6 exceedingly difficult, if not impossible. Instead, the Replan increases the likelihood that
7 households would either receive visits at less opportune times, or simply receive fewer visits
8 altogether.

9 255. Fourth, the Replan failed to account for the additional crucial operations that
10 enumerators had to conduct, as contemplated in the Bureau's final plans for the 2020 Census.

11 256. Apart from visiting households upwards of six times, enumerators also were
12 supposed to engage in a host of additional quality control activities. As noted above,
13 enumerators were expected to visit the households of persons that self-responded to the census
14 online but did not enter the unique identifier provided on census mailers. This “non-ID
15 processing” is necessary to verify the address information provided by respondents. While this
16 process only requires a single visit to a household, it nevertheless had to be completed in the
17 compressed timeline provided for under the Replan.

18 257. Similarly, the Bureau had to conduct quality control reinterviews of a sample of
19 households during Non-Response Follow Up. This operation was designed to deter and detect
20 enumerator falsification. Detecting such falsifications would be especially important under the
21 Replan which required individual enumerators to shoulder a heavier workload. The use of
22 enumerators to conduct these reinterviews would, under the Replan, place additional strain on
23 the Bureau's already stretched labor resources.

24 258. Cutting any one of these functions would cause errors and inaccuracies to affect
25 the final 2020 Census data. By reversing the COVID-19 Plan and shortening the timeframe for
26 conducting Non-Response Follow Up by a month, the Bureau would likely need to make cuts to
27 one or more of these operations.

28

1 265. They were not alone. Senior Advisor for Decennial Affairs, James Treat wrote
2 that “[a]ny effort to concatenate or eliminate processing and review steps to reduce the
3 timeframes will significantly reduce the accuracy of the apportionment counts and the
4 redistricting data products.”

5 266. And the Bureau’s own documents while devising the Replan warned that all of
6 the backend processing changes “represent an abbreviated process that is likely to reduce the
7 accuracy of the 2020 Census and threaten the fitness for use.”

8 **C. The Replan Also Failed to Appropriately Account for Key Factors Affecting the**
9 **Data Processing Period**

10 267. The Replan also failed to account for several important factors affecting the 2020
11 Census data processing period, including the additional strain on data-processing operations
12 resulting from the consequences of the COVID-19 pandemic. Again, these factors are discussed
13 below as of the time of the Replan decision. Section VII below discusses Defendants’ more
14 recent contradictory statements and conduct regarding census data processing and its link to data
15 collection, and how these independently demonstrate Defendants’ violation of their
16 constitutional and statutory obligations.

17 268. Defendants have long recognized that a long data processing period was critical to
18 ensuring the fairness, completeness, and accuracy of the decennial census. The Operational Plan
19 provided 5 months for this complex but vital period—and the COVID-19 Plan expanded that to 6
20 months, given the added complications from the pandemic that the Bureau knew would result in
21 messy data collections that would have to be appropriately processed and understood.

22 269. For example, following the outbreak of COVID-19 in the United States in mid-
23 March 2020, colleges and universities across the country closed, and students moved out of on-
24 campus and off-campus housing. Similarly, many residents of cities, especially those living in
25 COVID-19 hotspots, moved to locations where the virus was less prevalent. In a recent study,
26 three percent of people surveyed reported that they had moved permanently or temporarily as a
27 result of the pandemic.

28

1 270. This significant movement of people coincided with Census Day, April 1, 2020,
2 and has and will lead to confusion about what residence should be listed on responses.

3 271. It is likely that the Bureau has received an increased amount of duplicate
4 responses, which will, in turn, require more time and Bureau resources to review and correct.

5 272. The Replan also failed to account for the Bureau’s inability to timely obtain and
6 process all the administrative-records data crucial for completing an accurate count.

7 273. The Bureau relies heavily but not solely on Title 26 data—that is, tax returns that
8 individuals file with the Internal Revenue Service (“IRS”)—for some of the administrative
9 records it uses to fill in missing people.

10 274. Because this year’s tax filing deadline was July 15, 2020, and the IRS generally
11 requires three months to transfer Title 26 data to the Census Bureau, the Bureau will not possess
12 all the Title 26 data it is planning to use until mid-October 2020, at the earliest, and potentially
13 much later. Once the Bureau has possession of that Title 26 data, it will have to undertake a
14 time-consuming round of additional review and processing, further delaying its ability to use the
15 data for its planned purposes. These delays will compel the data-processing phase of 2020
16 Census operations to proceed more slowly than the Replan contemplates or would allow.

17 275. As with truncating data collections, Top Bureau officials were well aware of the
18 harm that would be caused by curtailing data-processing operations at the time the Replan was
19 promulgated. As the Bureau explained, “[E]ach and every step in post processing is necessary
20 and eliminating any step would result in a diminished data product. . . [N]o step can be
21 eliminated or overlap with another step.”

22 276. And the August 3 presentation to Secretary Ross that unveiled the Replan itself
23 warned that “[a]ll of these activities represent abbreviated processes or eliminated activities that
24 will reduce the accuracy of the 2020 Census”; that the “compressed review period creates risk for
25 serious errors not being discovered in the data—thereby significantly decreasing data quality”;
26 and that those “serious errors” if discovered “may not be fixed” due to lack of time in data
27 processing. PI Order 55, 58 (quoting DOC_9496; DOC_10285).

28

1 277. The Department of Commerce’s Office of Inspector General, too, concluded that
2 the “streamlined data processing under the accelerated plan poses a myriad of risks to accuracy
3 and completeness.” Department of Commerce Office of Inspector General, “The Acceleration of
4 the Census Schedule Increases Risks to a Complete and Accurate 2020 Census.”

5 278. Ultimately, the solution to alleviate each of these problems was articulated in the
6 COVID-19 Plan: provide the Bureau’s limited number of enumerators with additional time to
7 conduct the data-collection operations necessary to ensure a complete and accurate census, and
8 provide Bureau staff with additional time to conduct the data-processing operations necessary to
9 ensuring the same. The Replan failed to address these issues, explain why the Bureau's prior
10 conclusions were incorrect, or explain how cutting in half the time for data processing would not
11 create fatal flaws in data quality.

12 **D. The Replan Did Not Account for Federal Statistical Guidelines**

13 279. In replacing the COVID-19 Plan with the Replan, Defendants departed from
14 federal government statistical standards that promote the accuracy of information collected and
15 disseminated by the agencies.

16 280. Under the Paperwork Reduction Act, the Office of Management and Budget is
17 responsible for coordinating the federal statistical system, including the development and
18 implementation of “Governmentwide policies, principles, standards, and guidelines” “concerning
19 [] statistical collection procedures and methods.” 44 U.S.C. § 3504(e)(3) (A).

20 281. The Office of Management and Budget is responsible for issuing guidelines that
21 provide “procedural guidance to Federal agencies for ensuring and maximizing the quality,
22 objectivity, utility and integrity of information (including statistical information) disseminated by
23 Federal agencies.” Consolidated Appropriations Act, FY 2001, Pub. L. No. 106-554, § 515,
24 114 Stat. 2763 (2000).

25 282. One such guideline issued by the Office of Management and Budget provides
26 specific standards to agencies like the Census Bureau, in ensuring the quality and utility of
27 federal statistical surveys, such as the decennial census. Office of Mgmt. & Budget, Standards
28 and Guidelines for Statistical Surveys § 2 (2006).

1 283. Under these standards, agencies are required to develop “realistic timetable[s]”
2 for surveys. *Id.* § 1.2.

3 284. The Bureau failed to take this basic requirement into account when it decided to
4 implement the Replan. The Replan compressed the timeline for counting operations despite
5 evidence of staffing shortages and heavier workload. The Replan attempts to accomplish an
6 idea—delivery of results by December 31, 2020, half the time previously allotted—that the
7 Bureau had already characterized in various ways as “impossible” and “ludicrous” and “mentally
8 deficien[t].”

9 285. The standards also require agencies, including the Census Bureau, to “[e]ncourage
10 respondents to participate to maximize response rates and improve data quality.” Office of
11 Mgmt. & Budget, Standards and Guidelines for Statistical Surveys § 2.3.2. This requires that the
12 Census Bureau “[e]nsure that the data collection period is of adequate and reasonable length.”

13 286. Again, the Replan did not account for these standards. The Final Operational
14 Plan and the COVID-19 Plan provided for over eleven weeks of Non-Response Follow Up, and
15 up to five and six months, respectively, of post-collection data processing for the apportionment
16 report. The Replan, on the other hand, cut the time allotted for counting by four weeks, without
17 explaining how it will encourage more efficiency in collecting responses than the plan it
18 reversed.

19 287. The standards also require the Bureau to plan for “an adequate number of contact
20 attempts” to the respondent and to establish protocols for minimizing enumerator falsification,
21 including “reinterviewing respondents.” Office of Mgmt. & Budget, Standards and Guidelines
22 for Statistical Surveys, Directive No. 2, § 2.3.3.

23 288. With the Replan significantly cutting the time available to conduct Non-Response
24 Follow Up, the Bureau had to significantly alter particular Non-Response Follow Up processes.
25 This included reducing the number of housing unit visits it earlier deemed necessary to
26 enumerate a non-responsive household, eliminating enumerator reinterviews, and so on. *See*
27 Section VII *infra*. And these conflict with the Bureau’s obligation to abide by federal statistical
28 standards.

1 **E. Plaintiffs Have Spent Time and Money Counteracting Confusion from the Replan**

2 289. The new plan to rush completion of the 2020 Census also creates additional
3 confusion about census operations at a critical moment in the census-taking process.

4 290. The Census Bureau’s abrupt change will require groups and local governments
5 engaging in Get Out the Count campaigns, including Plaintiff localities and Plaintiff
6 organizations, to expend resources to correct confusion about the 2020 Census.

7 291. As noted above, Plaintiff organizations and localities engaged in extensive public
8 information campaigns that publicized the October 31, 2020 deadline.

9 292. The Replan required Plaintiffs to expend additional resources in order to update
10 existing public materials, distribute new materials, and engage in more public-facing efforts to
11 educate the public, their constituents, their members and/or constituents, and local organizations.

12 293. For instance, in Harris County, officials ordered a mailing to constituents
13 informing them that they had until October 31, 2020 to respond to the census. That order
14 occurred before the August 3, 2020 decision to implement the Replan. In light of the new plan,
15 the officials were forced to order stickers to cover the reference to October 31, 2020 on the
16 mailer and to dedicate office staff to spend time affixing those stickers and updating the mailer.
17 Similarly, Plaintiffs the City of Los Angeles, BAJI, and Urban League had to deal with
18 advertisements on social media to correct previous communications that referenced the
19 October 31, 2020 deadline.

20 294. Apart from correcting misinterpretations arising from earlier statements Plaintiffs
21 made in reliance on the Bureau’s COVID-19 Plan, Plaintiffs have also been forced to engage in
22 more, unanticipated outreach to educate the public about the Census Bureau’s Replan decision,
23 including developing new plans to reach more households and encourage more census
24 participation.

25 **F. The Replan Will Ultimately Lead to Low Quality and Inaccurate Data**

26 295. Ultimately, Defendants’ decision to rush completion of the 2020 Census will
27 produce a significantly less accurate census than the COVID-19 Plan.

28

1 296. By cutting down the time allotted for door-knocking, the Replan will result in
2 fewer contact days by enumerators to non-responsive households, and less data collected by
3 enumerators about those households.

4 297. The concerns about inaccuracy resulting from shortening time for Non-Response
5 Follow Up are real and verified. A GAO review of the 2010 Non-Response Follow Up operation
6 determined that local census offices with “higher percentages” of “less complete house-hold
7 data” were more likely to have completed their Non-Response Follow Up in 53 days or less as
8 compared to those offices that took a longer period of time. U.S. Gov’t Accountability Office,
9 *2010 Census: Data Collection Operations Were Generally Completed as Planned, but Long-*
10 *Standing Challenges Suggest Need for Fundamental Reforms* (Dec. 2010),
11 <https://www.gao.gov/new.items/d11193.pdf>.

12 298. As noted above, after the Bureau exhausts attempts to enumerate households
13 through methods that render more accurate results, such as self-response and enumerator
14 interviews, the Bureau turns to less accurate sources of data and statistical methods as a last
15 resort to fill in missing information.

16 299. By curtailing Non-Response Follow Up, the Replan has forced the Bureau to
17 resort to less accurate methods of data collection, well before the exhaustion of more accurate
18 methods. Consequently, the Replan has led to the production of lower-quality information.

