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

CITY OF SAN JOSE, CALIFORNIA, et al.,

Plaintiffs,

v.

DONALD J. TRUMP, in his official capacity as President of the United States, et al.,

Defendants.

CASE NO. 5:20-cv-05167-LHK-RRC-EMC

DECLARATION OF MATTHEW A. BARRETO, PH.D. IN SUPPORT OF PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT

Date: October 8, 2020, 2020
Time: 1:30 p.m.
Place: Courtroom 8, 4th Floor
Judge: Honorable Richard R. Clifton
Honorable Lucy H. Koh
Honorable Edward M. Chen

EXPERT DECLARATION OF MATTHEW A. BARRETO, PH.D.

I. BACKGROUND AND QUALIFICATIONS

1. I am currently a Professor of Political Science and Chicana/o Studies at the University of California, Los Angeles. I am the co-founder and faculty director of the Latino Politics and Policy Initiative (LPPI) in the Luskin School of Public Affairs, a national research center that studies policy issues that impact the Latino and immigrant community.

2. Before I joined UCLA in 2015, I was a professor at the University of Washington for more than nine years, where I was promoted to Associate Professor with tenure, and then Full Professor with tenure. At the University of Washington, I was an affiliated faculty member of the Center for Statistics and the Social Sciences, and an adjunct Professor of Law at the UW School of Law. I am also the co-founder of the research firm Latino Decisions.

3. Throughout my career, I have taught courses on Immigration Policy, Racial and Ethnic Politics, Electoral Politics, Public Opinion, Voting Rights, Chicano/Latino History, Introduction to Statistical Analysis, and Advanced Statistical Analysis to Ph.D. students.

4. I earned a Ph.D. in Political Science at the University of California, Irvine in 2005, with an emphasis on racial and ethnic politics in the United States, political behavior, and public opinion.

5. I have published multiple peer-reviewed academic research papers on Latino participation in the U.S. Census, immigrant public opinion and immigrant political engagement (among other topics).

6. In 2018 I provided expert reports and testimony in three federal lawsuits challenging the Department of Commerce's inclusion of a citizenship status question on the 2020 Census, which included an extensive literature review and evaluation of how immigrants react to changes to the U.S. Census. In all three federal trials, the courts recognized my expertise in studying immigrant political and civic participation, and cited my literature review in ruling in favor of the plaintiffs.

7. I have conducted research nationwide and in New York, California, Indiana, Wisconsin, Pennsylvania, Alabama, Texas, North Dakota, and North Carolina in connection with

litigation assessing, among other things, how the public responds to, and is affected by, changes in the law. Courts have accepted my research studies as viable and methodologically accurate instruments to understand how the public responds to changes in state law. In particular, my previous research has focused on understanding sub-group analysis to evaluate differential impacts by race and ethnicity. Recently in North Carolina, a federal court relied on my research in issuing an injunction against the state's voter ID law. In addition, the United States District Court for the District of North Dakota stated in *Brakebill v. Jaeger* (No. 1:16-cv-008) that "the Court gives the findings of the Barreto/Sanchez Survey, and the other studies and data presented by the Plaintiffs, considerable weight." Prior to this, in 2014 in *Veasey v. Perry* (No. 13-CV-00193), the United States District Court for the Southern District of Texas, and in findings affirmed by the Fifth Circuit Court of Appeals, found that my survey was statistically sound and relied upon my survey findings to evaluate the impact of Texas's voter ID law. Likewise, in *Frank v. Walker* (No. 2:11-cv-01128), a survey I administered and included as part of my expert report was given full weight by the United States District Court for the Eastern District of Wisconsin in a voter ID case in Wisconsin.

8. In *Fish v. Kobach* (No. 16-2105-JAR-JPO), the plaintiffs retained me as an expert witness to evaluate the methodology of the defendant's survey, and the United States District Court for Kansas found me to be an expert on best practices of survey research and credible and qualified to discuss survey methodology.

9. I have also regularly presented my expert review and summary of social science literature as part of expert witness reports and declarations, which have been accepted as valid and relied upon by the courts. Review of published social science literature is a well-established method among political scientists and social scientists in general for drawing valid conclusions regarding the general consensus in the field. Literature reviews are an essential component of all academic research and a requirement for publishing peer-reviewed academic research because they establish the baseline set of knowledge and expectations within the field. As noted above, in litigation challenging the addition of a citizenship question to the 2020 Decennial Census, three federal courts in New York, California, and Maryland relied upon my literature review as

providing credible and valid evidence to help the courts form their opinions.

10. Earlier in 2020, in *New York v. Immigration and Customs Enforcement*, I provided an in-depth literature review examining how immigrant communities respond to increased immigration enforcement, surveillance and monitoring of undocumented immigrants.

11. My full professional qualifications and activities are set forth in my curriculum vitae, a true and correct copy of which I have attached hereto as Appendix A.

II. SCOPE OF WORK

12. Plaintiffs in this action retained me to evaluate whether the Presidential Memorandum (PM) issued by President Donald Trump on July 21, 2020 to exclude undocumented immigrants from the apportionment base in 2020 would have a negative impact on the Census participation rates of immigrant communities, including undocumented immigrants, legal permanent residents, and naturalized U.S. citizens. In particular, I was asked to assess if this would place new burdens on community-based organizations which work in partnership with the Census to improve relations and improve response rates in immigrant communities. To conduct my evaluation, I reviewed two sources of information. First, I compiled an analysis of news coverage of the PM to assess the reach of the announcement. Second, I conducted a comprehensive literature review on survey methodology, response rates, sensitive questions and methodology, and census procedures addressing missing data and imputation.

13. I worked on this project with Mr. Marcel Roman, a Ph.D. student in the department of Political Science at UCLA and Mr. Chris Galeano, a J.D. student in the UCLA School of Law. Mr. Roman and Mr. Galeano both helped me compile sources for the literature review and news coverage of the aforementioned PM.

III. EXECUTIVE SUMMARY

14. Based on my review of the news coverage of the PM, the extant literature published in the social sciences, and my own extensive experience with immigrant civic engagement, I conclude that the July 21 PM will reduce participation in the 2020 Census, and ultimately will reduce the accuracy of the 2020 Census. The PM generates the perception of real

and immediate threat for undocumented immigrants that will erode their trust in the Census, which will lead to increased non-response in immigrant communities. Calling attention to the citizenship or immigration status of immigrants in a negative light in connection with official government functions such as the Census causes immigrants to reduce their civic engagement. The new PM sends a signal