19 300. For instance, under the Final Operational Plan, the Bureau would not consider
20 low-quality administrative data before conducting the requisite number of contact days for a
21 particular type of housing unit. By reducing the number of enumerator contact days, the Replan
22 has led to reliance on these types of lower-quality data sources prior to exhausting the more
23 accurate methods contemplated in the Final Operational Plan. Consequently, the Replan has led
24 to more inaccuracies in the data.

25 301. Based upon past practices, the Bureau may also use whole-count imputation to
26 calculate missing household data but to an extent and in ways not used previously. Imputation
27 involves the Bureau using information from surrounding responsive households to infer the
28 count and characteristics of a non-responsive household.

1 302. In the 2010 census, the Bureau imputed approximately 0.3% of households
2 nationwide, left over after exhausting its Non-Response Follow Up efforts. Under the time
3 constraints of the Replan, the Bureau will need to turn to imputation before exhausting its in-
4 person enumeration efforts. One former Census Bureau Director has estimated that, under the
5 Replan, the Bureau may end up imputing up to 10% of households. Depending on the quality of
6 the data collected—and whether it can appropriately be used to deem a household truly
7 enumerated or not—imputation levels may vary, and may end up being significantly higher than
8 expected from looking at claimed completion rates alone.

9 303. Since data produced through the Bureau’s current imputation methods are less
10 accurate than data collected from enumerator interviews, Defendants’ decision to rush
11 completion of the 2020 Census will result in significantly less accurate total-population data than
12 would have been produced under the COVID-19 Plan. This decline in accuracy will affect both
13 the census’s calculations of the total number of people living in the country and the census’s
14 recording of the characteristics of those people, and such inaccurate data will not meet the
15 constitutional minimum for conducting the decennial enumeration or satisfy the “strong
16 constitutional interest in accuracy” of the Census. *Utah v. Evans*, 536 U.S. 452, 478 (2002).

17 304. The Replan will also disrupt the post-collection data processing operations,
18 described above. As noted by Secretary Ross and Director Dillingham in mid-April 2020,
19 following Non-Response Follow Up the Bureau engages in “lengthy, thorough and scientifically
20 rigorous” data processing, which is essential to ensuring an accurate census.

21 305. In announcing the new plan to rush the completion of the 2020 Census, Director
22 Dillingham stated that the Bureau would “streamline” these operations in order to meet the
23 December 31, 2020 deadline.

24 306. While the Director has not specified what this “streamlining” means for post-
25 collection operations, the bottom line is that the Bureau cannot fully engage in the operations as
26 contemplated in its Final Operational Plan on the shortened timeframe. As a result, the Bureau
27 will have to cut or reduce its efforts to review and process collected data to ensure accuracy.

28

1 **G. The Replan Will Lead to Undercounting of Minorities**

2 307. The new plan to rush completion of the 2020 Census will exacerbate
3 undercounting of Black, Latino, and Native American communities.

4 308. As noted above, Non-Response Follow Up, is specifically designed to ensure that
5 traditionally hard-to-count communities, including Black, Latino, and Native American
6 communities are fully counted. By cutting Non-Response Follow Up short, the administration is
7 disrupting the operation most essential to ensuring an accurate count for these communities.

8 309. For the 2020 Census, Black, Latino and Native American populations make up a
9 disproportionate share of the population in tracts with the lowest self-response rates in the United
10 States. For instance, as of July 23, 2020, one in five residents living in census tracts with the
11 lowest self-response rates was Black, and one in four was Hispanic, far larger proportions than
12 Black and Hispanic shares of the general population.

13 310. Consequently, Black, Latino, and Native American households made up a
14 disproportionate share of the Non-Response Follow Up universe.

15 311. Given the challenges of the shortened Non-Response Follow Up timeline, Black,
16 Latino, and Native American households have a high likelihood of being missed, or inaccurately
17 enumerated through administrative records and imputation. As noted above, these alternative
18 methods for enumeration will result in lower quality data for these groups.

19 312. The problem, however, is even more serious because it replicates and exacerbates
20 problems the Census Bureau has found in prior censuses and has striven to correct in subsequent
21 censuses. Data from previous censuses shows that Black, Latino, and Native Americans have
22 historically been undercounted. Over-reliance on alternative methods of data to enumerate a
23 disproportionate share of the population in these groups will further exacerbate potential
24 undercounting in these groups during the 2020 Census.

25 313. Accurate data about the size, location, and characteristics of communities of color
26 is necessary to equitably distribute political power through congressional reapportionment and
27 redistricting at the state and local levels, enforce civil-rights laws that affect basic needs like
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1 housing and employment, and conduct effective research, including on pressing issues like
2 public health.

3 314. Truncating Non-Response Follow Up will exacerbate undercounts of
4 communities of color in at least two ways: first, by missing members of those communities
5 entirely; or, second, by recording their characteristics incorrectly, such that the census results
6 will not register them as members of communities of color. In either instance, data regarding
7 communities of color will be inaccurate. This inaccuracy then deprives communities of color of
8 federal funding, all the material support that flows from federal funding, the protections of the
9 law, and political power at the federal, state, and local levels.

10 315. This undercounting will be significantly exacerbated by the shortened data-
11 processing timeline.

12 316. All evidence suggests that much of the underlying data collected by Defendants
13 was collected through administrative records and proxies—and the “quality of the data that the
14 Census Bureau collects... is degraded by the number of households with no directly-collected
15 information.” Louis Decl. ¶ 21. Shortening data-processing operations will prevent the Bureau
16 from finding and fixing these errors, as the Bureau itself has acknowledged. *See* PI Order 55, 58.

17 317. The harms are particularly obvious in the use of imputation. “[T]he statistical
18 methods that the Census Bureau uses for whole person imputation rely on using information
19 from the resolved housing units,” so “any undercounts that are in the resolved housing units will
20 be carried forward and not corrected.” Thompson Decl. ¶ 20. And because imputation will be
21 accomplished in part based on the use of administrative records, and such records for hard-to-
22 count populations are generally lower quality, “the imputed values are likely to be less accurate
23 for hard-to-count groups than for the relatively easy to count.” Louis Decl. ¶ 39.

24 318. Relatedly, the “compressed time frame for Quality Control and data processing”
25 is likely to “contribute to an even larger overcount of the white population” and undercount of
26 the Hispanic and immigrant population. Hillygus Decl. ¶¶ 20, 37. That is in part because white
27 households are likely to have much better administrative records (and thus are likely to be
28 double-counted at multiple addresses), while Hispanics and immigrants have larger household

1 sizes on averages (and are thus likely to be undercounted when imputation is used to estimate
2 household sizes). *Id.* Time and attention are needed to identify and fix these errors when they
3 occur. Louis Decl. ¶¶ 22, 25-37. And under the Replan and Defendants’ new announcements,
4 that time is not available.

5 **H. The Replan Has No Legitimate Justification**

6 319. In announcing the Replan, Defendants provided no express justification.
7 Defendants stated in passing, however, that reporting of apportionment data to the President by
8 December 31, 2020 is required by statute. And in this litigation, they have settled on that
9 rationale, raising it repeatedly and solely.

10 320. But there is “nothing sacred in the due date of the filing [of apportionment data],
11 especially when the work of the Census Bureau... is incomplete.” *Carey v. Klutznick*, 637 F. 2d
12 834, 837 (2d Cir. 1980).

13 321. The Supreme Court thus determined that the government can and should
14 substitute apportionment counts that have already been filed and certified with “newer, more
15 accurate version[s].” *Utah v. Evans*, 536 U.S. 452, 462 (2002).

16 322. Defendants have also recognized that, in the event of a conflict between the two,
17 the constitutional requirement of a fair and accurate enumeration, rather than the statutory
18 deadline, is the controlling legal requirement. With the COVID-19 pandemic threatening the
19 health and safety of communities across the country, Defendants adjusted 2020 Census
20 operations in the COVID-19 Plan, shifting the timeline by several months. Defendants did not
21 wait for Congress to act to implement this plan, recognizing that the Plan was necessary to
22 protect enumerators and respondents, and to ensure an accurate count.

23 323. Because of those delays, as the Bureau itself recognized, it was no longer possible
24 for Defendants to produce data by December 31, 2020 that fulfilled their constitutional and
25 statutory mandate. Specifically, the Bureau could not simultaneously pursue an accurate 2020
26 Census, and speed through completion of census-taking in order to report numbers to the
27 President by the end of the year.

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1 324. Several senior officials charged with actually conducting the 2020 Census
2 confirmed the impossibility of this task throughout the summer, including approximately four
3 weeks before Defendants’ abruptly announced their decision to adopt the Replan.

4 325. The Census Bureau thus never stated, neither publicly nor internally, that the
5 statutory deadline was sacrosanct and compelled the Replan. No one at the Census Bureau ever
6 stated that a statutory deadline compelled their submission of census counts that they knew were
7 incomplete, inaccurate, unconstitutional, or unfit for purpose.

8 326. The statutory deadline at issue is not mandated by the Constitution. Taking the
9 modest additional time necessary to ensure an accurate census, should not prevent a timely
10 reapportionment, as elections for congressional seats impacted by reapportionment will not occur
11 until 2022.

12 327. Ultimately, Defendants cannot sacrifice their mandatory *constitutional* obligation
13 to make decisions reasonably related to producing an accurate count in order to claim,
14 pretextually, that they must comply with a pro forma *statutory* deadline no matter what—and no
15 matter what product they deliver. Congress clearly could not, for instance, satisfy its
16 constitutional obligations by providing the Census Bureau with a single week in which to
17 conduct the census. Strictly adhering to the December 31, 2020 deadline, as applied in
18 extraordinary circumstances of the ongoing pandemic, would be equally unconstitutional.

19 **I. Implementation of the Apportionment Exclusion Order**

20 328. The Replan cannot be justified on the basis of artificial statutory deadlines.
21 Instead, the timing of the abandonment and internal documents strongly suggest that the decision
22 was influenced by a desire to implement the President’s Executive Memorandum excluding
23 undocumented immigrants from the apportionment count, thereby undercutting the contribution
24 of communities of color to the calculations for equal representation for purposes of congressional
25 apportionment (the “Apportionment Exclusion Order”).

26 329. In late June 2020, the White House took the unprecedented step of adding two
27 political appointees to Census Bureau staff with unspecified job duties. Neither appointee had an
28 expertise in statistics, and both had a demonstrated history of partisan activity. These unusual

1 appointees had previously engaged with the Census Bureau on questions about changing
2 operations and methodology.

3 330. In mid-July 2020, White House officials reportedly asked congressional
4 appropriators to include \$1 billion in the next coronavirus stimulus bill for the purpose of
5 completing the 2020 Census by the December 31, 2020 deadline.

6 331. This abrupt change in policy coincided with and was motivated by the President's
7 July 21, 2020 issuance of the unconstitutional Apportionment Exclusion Order declaring that it is
8 the policy of the United States to remove undocumented persons from the apportionment count,
9 and requiring the Secretary of Commerce to produce estimates of the number of undocumented
10 persons in the United States when reporting total population counts to the President. As noted,
11 the Apportionment Exclusion Order is currently being challenged as unconstitutional and
12 unlawful in a number of lawsuits filed in jurisdictions around the country, including in this
13 District.

14 332. Shortening the census timeline increases the likelihood that, regardless of the
15 outcome of the November 2020 election, this President will have the opportunity to implement
16 his Apportionment Exclusion Order. Delaying reporting until spring—as the COVID-19 Plan
17 issued by the Census Bureau and Department of Commerce previously did—leaves open the
18 possibility that the President will no longer be in office when data is provided, and thus will be
19 unable to effectuate the Apportionment Exclusion Order.

20 333. Defendants did not justify their sudden, unexplained reversal of position with any
21 evidence that Bureau officials had been wrong in stating, repeatedly, that it would be impossible
22 to produce accurate counts by December 31, 2020. There is also no evidence that the decision to
23 cut short counting operations was driven by the scientifically based judgment of Bureau
24 personnel or external experts.

25 334. To the extent that Defendants' are motivated by a desire to implement the
26 President's Apportionment Exclusion Order, that motivation is improper. It bears no reasonable
27 relationship to the achievement of a fair and accurate census, and, under the circumstances
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1 currently facing the count, implementing the Apportionment Exclusion Order will undermine
2 that goal.

3 335. Moreover, that Memorandum is just the latest attempt by the President and
4 Secretary Ross to manipulate the census along racial and ethnic lines. Beginning in 2017,
5 Secretary Ross attempted to add an untested citizenship question to the 2020 Census, claiming
6 that the question was necessary to better enforce the Voting Rights Act. In reality, the
7 administration was seeking block-level citizenship data so states could draw district lines in a
8 manner that would disadvantage Black and Latino communities.

9 336. Defendant Ross's decision was litigated, and enjoined by three district courts.
10 One of those cases ultimately ended up before the Supreme Court. There the Court found that
11 Defendant Ross's stated Voting Rights Act rationale to support the addition of a citizenship
12 question to the 2020 Census was "contrived" and vacated Defendant Ross's decision. *Dep't of*
13 *Commerce v. New York*, 139 S. Ct. 2551, 2575-76 (2019).

14 337. On July 5, 2019, following the Supreme Court's decision, President Trump
15 confirmed the real rationale—and fully justified the Supreme Court's holding that the
16 administration's rationale for this census decision was pretextual—when he stated that the
17 administration sought a citizenship question, not to enforce the Voting Rights Act, but rather "for
18 districting" and "for appropriations." Remarks by President Trump Before Marine One
19 Departure (July 5, 2019), [https://www.whitehouse.gov/briefings-statements/remarks-president-](https://www.whitehouse.gov/briefings-statements/remarks-president-trump-marine-one-departure-51/)
20 [trump-marine-one-departure-51/](https://www.whitehouse.gov/briefings-statements/remarks-president-trump-marine-one-departure-51/).

21 338. Indeed, further evidence that Defendants' actions were pretextual arose from files
22 of a prominent redistricting strategist, Thomas Hofeller. In 2015, Hofeller prepared a study titled
23 "The Use of Citizen Voting Age Population in Redistricting." In the study, Hofeller
24 recommended adding a citizenship question to the census so that states could use citizen voting-
25 age population rather than total population to redistrict. This change in the redistricting base, in
26 Hofeller's words, would be advantageous to "Non-Hispanic Whites" and would undercut the
27 political power of Hispanics.

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1 339. It was later revealed that Hofeller was involved in drafting portions of the
2 memorandum from the Department of Justice to Defendant Commerce seeking addition of a
3 citizenship question on the 2020 Census, including sections relating to the pretextual reason for
4 requesting the question. *See* Ex. 8 to NYIC Pls.’ Mot. for Sanctions at 124-31, *New York v. U.S.*
5 *Dep’t of Commerce*, No. 1:18-cv-2921-JMF (S.D.N.Y. July 16, 2019), ECF No. 635-1; Defs.’
6 Opp. to Letter Mot. to Compel at 3, *New York v. U.S. Dep’t of Commerce*, No. 1:18-cv-2921-
7 JMF (S.D.N.Y. Oct. 30, 2018), ECF No. 451.

8 340. Shortly after the Supreme Court’s decision, President Trump issued an executive
9 order, demanding executive agencies provide the Census Bureau with administrative records
10 sufficient to allow the Bureau to determine “the number of citizens and noncitizens in the
11 country.” Exec. Order No. 13,880, § 1, 84 Fed. Reg. 33,821, 33,821 (July 16, 2019). The
12 Executive Order explicitly states that the reason this data is necessary is to design “legislative
13 districts based on the population of voter-eligible citizens,” instead of total population. *Id.* at
14 33,823-84.

15 341. In light of that history, the Apportionment Exclusion Order, and the near-
16 contemporaneous decision to cut counting operations short, represent yet another attempt by the
17 administration to manipulate the 2020 Census and potentially undercut the political power of
18 communities of color. Defendants cannot rely on this memorandum as justification to support
19 their decision to undermine the accuracy of the census.

20 **VII. Defendants’ Post-Replan Conduct and the Effects of the Replan to Date Show That**
21 **the Replan and the Numbers It Will Produce are Flawed and Unconstitutional**

22 342. For all the reasons set forth above, the Replan was constitutionally and statutorily
23 flawed when announced. The passage of time and real-world developments since the initial
24 filing of this lawsuit now provide further support that the Replan is unlawful.

25 343. As stated, on August 14, 2020, Secretary Ross made various public assertions
26 about the quality and processes of the Replan that were not true at the time, and have been shown
27 to be definitively not true over time, including:
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- 1 • “The 2020 Census...is on its way to delivering a successful count
2 in every community across the nation”
- 3 • The “updated plan to complete data collection by September 30,
4 2020...increases the number of hours worked per week to
5 accomplish the same amount of work in a shorter time period and
6 meet the statutory deadline, without sacrificing quality.”
- 7 • “Under this plan, the Census Bureau will meet or exceed the
8 standard of data collection set in previous decennial censuses”
- 9 • “So, while the critics have said this plan is being ‘cut-off’ too soon,
10 in reality, it has been strengthened.”
- 11 • “This week we fully engage the 2020 census’s important non-
12 response follow-up operation, where census-takers go door-to-
13 door to obtain responses from the just over 50 million households
14 who have not yet responded.”

15 344. The falsity of some of the preceding statements was demonstrated by an internal
16 document that was revealed only later: the August 3 “Replan” presentation that was provided to
17 the public by Congress on September 2, 2020. AR DOC_10275. In the presentation, and in
18 other materials later disclosed, Defendants made clear that the Replan had in fact lowered their
19 standards for data collection and sought to gain time by cutting corners. Among other things,
20 Defendants (i) significantly reduced the number of contact attempts or visits required in various
21 situations; (ii) increased reliance on non-contact methods such as enumeration through
22 administrative records; (iii) eliminated the random re-interview process (an important part of
23 previous censuses); and (iv) changed the nature of the “count” information collected by
24 enumerators, removing the requirement that demographic information be collected and allowing
25 “population count” information alone in wider circumstances. The Bureau believed that these
26 steps would reduce the NRFU workload of ~64M cases by 8.5 million cases.

27 345. In addition, Defendants’ post-Replan conduct, and the real-world effects of the
28 Replan, would show that these mechanisms and others were in fact used in the data collection
29 period, leading to a flawed set of numbers that, as of October 16, Defendants plan to start using
30 in the data processing period.

1 346. Notwithstanding all this, Defendants have claimed publicly, to this Court, to the
2 Ninth Circuit, and to the Supreme Court that by reaching a 99% completion rate nationwide (and
3 as of October 15, in every state), Defendants have obtained a data collection count that is as good
4 as prior censuses, and sufficient.

5 347. This assertion, just like Secretary Ross’s assertions of August 14, is incorrect, for
6 each of the following reasons discussed in detail below.

7 348. *First*, real world developments have in fact shown that data collection was
8 nowhere near adequate as of (1) September 11, when data collection operations became eligible
9 nationwide for closeout, under the Replan, or (2) September 30, when data collection was to
10 have fully ended under the Replan,. But for this Court’s TRO and preliminary injunction, the
11 Replan would have had catastrophic effects on the 2020 decennial census.

12 349. *Second*, the data shows that Defendants had no ability, in the context and
13 circumstances of the last few months, to have reached completion rates of 99% in every state
14 absent a massive shift in their internal metrics and processes. Accordingly, the 99%-in-every-
15 state number they tout cannot justify the Replan.

16 350. *Third*, the metrics and numbers that Defendants have provided to date, carefully
17 analyzed, demonstrate that this level of claimed completion is misleading and nothing like the
18 completion metrics obtained by prior censuses. Properly understood, these numbers show that
19 Plaintiffs’ concerns about the Replan’s deleterious and unlawful effects have, in fact, been borne
20 out.

21 **A. Defendants’ Plan to Start Winding Down Data Collections by September 11,
22 and End on September 30 Per the Replan Would Have Had Catastrophic
and Unprecedented Effects on the Census if Not Preliminarily Enjoined**

23 351. Defendants failed to reach a complete and accurate census data collection count
24 by the deadlines set forth by the Replan—or come anywhere close. Indeed, it has only been this
25 litigation—and more, specifically, this Court’s initial orders on preliminary relief—that
26 prevented a full and catastrophic failure of the 2020 data collection period.

27 352. Defendants repeatedly stated publicly and to this Court, including via sworn
28 testimony, that under the Replan they would “complete data collection by

1 September 30...without sacrificing quality.” Ross. Op-Ed. And when Defendants opposed
2 Plaintiffs’ request for a TRO in this case, they claimed that a TRO was not necessary because
3 Defendants were on track to reach an accurate census, with completion rates of 99% in every
4 state by September 30.

5 353. As an initial matter, reaching 99% completion in every state is *not* the sole
6 “accuracy” goal of the census. The goal is to count every person once, in the right place—and
7 that means, in particular, fully enumerating hard-to count populations that have been historically
8 underrepresented in past censuses.

9 354. But even so, the Replan utterly failed to meet this numerical statewide
10 “completion” goal, with respect to two of its key dates: its September 11 date to start closeout
11 procedures regardless of completion rate, and its September 30 date to end all data collection.

12 September 11 Wind-Down Date

13 355. In the September 5, 2020 Fontenot Declaration, Defendants first revealed that
14 regional offices could enter the closeout phase on September 11, regardless of completion rate.

15 356. This meant that Defendants had the ability to start winding down NRFU
16 operations in every single CFS area, no matter the completion rate of the CFS, as of
17 September 11—at the discretion of the regional manager—in order to meet the Replan’s
18 September 30 NRFU shutdown date.

19 357. This in turn would have allowed the CFS areas to engage in a number of tactics
20 and actions to try and maximize “completions”—including, but not limited to, allowing housing
21 units in NRFU to be deemed complete and enumerated by “Pop Count” only.

22 358. This is important. When counting a housing unit, the Census Bureau attempts to
23 gather data not just on the total number of people, but on important characteristics, including
24 race/ethnicity and age.

25 359. However, as a last resort, at the very end of the data collection period, the Bureau
26 will accept an enumeration of just the population count for a housing unit in order to complete
27 the unit. The Bureau can accept that information from someone in the housing unit or, more
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1 likely, from a proxy respondent. The use of “pop count only” has, historically, been extremely
2 limited.

3 360. The Bureau has historically made limited use of “pop count only” numbers is
4 because of the significant adverse impacts of such a practice. Failure to collect any information
5 about a household aside from a count increases the likelihood that characteristic data, such as
6 race/ethnicity or age, will have to be imputed—even if the count itself does not. And imputation
7 is effectively an educated guess about the housing unit, far less accurate than other forms of
8 enumeration. Dkt. 36-3, Hillygus Decl. ¶¶ 36-38; Dkt. 36-2, Thompson Decl. ¶ 20(d).

9 361. Moreover, inaccurate race and ethnicity data can have a deleterious effect on
10 states’ ability to draw lines that comply with the Voting Rights Act; and inaccurate age data can
11 disrupt the amount of federal resources states and local school districts receive under important
12 federal education funding programs.

13 362. These issues fall more heavily on hard-to-count groups, who are overrepresented
14 in the NRFU universe vis-à-vis the entire census address file (MAF). This lays the groundwork
15 for differential undercounts, including along racial and ethnic lines.

16 363. Notwithstanding those concerns, and in furtherance of the September 30
17 operations shutdown, Defendants had planned to allow every census office in the nation to start
18 winding down and initiate closeout procedures beginning on September 11—regardless of how
19 far along they were.

20 364. Again, to put the issue in real numbers: as of September 11, *over 13.5 million*
21 *household units in the nation*, or at reasonable assumptions ~25-30 million individuals, had not
22 been counted. And each would have become subject to early closeout procedures. This
23 mechanism to obtain a “census lite” for upwards of 30 million individuals (and/or not personally
24 enumerate them at all) affected every single state. Below are a few examples:

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- *Alabama*: ~450,000 HUs uncounted (~1-1.5 million individuals)
- *Arizona*: ~500,000 HUs uncounted (~1-1.5 million individuals)
- *California*: ~960,000 HUs uncounted (~2-3 million individuals)
- *Florida*: ~1,400,000 HUs uncounted (~3-4 million individuals)
- *Georgia*: ~800,000 HUs uncounted (~1.5-2.5 million individuals)
- *Illinois*: ~330,000 HUs uncounted (~600k - 1 million individuals)
- *Michigan*: ~430,000 HUs uncounted (~900k-1.3 million individuals)
- *New York*: ~860,000 HUs uncounted (~2-3 million individuals)
- *North Carolina*: ~730,000 HUs uncounted (~2-3 million individuals)
- *Pennsylvania*: ~430,000 HUs uncounted (~1-1.5 million individuals)
- *South Carolina*: ~415,000 HUs uncounted (~1-1.5 million individuals)
- *Texas*: ~1,300,000 HUs uncounted (~2.5- million individuals)

365. This would have been drastically different than the previous censuses. In the 2010 Census, for example, Defendants had reached approximately 99% completion three weeks before NRFU ended. So on information and belief closeout procedures, including pop-count only changes, were put in place for at most 1-2 million housing units (or even a few hundred thousand housing units), compared to the 13.7 million household units Defendants would have subjected to closeout under the Replan. The following chart is illuminating:

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Area	~Total Housing Units ¹	Completion %: 9/12 CB Report ²	~Housing Units Not Counted	Completion %: 10/1 CB Report ²	~Housing Units Not Counted
<i>US Total</i>	149,755,969	90.80%	13,777,549	98.90%	1,647,316
Alabama	2,551,113	82.30%	451,547	94.90%	130,107
Alaska	343,602	93.10%	23,709	99.90%	344
Arizona	3,263,115	83.90%	525,362	98.00%	65,262
Arkansas	1,560,289	94.30%	88,936	99.90%	1,560
California	15,301,327	93.70%	963,984	99.60%	61,205
Colorado	2,642,421	90.90%	240,460	98.60%	36,994
Connecticut	1,593,286	95.80%	66,918	99.90%	1,593
Delaware	467,096	88.80%	52,315	98.90%	5,138
DC	384,626	88.80%	43,078	98.30%	6,539
Florida	10,338,788	86.00%	1,447,430	98.00%	206,776
Georgia	4,844,483	83.10%	818,718	96.80%	155,023
Hawaii	594,089	97.60%	14,258	99.90%	594
Idaho	798,954	99.10%	7,191	99.90%	799
Illinois	5,673,995	94.10%	334,766	99.40%	34,044
Indiana	3,086,263	96.40%	111,105	99.90%	3,086
Iowa	1,495,626	88.10%	177,979	99.10%	13,461
Kansas	1,353,266	96.50%	47,364	99.80%	2,707
Kentucky	2,153,348	88.50%	247,635	98.40%	34,454
Louisiana	2,277,553	83.50%	375,796	95.80%	95,657
Maine	791,620	96.70%	26,123	99.90%	792
Maryland	2,631,918	92.80%	189,498	99.30%	18,423
Massachusetts	3,194,810	93.50%	207,663	99.40%	19,169
Michigan	4,828,763	90.90%	439,417	99.00%	48,288
Minnesota	2,593,423	95.00%	129,671	99.60%	10,374
Mississippi	1,467,455	83.10%	248,000	96.40%	52,828
Missouri	3,099,997	94.10%	182,900	99.40%	18,600
Montana	571,279	83.20%	95,975	96.60%	19,423
Nebraska	890,301	92.10%	70,334	99.60%	3,561
Nevada	1,325,391	90.00%	132,539	99.50%	6,627
New Hampshire	668,120	92.90%	47,437	99.90%	668
New Jersey	3,891,496	90.70%	361,909	99.60%	15,566
New Mexico	1,018,320	84.60%	156,821	98.10%	19,348
New York	9,113,163	90.50%	865,750	99.30%	63,792
North Carolina	5,086,710	85.60%	732,486	97.80%	111,908
North Dakota	407,240	91.60%	34,208	99.60%	1,629
Ohio	5,527,092	93.00%	386,896	99.40%	33,163
Oklahoma	1,909,950	88.10%	227,284	98.60%	26,739
Oregon	1,955,562	96.10%	76,267	99.50%	9,778
Pennsylvania	6,074,730	92.80%	437,381	99.10%	54,673
Rhode Island	498,245	92.10%	39,361	99.50%	2,491
South Carolina	2,600,548	84.00%	416,088	96.50%	91,019
South Dakota	417,560	89.50%	43,844	98.10%	7,934
Tennessee	3,299,381	91.70%	273,849	98.90%	36,293
Texas	12,349,756	89.30%	1,321,424	99.50%	61,749
Utah	1,209,969	93.50%	78,648	99.90%	1,210
Vermont	357,230	94.50%	19,648	99.90%	357
Virginia	3,779,137	91.60%	317,448	99.20%	30,233
Washington	3,352,194	97.40%	87,157	99.90%	3,352
West Virginia	976,904	98.70%	12,700	99.90%	977
Wisconsin	2,854,820	96.30%	105,628	99.80%	5,710
Wyoming	289,645	88.20%	34,178	99.00%	2,896
Puerto Rico	1,554,207	90.80%	142,987	99.90%	1,554

(1) 9/25 Bureau spreadsheet; total HU numbers appear to non-materially vary over time. ECF 233-1 at 40 of 81

(2) <https://2020census.gov/en/response-rates/nrfu.html#dd234650384-co>.

1 366. A comparison of these numbers, with the Bureau’s own chart setting forth NRFU
2 completion in 2010, is stark:

3
4 **Table 11: NRFU Housing Units Completed By Week²³**

Week	Housing Units Completed	Percent	Cumulative Percent
4/01 - 4/03	8,522	<0.1%	<0.1%
4/04 - 4/10	21,649	<0.1%	0.1%
4/11 - 4/17	35,633	0.1%	0.1%
4/18 - 4/24	42,776	0.1%	0.2%
4/25 - 4/30	897,485	1.9%	2.1%
5/01 - 5/08 Start of NRFU	10,488,338	22.2%	24.4%
5/09 - 5/15	9,799,293	20.8%	45.1%
5/16 - 5/22	8,853,582	18.8%	63.9%
5/23 - 5/29	6,809,268	14.4%	78.3%
5/30 - 6/05	4,452,359	9.4%	87.7%
6/06 - 6/12	3,240,081	6.9%	94.6%
6/13 - 6/19	1,592,457	3.4%	98.0%
6/20 - 6/26	642,469	1.4%	99.3%
6/27 - 7/03	142,321	0.3%	99.6%
7/04 - 7/10 End of NRFU	16,841	<0.1%	99.7%
7/11 - 7/17	4,437	<0.1%	99.7%
7/18 - 7/24	4,144	<0.1%	99.7%
7/25 - 7/31	3,690	<0.1%	99.7%
8/01 - 8/07	19,080	<0.1%	99.7%
8/08 - 8/14	16,548	<0.1%	99.8%
8/15 - 8/21	12,897	<0.1%	99.8%
8/22 - 8/28	8,763	<0.1%	99.8%
8/29 - 9/04	1,649	<0.1%	99.8%
Missing/Out of Range	83,123	0.2%	100.0%
Total Housing Units	47,197,405	100.0%²⁴	100.0%

17
18 367. The data also show that Defendants’ claims that they would have reached a 99%
19 completion rate in every state by the Replan’s new data collection shutdown date of
20 September 30—using a “strengthened” data collection plan that “will meet or exceed the
21 standard of data collection set in previous decennial censuses,” was also not correct. Even
22 assuming that the “completion” metrics being used by Defendants were materially identical to or
23 stronger than the standards used in previous censuses, *16 states plus the District of Columbia*
24 were below the 99% threshold on September 30, and millions of Americans would have been
25 shut out of the count.

26 368. The overall completion metrics, or even the state-by-state completion metrics,
27 also hide a bigger problem: the differential undercounts, when looking at the local CFS areas.
28 As Defendants themselves realized, in internal documents from September, numerous CFS areas

1 at that time were far below target. In two Census ACOs (Shreveport, Louisiana and Window
 2 Rock, Arizona), actual completion rates on September 28th were below 75% even though the
 3 targeted completion rate was over 95%. Another 22 Census offices reported completion rates of
 4 under 90% on September 28th compared to a targeted completion rate of over 95%. A review of
 5 the limited Census Bureau internal documents indicates declining enumerator productivity
 6 during September, and a deceleration rather than acceleration of the rate at which NRFU could
 7 be completed, in many of these offices. It also indicates extremely low completion rates in tribal
 8 lands. Any forced closing by September 30 would have thus resulted in massive undercounts.
 9 The public, however, would not necessarily have had access to this information—because
 10 contrary to Defendants’ assurances, Defendants had already engaged in, and were planning
 11 further, to shift their metrics and processes so as to mark “complete” housing units with a bare
 12 minimum of work.

13 **B. Defendants Had No Realistic Ability to Reach A True 99% Completion Rate**
 14 **in All States—Not By September 30 or Even October 15—So They Altered**
 15 **and Weakened Standards and Processes Vital to an Accurate Census**

16 369. Defendants never had a realistic ability to reach true 99% completion rates in
 17 every state by September 30 or even October 15—let alone while trying to reach hard-to-count
 18 populations—without significant, accuracy-reducing changes to the census’s standards,
 19 processes and metrics.

20 370. To start, a comparison with 2010 is illuminating. The 2010 Census scheduled 10
 21 weeks of NRFU to resolve ~47,200,000 million household units. *See* U.S. Dept. of Commerce,
 22 Office of Inspector General, *Census 2010: Final Report to Congress* (June 2011) at 49. The
 23 2020 Census Final Operational Plan scheduled 11.5 weeks of NRFU to resolve ~64,000,000
 24 housing units. *See* Final Operational Plan.

25 371. Although NRFU caseload completions are not linear on a week to week basis
 26 (with the harder cases that remain at the end of NRFU taking longer to complete), the numbers
 27 make clear that the Bureau was already planning to be far more efficient in 2020 than in 2010—
 28 because it added only 10 days more to handle an additional ~17 million housing units.

1 372. The Bureau spent a decade making sure it could cover that massive load by
2 honing these efficiencies. The advancements it came up with were essential to its ability to
3 squeeze an extra 17 million housing units into a period only 1.5 weeks longer than in 2010—but
4 those plans left no spare room. This is critical to Defendants’ assertions now. The Operational
5 Plan—and the COVID-19 Plan, which built on the Operational Plan and adjusted it to
6 appropriately account for the COVID-19 pandemic—had *already built in* all of the technological
7 and process advancements the Bureau was expecting to use during the NRFU period. The
8 Bureau conducted numerous tests in 2012, 2013, 2014, 2015, 2016, 2017, 2018, and 2019,
9 leading up to the 2020 Census, including these advancements, such as the use of advanced
10 software, assignment optimization, advancements in review technology (while still providing for
11 the critical random reinterviews), the use of iPhones instead of paper technology, and more. *See*,
12 *e.g.*, Dkt. 37-5 at 31-55.

13 373. With all of these advancements and tests, the Bureau projected enumerator
14 productivity to be around 1.55 resolved cases per hour. *See* Dkt. 81-1 at ¶ 75; Dkt. 170-2 at ¶ 51
15 (Feb. 11, 2020), *National Association for the Advancement of Colored People v. Bureau of the*
16 *Census*, No. 8:18-cv-00891-PWG (D. Md.); *see also* U.S. Census Bureau, *Final Census Test*
17 *Proves Successful*, Sept. 5, 2018,
18 [https://www.census.gov/newsroom/blogs/director/2018/09/final-census-test-proves-](https://www.census.gov/newsroom/blogs/director/2018/09/final-census-test-proves-successful.html)
19 [successful.html](https://www.census.gov/newsroom/blogs/director/2018/09/final-census-test-proves-successful.html) (describing 2018 end-to-end test and stating, “[p]erhaps most encouraging is that
20 we have observed a substantial increase in enumerator productivity from adoption of technology
21 and automation”); U.S. Census Bureau, *U.S. Census Bureau Demonstrates Readiness for the*
22 *2020 Census*, Sept. 5, 2020, [https://www.census.gov/newsroom/press-releases/2018/census-](https://www.census.gov/newsroom/press-releases/2018/census-demonstrates-readiness-for-2020-census.html)
23 [demonstrates-readiness-for-2020-census.html](https://www.census.gov/newsroom/press-releases/2018/census-demonstrates-readiness-for-2020-census.html). This was a “substantial increase” over the 1.05
24 resolved cases per hour during the 2010 Census. U.S. Census Bureau, *Final Census Test Proves*
25 *Successful*, Sept. 5, 2018, [https://www.census.gov/newsroom/blogs/director/2018/09/final-](https://www.census.gov/newsroom/blogs/director/2018/09/final-census-test-proves-successful.html)
26 [census-test-proves-successful.html](https://www.census.gov/newsroom/blogs/director/2018/09/final-census-test-proves-successful.html). And there was no indication—ever, by anyone—that the
27 Bureau could squeeze out greater productivity from its enumerators, even using all of this new
28 technology and software optimization, while still reasonably maintaining accuracy.

1 374. In order to squeeze in 62 million housing unit enumerations in an already-short
2 11.5 week period, the Bureau also closely calculated the number of enumerators it would need,
3 based on the projected enumerator per-hour productivity and per-week workload. After a decade
4 of study preparing for the 2020 Census, Defendants had initially projected needing around
5 260,000 enumerators to perform NRFU operations. *See* Dkt. 37-15 at 90.

6 375. But as the COVID-19 pandemic began to ramp up in the United States,
7 Defendants projected needing to hire more than 300,000 enumerators, depending on enumerator
8 performance and self-response rate before NRFU began. *See* Dkt. 170-2 at ¶¶ 50-51 (Feb. 11,
9 2020), *National Association for the Advancement of Colored People v. Bureau of the Census*,
10 No. 8:18-cv-00891-PWG (D. Md.). There was no attempt to squeeze additional hours from
11 enumerators, or attempt to force enumerators to be more productive than the already-heightened
12 productivity increase of 1.55 resolved cases per hour.

13 376. The problem for Defendants, of course, is that they were *unable* to hire additional
14 enumerators or train them in time. When NRFU was completely underway by August 11, 2020,
15 the Bureau still had many tens of thousands fewer enumerators than it had projected, even absent
16 the COVID-19 pandemic. For example, the Bureau’s total number of temporary workers, which
17 includes more than just enumerators, totaled only 288,204 during the span of August 9 to
18 August 15, 2020. U.S. Census Bureau, *2020 Census Paid Temporary Workers*,
19 [https://www.census.gov/content/dam/Census/newsroom/press-kits/2020/2020-census-weekly-](https://www.census.gov/content/dam/Census/newsroom/press-kits/2020/2020-census-weekly-hires.pdf)
20 [hires.pdf](https://www.census.gov/content/dam/Census/newsroom/press-kits/2020/2020-census-weekly-hires.pdf). On August 17, 2020, the Office of the Inspector General reported the Bureau had only
21 220,000 enumerators, and that Bureau officials stated they needed above 300,000 enumerators.
22 *See* Dkt. 37-13 at 2. The Bureau, in fact, never reached the 300,000 or more enumerators that
23 officials admitted they needed. Instead, as Tim Olson, Associate Director for Field Operations
24 explained on July 23, 2020, the numbers at the beginning of NRFU showed “the awful deploy
25 rate” of enumerators, as well as an “almost debilitating higher quit rate” than past censuses. AR
26 DOC_0007737.

27 377. Instead, enumerator productivity rates somehow started to skyrocket. On
28 September 1, 2020, Mr. Fontenot reported that despite the shortfall in the number of necessary

1 enumerators, the progress levels indicated Defendants would “nonetheless be able to complete
2 NRFU before September 30.” Dkt. 81-1 at ¶ 74. This was because, despite the numerous tests
3 over the previous decade that showed enumerator productivity would be around 1.55 resolved
4 cases per hour, enumerators were miraculously resolving 2.32 cases per hour. *Id.* ¶ 75.

5 378. After a decade of planning, and tests over repeated years using the exact same
6 technology and optimizing mechanisms and software, the Bureau had squeezed productivity
7 from 1.05 cases/hour to 1.55 cases/hr – an amazing ~53% increase in efficiency. And yet
8 somehow, in the space of about a week, Defendants had been able to *more than double that gain*,
9 and in fact increase productivity by 121%, from 1.05 to 2.32 an hour. And they were able to do
10 so in the face of the ever-present COVID-19 pandemic and attendant restrictions throughout the
11 country. And they were able to maintain it despite hurricanes and major storms in the South and
12 East Coast, and wildfires in the West. *See* Dkt. 266-1 ¶ 17. And according to Secretary Ross, it
13 was all apparently done by meeting or exceeding the standards of the previous census, and in fact
14 by *strengthening* those standards and processes.

15 379. Math and human productivity do not work in such fashion. The real answer was
16 that by September 1, 2020, the Replan had been in effect for nearly a month—along with its
17 accuracy-slicing alterations to data collections processes. *See, e.g.*, Aug. 3 Presentation, Dkt.
18 131-7 at 7; AR DOC_0008779. It was these significant alterations—resulting in a massive
19 decrease in in-person visits and a corresponding increase in the use of administrative records,
20 proxies, and changed information requirements (i.e., pop-counts), along with more serious
21 charges of enumerators being told to act improperly and cut corners—that led to the impossible
22 jump in enumerator productivity.

23 380. Dozens of enumerators complained directly-- including to the Court. Through
24 these complaints and others, Plaintiffs are aware of numerous instances across the country that
25 demonstrate that in sacrificing accuracy for speed, and rushing toward “completion” rates so as
26 to forestall and then overturn the preliminary injunction in this case, Defendants cut many
27 corners and made decisions that do not bear a reasonable relationship to the accomplishment of
28 an actual enumeration.

1 381. These corner-cutting operations, as relayed by employees involved, fall into the
2 following categories of conduct:

3 382. **Dramatically increased use of non-direct enumeration, including telephone**
4 **calls, proxies, and use of administrative records.** Dkt. 233 at 106-111. For example, a CFS in
5 Southern California reported that after only one attempt, thousands and thousands of households
6 are being marked complete in at least Southern California and Southern Texas without any
7 enumeration. Whereas other households were receiving as many as 26 actual attempts to close.
8 Dkt. 220. As the CFS explained, this was for reasons that a “manager stated” were “political,”
9 and no corrective action was taken. *Id.* at 2. Another census worker corroborated the story,
10 noting that “multiple Census Field Managers” acknowledged that these cases were not properly
11 closed. Dkt. 221 at 2.

12 383. Assistant Director for Field Operations James Christy of the Bureau explained
13 that these were normal procedures and that units were closed through use of Administrative
14 Records, a form of non-direct enumeration. *See* Dkt. 244-1 ¶¶ 4-6. Yet Bureau employees
15 above the CFS level agreed that these cases were coded in error, and the Regional Office agreed
16 that use of administrative records were appropriate for only a portion of these households. *See*
17 Dkt. 285.

18 384. There are more. According to a CFS in the Baltimore ACO, thousands of cases
19 were manually marked completed without explanation, and removed from the NRFU workload,
20 after only one contact attempt. According to CFSs in North Carolina and Massachusetts, many
21 households were closed out in those states with 0 or 1 contact attempt. In North Carolina, cases
22 were closed out by improperly identifying addresses as incorrect addresses, and those addresses
23 were not enumerated. Bureau employees above the CFS level were aware of this, and when
24 raised by certain CFMs, those CFMs ultimately resigned after failed attempts to have the
25 situation resolved. In Northern California, in areas hit by wildfires, at least one enumerator was
26 told to contact the county tax assessor and use the information from property deeds for
27 enumeration.

28

1 385. Such non-direct enumeration methods are less accurate and have a profound
2 effect on immigrants and minorities—the hard-to-count populations. *See, e.g.*, Dkt. 36-2 ¶ 22;
3 Dkt. 36-3 ¶¶ 23, 38.

4 386. The dramatically increased use of administrative records and proxies—and the
5 changed mechanisms and protocols as to when they could be utilized—was not part of the
6 Operational Plan or COVID-19 plan, and as discussed below, was far in excess of anything
7 considered to be a standard and appropriate part of the data collection period.

8 387. **Undue pressure to close cases quickly.** There are also numerous reports of
9 enumerators being pressured by census field supervisors and census field managers to close
10 cases as quickly as possible.

11 388. A CFS in San Francisco was “verbally instructed to take further accuracy
12 reducing shortcuts to get the work completed ASAP,” contrary to the Bureau’s own manuals.
13 Dkt. 222. He also noted other “shortcut processes... communicated orally” outside the normal
14 channels to get done quickly. *Id.*

15 389. An enumerator in the Spokane District of Washington reported on September 29
16 that the supervisors were making “a large push” “to complete cases as quickly as possible.” Dkt.
17 238 at 3. The enumerator reported “grave concerns on accuracy” because enumerators were
18 being told “to close down remaining cases by whatever means necessary,” likely leading to
19 “cases prematurely or inaccurately handled.” *Id.*

20 390. Cases were closed early even when those cases could have been directly
21 enumerated. *See* Dkt. 316.

22 391. An enumerator in Northern California, in areas hit by wildfires, reported a marked
23 difference in enumeration standards in the three days leading up to September 30, 2020,
24 specifically that enumerators were told to close cases no matter what and just get a population
25 count. The enumerator reported being told to just be very vague in the definitions used when
26 entering information into the app for enumeration.

27 392. When enumerators traveled to other locations to enumerate, they were pressured
28 to close cases as quickly as possible.

1 393. For example, in North Carolina, at least one traveling enumerator told local
2 enumerators that the traveling enumerator was closing 25 cases per hour despite working in a
3 rural area where doing more than 2 cases an hour was considered great work. Coincident with
4 the use of traveling enumerators, the relevant ACO's completion rate went up roughly 3% in one
5 day, when the area typically struggled to go up 1 or 2% in a day.

6 394. On or around September 30, 2020, in North Carolina, enumerators were told to
7 leave a notice of visit for a housing unit they were visiting for the first time during NRFU, and
8 told to seek a proxy the same day.

9 395. On or around September 30, 2020, in North Carolina, a CFM placed notes on
10 every case assigned to enumerators to "complete" the case. According to at least one CFS
11 working with such enumerators, the instruction caused enumerators to question the ethical
12 implications of completing cases, and enumerators were feeling extra pressure to complete cases
13 without actual data.

14 396. Instructions such as those identified above suggested to enumerators that they
15 should falsify data to close cases quickly.

16 397. Moreover, the financial incentives to close cases similarly motivated enumerators
17 to falsify data to close cases quickly in order to collect the monetary awards provided under the
18 Replan. *See, e.g.*, OIG-20-052-M, OIG Memorandum, The Census Bureau's Program to Provide
19 Awards to Nonresponse Followup Enumerators and Field Supervisors May Require Additional
20 Quality Assurance of Cases to Ensure Data Accuracy (Sept. 28, 2020),
21 [https://www.oig.doc.gov/Pages/2020-Census-Alert-The-Census-Bureaus-Program-to-Provide-](https://www.oig.doc.gov/Pages/2020-Census-Alert-The-Census-Bureaus-Program-to-Provide-Awards-to-Nonresponse-Followup-Enumerators-and-Field-Supervisors-M.aspx)
22 [Awards-to-Nonresponse-Followup-Enumerators-and-Field-Supervisors-M.aspx](https://www.oig.doc.gov/Pages/2020-Census-Alert-The-Census-Bureaus-Program-to-Provide-Awards-to-Nonresponse-Followup-Enumerators-and-Field-Supervisors-M.aspx).

23 398. **Falsification of Data.** Defendants' employees also directed enumerators to
24 falsify data in order to close cases and so that Defendants could report better than 99%
25 completion; such instructions were often given only verbally.

26 399. Defendants pushed enumerators and supervisors to rush the completion of
27 enumeration activities by directing CFSs and enumerators to "put population 1 or 2, select male
28 or female for each and close out all the remaining cases in their list this way." Dkt. 285 at 7.

1 They were also instructed to enter the rest of the data as “refused” or “don’t know” in the
2 enumerator app. *Id.*

3 400. In North Carolina, on September 30, 2020, on a conference call between CFSs
4 and a CFM, the CFSs were directed to tell their enumerators to close cases and mark them as a
5 “dangerous address,” regardless of actual status, so that those cases would go to supervisor
6 review and the CFM could mark those cases completed without a count.

7 401. In North Carolina, enumerators were given the instruction described in the
8 previous paragraph.

9 402. In North Carolina, enumerators were also told to operate as their own proxy and
10 to guess how many people lived in a housing unit without any input from someone at the house
11 or someone otherwise familiar with the housing unit.

12 403. Enumerators traveling to Alabama were told to close cases by following a set of
13 instructions that would allow them to put in a fictitious name for a proxy respondent and to close
14 cases by simply putting in a “1” for number of people living in the household.

15 404. An enumerator in Northern California, in areas hit by wildfires, was told that if a
16 visited house was totally empty, to mark in the app that there was a “refusal” to provide
17 identifying information, and to simply enter a population count of one for the housing unit.

18 405. A CFS in San Francisco was “verbally instructed to take further accuracy
19 reducing shortcuts to get the work completed ASAP,” contrary to the Bureau’s own manuals.
20 Dkt. 222. He also noted other “shortcut processes... communicated orally” outside the normal
21 channels to get done quickly. *Id.*

22 406. In many instances, enumerators were told to perform these falsifying operations
23 while near the housing unit. On information and belief, this instruction was given because the
24 Bureau’s enumerator software was recording enumerators’ geographic locations and an
25 enumeration undertaken too far from the housing unit in question would indicate an potentially
26 anomaly subject to investigation.

27 407. Moreover, it appears that Defendants made no attempts to recount the numerous
28 households that were closed for enumeration purposes—and contributed to Defendants’ 99%

1 completion rates—through the improper methods of the Replan. This is despite Defendants’
 2 knowledge that the Replan methods of enumeration were *expected* to be less accurate than the
 3 original operational plan. *See, e.g.*, Aug. 3 Presentation, Dkt. 131-7 at 7; AR DOC_0008779.

4 408. **Poor Handling of Relocated Populations.** Many people were displaced or
 5 relocated for various reasons during the 2020 Census. The COVID-19 pandemic, hurricanes and
 6 major storms in the South and East Coast, and wildfires in the West, hampered the Bureau’s
 7 enumeration efforts. *See* Dkt. 266-1 ¶ 17.

8 409. For example, many students who normally would have been at locations close to
 9 college and university campuses returned to their parents’ homes in light of school closures due
 10 to the COVID-19 pandemic. This led to the Bureau undercounting off-campus student
 11 households. *See, e.g.*, OIG-20-044-M, OIG Memorandum re The Census Bureau May Not
 12 Accurately Count College and University Students Living Off-Campus During the 2020 Census
 13 (Aug. 27, 2020), [https://www.oig.doc.gov/Pages/2020-Census-Alert-The-Census-Bureau-May-
 14 Not-Accurately-Count-College-and-University-Students-Living-Off-Campus-During-the-2.aspx](https://www.oig.doc.gov/Pages/2020-Census-Alert-The-Census-Bureau-May-Not-Accurately-Count-College-and-University-Students-Living-Off-Campus-During-the-2.aspx).
 15 Moreover, the Bureau did not have a plan to use off-campus student data. *See id.*

16 410. As another example, in New York City, many people left their city addresses and
 17 relocated. It was difficult or impossible for enumerators to get into buildings to enumerate.
 18 Even when enumerators were able to get in, housing units were often closed out for max
 19 attempts because no one was home to be enumerated.

20 411. As another example, in Northern California, in areas hit by wildfires, an
 21 enumerator reported lack of coordination and planning in trying to enumerate locations subject to
 22 road closures, making it impossible to visit addresses in the region.

23 **C. Defendant’ 99% Completion Rate Metrics Are Misleading, And True**
 24 **Metrics Indicate That the Replan Is Leading to A Fatally Flawed and**
 25 **Inaccurate Census, as Predicted**

26 412. *The claimed 99% completion rates as of October 15 are misleading and fail to*
 27 *measure up adequately to past censuses.* Defendants’ claim that they had reached completion
 28 rates of 99% in every state of the country by October 15—better than previous censuses—is

1 misleading and untrue. There are, instead, glaring differences between the 2020 Census and
2 previous censuses. Among other things:

3 413. First, the 99% completion metrics are inflated. Defendants have apparently not
4 included additional housing units identified through NRFU in their calculations, thus keeping the
5 denominator of their “completion” rate artificially low. Defendants appear to calculate
6 completion percentages by using a total housing unit number of ~149 million—yet the Census
7 Bureau has previously said that the total number of housing units is ~152 million. If this
8 discrepancy were fixed, the rates for the country overall would, on information and belief,
9 decrease below 99%.

10 414. Second, Defendants’ “completion” rate, as provided on October 21 by Associate
11 Directors Fontenot and Olson, only relate to occupied housing units and provide no information
12 about any units marked as vacant or delete. In fact, Defendants have provided no data about the
13 millions of housing units that are marked vacant or deleted from the registry, or even provided
14 the overall number of NRFU housing units marked as vacant or deleted. On information and
15 belief, Plaintiffs estimate that there are approximately 22,300,000 such units.

16 415. Third, Defendants’ attempt to limit information about NRFU results appears to be
17 an effort to convey the image that this year’s NRFU resulted in numbers equivalent to or better
18 than previous censuses—particularly as to the number of enumerations resolved by in-person
19 interviews. But in fact:

- 20 • **Of the total housing units in the nation** (from Defendants’ Master
21 Address File or MAF), which Defendants have stated equal
22 ~152,000,000, Defendants have enumerated *over a quarter*—
23 approximately 27%— through administrative records or proxies
24 only. This is unprecedented in recent census history: over a quarter
25 of Americans, ***over 41 million households and anywhere from***
26 ***approximately 80 to 100 million people*** (assuming 2-3 persons per
27 housing unit), have not been directly spoken to or from in this 2020
28 census.
- **Of the total housing units in the NRFU process**, which Defendants
have stated equal ~64,000,000, Defendants have conducted in-
person household enumeration of only ~36%, compared to ~47% in
the 2010 Census. If Defendants had just matched the 2010 census, it
appears that they would have conducted household in-person
enumerations of *~7 million more housing units*.

- **Of the total occupied housing units in the NRFU process**, which on information and belief totals ~41,700,000, Defendants have conducted in-person household enumeration of only ~55%, compared to ~75% in the 2010 Census. If Defendants had just matched the 2010 census, it appears that they would have conducted household in-person enumerations of ~8 million more housing units. Additionally, it appears that Defendants enumerated far more household units (perhaps millions more) via administrative records than even they had previously estimated or considered—and Defendants have not disclosed how they softened or altered their administrative record protocols and standards to result in such a significant increase.

416. Fourth, a stream of Census employees have warned the Court that Defendants’ completion numbers themselves are riddled with potential problems, ranging from enumerators pressured or told to provide false data or guesswork to enumerations being marked complete on minimal or no visits. And it is impossible to know just how bad the problem is, as Defendants have not (1) provided any information on the numbers or types of in-person visits, (2) provided any information on the specific sorts of administrative records or proxies used, and in what quantity, or (3) provided any information whatsoever at the local CFS area, which would allow the public and Plaintiffs to assess how Defendants’ various efforts at rushing data collections may have led to significant differential undercounts.

D. Further Shortening Data Processing Will Compound The Negative and Unlawful Effects of the Replan

417. Throughout the course of this litigation, Defendants made clear—repeatedly, recently, unequivocally, and under oath—that data-processing operations could not be shortened beyond the three months to which they were compressed under the Replan, and data processing must therefore begin no later than October 1.

418. 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.” Dkt. 288 at 12; *see* Sept. 5 Fonenot Decl. (¶ 100); Declaration of Albert E. Fontenot, Jr. ¶ 107, *La Union del Pueblo Entero v. Trump (LUPE)*, No. 19-02710 (D. Md.), Dkt. 117-1. And Defendants’ counsel “emphasize[d]” to this Court that “extending the timeline of the count past September 30th would make it impossible for the Bureau to comply with Section 141’s statutory deadline.” Dkt. 98 (Sept. 8, 2020 Tr. 9:6-9). The reason: “the post

1 processing deadlines for the Replan Schedule are tight, and extending the data collection
2 deadline would, of necessity, cause the Census Bureau to fail to be able to process the response
3 data in time to meet its statutory obligations.” Dkt. 81-1 ¶ 100. In short, as Associate Director
4 Fontenot acknowledged, “[w]e have already compressed the post processing schedule from 5
5 months to only 3 months. . . . We simply cannot shorten post processing beyond the already
6 shortened 3-month period.” *Id.*

7 419. After the Court’s preliminary injunction order issued, Defendants changed their
8 position and announced a *new* drop-dead date by which data-processing operations would have
9 to begin: October 6. But Defendants were just as unequivocal that they could not stay in the
10 field a single day past October 5 and still meet the statutory deadline. On September 28, the
11 Secretary asked top Bureau officials the following: “I would like to make sure that I understood
12 correctly that your team’s opinion is that if we stay in the field beyond October 5, we would not
13 be able to meet the statutory deadline of December 31.” Dkt. 256-1. As Defendants told the
14 Supreme Court, Deputy Director Jarmin’s answer was “that the Bureau must ‘finish field work
15 on 10/5 if we are to have enough time (assuming all goes well) to finish the processing of the
16 resident population, federally affiliated overseas and, if requested, unlawful aliens in ICE
17 Detention Centers by 12/31 [pursuant to the Presidential Memorandum].” Appellants’ Supp.
18 Br. 4-5, *Trump v. New York*, No. 20-366 (citation omitted). Defendants similarly told this Court
19 that the Bureau “need[s] to conclude field operations by October 5 in order to keep open the
20 possibility of meeting the deadline Congress set for reporting census figures to the President.”
21 Dkt. 284 at 4.

22 420. Defendants, of course, did *not* begin data-processing operations on October 6.
23 Defendants’ statements that that they nonetheless intend to deliver census-based apportionment
24 numbers by December 31 or shortly thereafter, are therefore extremely troubling, and an
25 admission that the numbers will be definition be constitutionally and statutorily infirm. As
26 Defendants’ own statements—and a host of outside experts—make clear, the Bureau cannot
27 accomplish five months of data processing in ten weeks.

28

1 421. Defendants also repeatedly claimed that they were obligated to meet the
2 December 31 statutory deadline for reporting apportionment counts to the President. And they
3 repeatedly relied on this statutory reporting deadline as the only reason for adopting and
4 defending the Replan.

5 422. Defendants' recent statements, however, suggest that they no longer view the
6 December 31 deadline as binding. There are good reasons to think that the new (not yet
7 revealed) target date will depend on the results of the upcoming election. If President Trump
8 does not win, Plaintiffs believe that the Secretary will ultimately submit his report *after* the
9 December 31 statutory deadline but *before* January 10—so that *this* President is able to
10 implement the Presidential Memorandum and submit that revised apportionment count before he
11 leaves office. The latest change in position only further confirms that the statutory deadline was
12 mere pretext. The true motivation for the severely truncated deadlines in the Replan is and has
13 always been a timeline that gives this President control over the final apportionment numbers.

14 **VIII. Harm to Plaintiffs.**

15 423. Plaintiffs and Plaintiff non-profits' members and/or constituents reside in locales
16 that will suffer harm as a result of Defendants' decision because that decision is very likely to
17 cause these locales to be more disproportionately undercounted in the 2020 Census than they
18 otherwise would have been.

19 424. On August 9, 2020, at the beginning of the Non-Response Follow Up operation,
20 Plaintiff City of Los Angeles, had a response rate of just 53.1%, which was significantly lower
21 than the 64.5% statewide response rate in California on that same date.

22 425. The Urban League, League of Women Voters, and BAJI have affiliates,
23 constituents, and members in major cities across the United States. This includes cities where
24 response rates were lower than their corresponding statewide response rates on the first day of
25 Non-Response Follow Up including San Francisco (61.4%) and Monterey (60.5%) as compared
26 to California (64.5%), Miami (49.6%) as compared to Florida (60.1%), Philadelphia (52%) as
27 compared to Pennsylvania (65.5%), Detroit (48.7%) as compared to Michigan (68.9%), and New
28 York City (54.9%) as compared to New York State (58.9%).

1 426. Plaintiffs Ellis and Garcia are residents of Houston, Texas. The response rate in
2 Houston at the beginning of Non-Response Follow Up was 54%, which was lower than the
3 statewide response rate for Texas on that date, 58.2%.

4 427. Defendants inappropriate NRFU machinations discussed above have ensured the
5 inadequacy of an actual count.

6 428. As noted above, Defendants' decision will result in fewer enumerations through
7 Non-Response Follow Up, increased reliance on low-quality administrative data, and increased
8 imputation. Consequently, Defendants' decision will result in cities' with higher rates of non-
9 response (1) having less accurate data; and (2) experiencing higher rates of undercounting.

10 429. Because these cities have a higher proportion of households in the Non-Response
11 Follow Up universe than their corresponding states, these cities have a substantially higher
12 likelihood of being undercounted because of Defendants' decision than surrounding communities
13 in their states. These disproportionate undercounts will be exacerbated and reinforced by
14 inadequate data processing, and will ultimately cause Plaintiffs to suffer both fiscal and
15 representational harm.

16 **A. Funding Harms**

17 430. The Replan will result in loss of federal funding for Plaintiffs Harris County, City
18 of Salinas, and the City of Los Angeles and the communities where members of Plaintiff non-
19 profits reside, including Miami, Detroit, Philadelphia and New York.

20 431. Over 130 programs and 675 billion dollars are allocated to states and localities on
21 the basis of census-derived information. This includes funding to states for federal transportation
22 planning purposes, education, and healthcare.

23 432. Many important federal programs, including Title I Grants under the Every
24 Student Succeeds Act, require states to distribute funds to localities on the basis of census-
25 derived information.

26 433. State Education Agencies must allocate Title I Grants, at least in part, on the
27 number of children aged 5-17 living in poverty in a local education agency's jurisdiction.

28

1 434. Given that members of Plaintiff non-profits reside in cities that are likely to be
2 more undercounted under the Replan relative to surrounding communities in their states,
3 including San Francisco, Miami, Detroit, Philadelphia, and New York City, Defendants' decision
4 will likely deprive the communities where these members reside of Title I Grant funding they
5 would have otherwise received. Similarly, Defendants' decision places Plaintiffs Ellis and
6 Garcia's community at higher risk of deprivation of Title I Grant funding.

7 435. Several additional federal programs require states to use census-derived
8 information to distribute funds directly to cities and counties, based on their share of a relevant
9 population. For instance, the Low Income Home Energy Assistance Program, the Workforce
10 Innovation and Opportunity Act program, and the Community Services Block Grant Program, all
11 require states to distribute funds to cities and counties, at least in part, on the proportion of a
12 state's low-income residents living in those cities and counties. This data is derived from
13 information collected during the decennial census.

14 436. Both Harris County and the City of Los Angeles receive funds under these
15 programs. Consequently, disproportionate undercounting of Harris County and the City of Los
16 Angeles, as compared to their states, is likely to result in loss of funds under these and similar
17 programs.

18 437. Several federal funding programs provide funding directly to cities and counties
19 based on census-derived information. For instance, the Community Development Block Grant
20 program, and the Emergency Solutions Grant, allocate funding to cities and counties based, at
21 least in part, on their share of the overall population count relative to other metropolitan areas.

22 438. Of cities with over 500,000 people, the City of Los Angeles had the fourth lowest
23 response rate in the country, just behind Detroit and Philadelphia. Consequently, Los Angeles
24 will likely lose Community Development Block Grant funds because of Defendants' decision.

25 439. Similarly, members of Plaintiff non-profits live in major metropolitan areas with
26 some of the lowest response rates in the country, such as Miami, Detroit and Philadelphia.
27 Defendants' decision will likely deprive these members' communities of funding under the
28 Community Development Block Grant program.

1 440. Finally, the allocation of federal transportation including the Surface
2 Transportation Block Grant Program, and the Metropolitan and Statewide Nonmetropolitan
3 Transportation Planning Programs are based on the population of urbanized areas in a state
4 compared to those of other states, as determined by the decennial census.

5 441. Plaintiffs Ellis and Garcia regularly drive on highways and roads in Texas.
6 Disproportionate undercounting of urbanized areas in Texas during the 2020 Census will result
7 in reduced transportation funding for Texas under federal transportation programs.

8 **B. Representational Harm**

9 442. Defendants' decision will also likely result in representational harm to individual
10 Plaintiffs and to the members of Plaintiff organizations.

11 443. Plaintiffs Ellis and Garcia reside in Houston, Texas. In terms of self-response
12 rates, Texas ranks 39th in the United States. Approximately four million Texas households are
13 in the Non-Response Follow Up universe, which is more households than any state other than
14 California.

15 444. Consequently, Defendants' decision will not only cause a substantial undercount
16 in Texas, but that undercount will likely be disproportionate as compared to other states. Texas
17 will likely be deprived of its fair share of representation in the next congressional apportionment.

18 445. As a result, Defendants' decision is likely to result in reduction of voting power
19 and representation for Plaintiffs Ellis and Garcia, because it will likely cause the loss of a seat in
20 Texas, and will result in fewer Representatives spread out over the state of Texas.

21 446. As for Plaintiff City of Los Angeles, at least one study has predicted that, were
22 California to lose a congressional seat because of the final census count, that seat is very likely to
23 come from a district that includes portions of South Los Angeles, thus reducing the city's
24 representational delegation.

25 447. Defendants' decision will also cause Plaintiff Ellis and members of Plaintiff non-
26 profits to experience a loss of intrastate voting power.

27 448. By causing disproportionate undercounting of communities in Houston, Detroit,
28 Philadelphia, and Miami, as compared to their corresponding states, Defendants' decision will

1 result in drawing of district lines that do not accurately represent the population of the state, and
2 disadvantage Plaintiffs Ellis and Garcia, and members of Plaintiff organizations that live in
3 undercounted communities.

4 **C. Inaccurate Data**

5 449. Plaintiff local governments will suffer harm from the adverse impact Defendants'
6 decision will have the accuracy of population counts produced by the Census Bureau. Plaintiff
7 local governments often rely on accurate information collected by the Census Bureau for crucial
8 public planning purposes, including planning for how to respond to emergencies.

9 450. For example, local governments often rely on a Social Vulnerability Index to
10 identify communities that are at high risk during a particular emergency. Government officials
11 rely on this index to determine where to allocate resources before and during emergencies. A
12 Social Vulnerability Index use census data to identify specific populations that may be
13 vulnerable to a particular emergency, including data relating to age, housing density, income
14 status, and race and ethnicity. Inaccurate census data would make disaster planning and
15 emergency response more difficult, and could disrupt important public programs.

16 451. In Harris County, officials used the Center for Disease Control's Social
17 Vulnerability Index to inform decisions about proper distribution of COVID-19 Relief Funds.
18 The funds were allocated to provide relief to Harris County residents most impacted by the
19 global pandemic. That Social Vulnerability Index, which was based on census data, was used to
20 identify census tracts with the most vulnerable residents, and applications from residents from
21 those tracts were prioritized and given higher chances of acceptance for funds. Without accurate
22 census data, Harris County would struggle to ensure that crucial relief funds were reaching the
23 communities most in need of them.

24 452. Similarly, King County relies on accurate census data to inform its public-policy
25 decision making. For instance, the county uses census data to plan public-transit service, and to
26 ensure priority populations have transit access, and to site public health clinics.

27 453. The low-quality data and undercounting that Defendants' decision will cause will
28 also harm Plaintiffs. For instance, undercounting of Black, Latino, Native American, and

1 immigrant communities will negatively affect the Urban League, League of Women Voters and
2 BAJI by undermining these organizations' core missions of promoting equal and just laws and
3 empowering vulnerable communities through building coalitions and initiating campaigns with
4 African Americans and Black immigrants, and fostering racial, economic, and social equality for
5 the communities they serve.

6 **D. Expending Additional Resources**

7 454. Plaintiff organizations, the Urban League, the League of Women Voters, and
8 BAJI, and Plaintiff local governments, City of San Jose, Harris County, King County, City of
9 Salinas, and City of Los Angeles will need to expend additional resources and divert resources
10 from planned programs and projects in order to address the adverse consequences of Defendants'
11 decision to abandon the COVID-19 Plan, and implement the Replan.

12 455. Plaintiffs' planned efforts to ensure the effective enumeration of historically
13 undercounted communities were based on the understanding that the Census Bureau would
14 implement the Non-Response Follow Up operation contemplated in the Final Operational Plan
15 and adjusted in the COVID-19 Plan.

16 456. The abrupt reversal of the COVID-19 Plan, and the implementation of curtailed
17 Non-Response Follow Up in the Bureau's Replan will adversely affect Plaintiffs' plans.

18 457. Plaintiff organizations and local governments will likely need to adjust plans, and
19 divert resources from other planned activities and programs in order to ensure the communities
20 they serve are adequately counted. Specifically, Plaintiffs will need to recruit and train staff to
21 engage in increased and expanded outreach to potential non-responsive households in order to
22 make up for fewer enumerator visits, or to other aspects of the Non-Response Follow Up
23 program, such as the reinterview process.

24 458. For instance, Plaintiff BAJI is planning significant adjustments to its 2020 Census
25 outreach plans in light of Defendants' decision, that include diversion of resources from other
26 sources, and significant expenditures. In order to engage in effective outreach, BAJI needs
27 organizing staff dedicated to civic engagement. With Non-Response Follow Up occurring from
28 August 11, 2020 through October 31, 2020, BAJI anticipated that it could spread its staffing

1 resources over that timeframe to ensure it was meeting its goals within the organization’s budget.
2 However, on a shorter timeframe, BAJI needs additional staff on a shorter timeframe, which will
3 require adjusting the organization’s budget and priorities for the next several months.

4 459. The adjustment is also challenging for BAJI as the organization caters to
5 immigrant communities with a variety of language needs. Increasing staffing on a short
6 timeframe poses significant challenges for the organization, because it must locate staff that can
7 communicate with the particular community that the organization is targeting for outreach
8 efforts.

9 **CLAIMS FOR RELIEF**

10 **FIRST CLAIM FOR RELIEF**

11 **Violation of the Enumeration Clause, and Fourteenth Amendment (U.S. Const. art. I, § 2; U.S. Const. amend. XIV, § 2)**

12 460. Plaintiffs incorporate by reference the allegations set forth in the preceding
13 paragraphs.

14 461. Under the Enumeration Clause of the U.S. Constitution, Congress, and, by
15 delegation, the Secretary of Commerce, must conduct an “actual Enumeration” of the population.
16 This clause requires that decisions relating to census-taking bear “a reasonable relationship to the
17 accomplishment of an actual enumeration of the population.” *Wisconsin v. City of N.Y.*, 517 U.S.
18 1, 20 (1996).

19 462. The COVID-19 pandemic severely disrupted the 2020 Census, resulting in
20 months of suspended operations and significant delays in crucial counting processes. Moreover,
21 the public-health crisis, which is unabated and appears to be in resurgence, has continued to
22 impact census operations.

23 463. To navigate this emergency, the Bureau took necessary action to adjust its
24 operational timelines in the COVID-19 Plan while seeking to maintain the operations and
25 processes included in the Final Operational Plan that had been designed to help ensure a
26 complete and accurate count.

27 464. Abruptly and without explanation, on August 3, 2020, Defendants abandoned the
28 COVID-19 Plan and implemented the Replan. The Replan does not bear “a reasonable

1 relationship to the accomplishment of an actual enumeration of the population.” After delaying
 2 all operations for months, the Bureau and its staff repeatedly recognized that it was impossible to
 3 produce counts consistent with their duties to ensure a full, fair, and accurate count by
 4 December 31, 2020. Indeed, current conditions demonstrate that it is infeasible to obtain a fair
 5 and accurate count by the end of the year. Nevertheless, the Defendants abandoned their
 6 constitutionally mandated pursuit of fair and accurate data, in favor of the speed of the Replan,
 7 and the inaccurate data it will produce.

8 465. Under these circumstances, the decision to curtail crucial 2020 Census operations
 9 violates the Enumeration Clause of the United States Constitution.

10 466. These constitutional violations have caused, are causing, and will continue to
 11 cause harm to Plaintiffs as alleged above, and there is a substantial likelihood that the requested
 12 relief will redress this harm.

13 **SECOND CLAIM FOR RELIEF**
 14 **Violation of Administrative Procedure Act—Arbitrary and Capricious**
 15 **(5 U.S.C. § 706(2)(A))**

16 467. Plaintiffs incorporate by reference the allegations set forth in the preceding
 17 paragraphs.

18 468. The APA, 5 U.S.C. § 706(2), provides that a court shall hold unlawful and set
 19 aside agency action found to be arbitrary, capricious, an abuse of discretion, or otherwise not in
 20 accordance with law. The Replan is final agency action because it marks the consummation of
 21 the agency’s decision-making process, and it is one by which rights or obligations have been
 22 determined, or from which legal consequences will flow. *Bennett v. Spear*, 520 U.S. 154, 177-78
 (1997).

23 469. In determining whether an action violates the APA, courts consider whether the
 24 agency examined relevant data and articulated a satisfactory explanation for its decision,
 25 including formulating a rational connection between the facts found and the choice made. *Motor*
 26 *Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).
 27 Where an agency wishes to depart from an earlier decision, it must acknowledge that change and
 28

1 any reliance interests its previous actions engendered. *See Perez v. Mortg. Bankers Ass'n*, 575
2 U.S. 92, 105-06 (2015).

3 470. The Bureau spent several years developing its Final Operational Plan for the 2020
4 Census. That plan carefully determined the required length of each operation, including the
5 appropriate length for data-collection and data-processing. It also included details about the
6 implementation of the various operations.

7 471. The COVID-19 pandemic disrupted census operations, and the Bureau responded
8 by adjusting its operations in its COVID-19 Plan. That plan involved retaining the details and
9 the length of time of various operations laid out in the Final Operational Plan, but shifting the
10 timeline for counting several months into the future to account for both the necessity of those
11 operations and the public-health emergency.

12 472. The Bureau began implementing the plan, and critical operations were suspended
13 and delayed through the summer. Bureau officials publicly and expressly recognized that it was
14 no longer possible to comply with the December 31, 2020 deadline if the Bureau intended to
15 fulfill its constitutional and statutory obligation of producing reasonably accurate population
16 counts.

17 473. Without explanation and without citing any evidence, Defendants suddenly
18 changed their position and issued a new plan with shortened timelines. Among other things, that
19 change conclusively changed the legal rights and obligations of private households, who now
20 have substantially less time to respond if they wish to be counted in the 2020 Census.
21 Defendants have provided no evidence to support rescinding the COVID-19 Plan, have failed to
22 acknowledge or explain their departure from their previous conclusions as to the length of time
23 necessary for an accurate census, and have cited no evidence that they could obtain accurate
24 counts on the shortened timeframe. Defendants' unexplained and unjustifiable reversal is
25 precisely the sort of arbitrary and capricious agency action that the Administrative Procedure Act
26 forbids.

27 474. Defendants' decision also fails to account for several factors relevant to the
28 decision, including the multiple-month long suspension in operations and delay of crucial census

1 operations, the staffing shortages facing the Bureau, the meticulously designed and tested
2 technical requirements for effective enumeration included in the Bureau’s Final Operational
3 Plan, and the various quality-control measures the Bureau must engage in to ensure that its
4 reported data is accurate.

5 475. Consequently, Defendants’ action is arbitrary and capricious.

6 476. This unlawful action has caused, is causing, and will continue to cause harm to
7 Plaintiffs as alleged above, and there is a substantial likelihood that the requested relief will
8 redress this harm.

9 **THIRD CLAIM FOR RELIEF**
10 **Violation of Administrative Procedure Act—Pretext**
11 **(5 U.S.C. § 706)**

12 477. Plaintiffs incorporate by reference the allegations set forth in the preceding
13 paragraphs.

14 478. Under the Administrative Procedure Act, agencies are required to disclose the
15 “genuine justification[] for important decisions.” *Dep’t of Commerce*, 139 S. Ct. at 2569, 2575-
16 76. Courts will not accept “contrived reasons” provided by agencies as that would defeat the
17 purpose of judicial review. *Id.* at 2576. Moreover, agencies cannot simply avoid providing
18 reasoning for their decision-making altogether.

19 479. Defendants have decided to cut crucial operations in order to produce 2020
20 Census population results to the President by December 31, 2020. In announcing that decision,
21 Defendants provided no legitimate justification for abandoning the COVID-19 Plan and
22 implementing the Replan.

23 480. Any attempt by the Defendants to rely on the reporting deadline provided under
24 the Census Act as justification for their decision is mere pretext. 13 U.S.C § 141(b).

25 481. For months, Defendants implemented the COVID-19 Plan, the timeline for which
26 necessarily assumed the statutory deadlines could not defeat the constitutional duty to conduct an
27 accurate enumeration, as applied to the extraordinary circumstances at hand. Defendants made
28 significant adjustments, including months-long delays of census operations, on the assumption
that the Bureau could and would conduct a full and robust count through the end of October 31,

1 2020. Since mid-April 2020, Defendants have expressly and publicly recognized that the Bureau
2 could not provide a complete and accurate count by December 31, 2020. And President Trump
3 maintained that the statutory deadlines need not be followed.

4 482. Defendants' reversal of position on the 2020 Census timeline appears driven by
5 Defendants' efforts to ensure implementation of the President's unconstitutional Apportionment
6 Exclusion Order, which attempts to exclude undocumented persons from the apportionment
7 count and continues a long-running pattern of racially discriminatory and improperly politically
8 motivated conduct of the 2020 Census.

9 483. In light of these considerations, Defendants' purported justification is pretextual
10 and, thus, arbitrary and capricious under the Administrative Procedure Act.

11 484. Defendants' unlawful action has caused, is causing, and will continue to cause
12 harm to Plaintiffs as alleged above, and there is a substantial likelihood that the requested relief
13 will redress this harm.

14 **PRAYER FOR RELIEF**

15 485. Plaintiffs respectfully request that this Court:

16 486. Declare that Defendants' promulgation of the Replan, and corresponding
17 revocation of the COVID-19 Plan is unconstitutional under the Enumeration Clause, and
18 unlawful under the Administrative Procedure Act.

19 487. Vacate the Replan, thereby reinstating the COVID-19 Plan.

20 488. Enjoin Defendants from implementing or effectuating the Replan or its
21 constituent parts and enjoin Defendants from unlawfully interfering with the implementation or
22 effectuation of the COVID-19 Plan or its constituent parts.

23 489. Award Plaintiffs costs, expenses, and reasonable attorneys' fees.

24 490. Award any other relief the Court deems just and proper.

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Dated: October 27, 2020

LATHAM & WATKINS LLP

By: /s/ Sadik Huseny

Steven M. Bauer (Bar No. 135067)
steven.bauer@lw.com

Sadik Huseny (Bar No. 224659)
sadik.huseny@lw.com

Amit Makker (Bar No. 280747)
amit.makker@lw.com

Shannon D. Lankenau (Bar. No. 294263)
shannon.lankenau@lw.com

LATHAM & WATKINS LLP
505 Montgomery Street, Suite 2000
San Francisco, CA 94111
Telephone: 415.391.0600
Facsimile: 415.395.8095

Richard P. Bress (*pro hac vice*)
rick.bress@lw.com

Melissa Arbus Sherry (*pro hac vice*)
melissa.sherry@lw.com

Anne W. Robinson (*pro hac vice*)
anne.robinson@lw.com

Tyce R. Walters (*pro hac vice*)
tyce.walters@lw.com

Gemma Donofrio (*pro hac vice*)
gemma.donofrio@lw.com

LATHAM & WATKINS LLP
555 Eleventh Street NW, Suite 1000
Washington, D.C. 20004
Telephone: 202.637.2200
Facsimile: 202.637.2201

*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; Adrian Garcia; and
the NAACP*

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Dated: October 27, 2020

By: /s/ Jon M. Greenbaum

Kristen Clarke (*pro hac vice*)
kclarke@lawyerscommittee.org
Jon M. Greenbaum (Bar No. 166733)
jgreenbaum@lawyerscommittee.org
Ezra D. Rosenberg (*pro hac vice*)
erosenberg@lawyerscommittee.org
Ajay Saini (*pro hac vice*)
asaini@lawyerscommittee.org
Maryum Jordan (Bar No. 325447)
mjordan@lawyerscommittee.org
Pooja Chaudhuri (Bar No. 314847)
pchaudhuri@lawyerscommittee.org

LAWYERS’ COMMITTEE FOR CIVIL RIGHTS UNDER LAW

1500 K Street NW, Suite 900
Washington, DC 20005
Telephone: 202.662.8600
Facsimile: 202.783.0857

Attorneys for Plaintiffs National Urban League; City of San Jose, California; Harris County, Texas; League of Women Voters; King County, Washington; Black Alliance for Just Immigration; Rodney Ellis; Adrian Garcia; the NAACP; and Navajo Nation

Wendy R. Weiser (*pro hac vice*)
weiserw@brennan.law.nyu.edu
Thomas P. Wolf (*pro hac vice*)
wolft@brennan.law.nyu.edu
Kelly M. Percival (*pro hac vice*)
percivalk@brennan.law.nyu.edu

BRENNAN CENTER FOR JUSTICE

120 Broadway, Suite 1750
New York, NY 10271
Telephone: 646.292.8310
Facsimile: 212.463.7308

Attorneys for Plaintiffs National Urban League; City of San Jose, California; Harris County, Texas; League of Women Voters; King County, Washington; Black Alliance for Just Immigration; Rodney Ellis; Adrian Garcia; the NAACP; and Navajo Nation

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Mark Rosenbaum (Bar No. 59940)
mrosenbaum@publiccounsel.org
PUBLIC COUNSEL
610 South Ardmore Avenue
Los Angeles, California 90005
Telephone: 213.385.2977
Facsimile: 213.385.9089

Attorneys for Plaintiff City of San Jose

Doreen McPaul, Attorney General
dmcpaul@nndoj.org
Jason Searle (admitted *pro hac vice*)
jasearle@nndoj.org
NAVAJO NATION DEPARTMENT OF JUSTICE
P.O. Box 2010
Window Rock, AZ 86515
Telephone: (928) 871-6345

Attorneys for Navajo Nation

Dated: October 27, 2020

By: /s/ Danielle Goldstein
Michael N. Feuer (Bar No. 111529)
mike.feuer@lacity.org
Kathleen Kenealy (Bar No. 212289)
kathleen.kenealy@lacity.org
Danielle Goldstein (Bar No. 257486)
danielle.goldstein@lacity.org
Michael Dundas (Bar No. 226930)
mike.dundas@lacity.org
CITY ATTORNEY FOR THE CITY OF LOS ANGELES
200 N. Main Street, 8th Floor
Los Angeles, CA 90012
Telephone: 213.473.3231
Facsimile: 213.978.8312

Attorneys for Plaintiff City of Los Angeles

Dated: October 27, 2020

By: /s/ Michael Mutalipassi
Christopher A. Callihan (Bar No. 203010)
legalwebmail@ci.salinas.ca.us
Michael Mutalipassi (Bar No. 274858)
michaelmu@ci.salinas.ca.us
CITY OF SALINAS
200 Lincoln Avenue
Salinas, CA 93901
Telephone: 831.758.7256
Facsimile: 831.758.7257

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Dated: October 27, 2020

Attorneys for Plaintiff City of Salinas

By: /s/ Rafey S. Balabanian
Rafey S. Balabanian (Bar No. 315962)
rbalabanian@edelson.com
Lily E. Hough (Bar No. 315277)
lough@edelson.com
EDELSON P.C.
123 Townsend Street, Suite 100
San Francisco, CA 94107
Telephone: 415.212.9300
Facsimile: 415.373.9435

Rebecca Hirsch (*pro hac vice*)
rebecca.hirsch2@cityofchicago.org
**CORPORATION COUNSEL FOR THE
CITY OF CHICAGO**
Mark A. Flessner
Stephen J. Kane
121 N. LaSalle Street, Room 600
Chicago, IL 60602
Telephone: (312) 744-8143
Facsimile: (312) 744-5185

Attorneys for Plaintiff City of Chicago

Dated: October 27, 2020

By: /s/ Donald R. Pongrace
Donald R. Pongrace (*pro hac vice*)
dpong race@akingump.com
**AKIN GUMP STRAUSS HAUER & FELD
LLP**
2001 K St., N.W.
Washington, D.C. 20006
Telephone: (202) 887-4000
Facsimile: 202-887-4288

Dario J. Frommer (Bar No. 161248)
dfrommer@akingump.com
**AKIN GUMP STRAUSS HAUER & FELD
LLP**
1999 Avenue of the Stars, Suite 600
Los Angeles, CA 90067-6022
Phone: 213.254.1270
Fax: 310.229.1001

*Attorneys for Plaintiff Gila River Indian
Community*

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Dated: October 27, 2020

By: /s/ David I. Holtzman
David I. Holtzman (Bar No. 299287)
David.Holtzman@hklaw.com
HOLLAND & KNIGHT LLP
Daniel P. Kappes
Jacqueline N. Harvey
50 California Street, 28th Floor
San Francisco, CA 94111
Telephone: (415) 743-6970
Fax: (415) 743-6910

Attorneys for Plaintiff County of Los Angeles

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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: October 27, 2020

LATHAM & WATKINS LLP

By: /s/ Sadik Huseny
Sadik Huseny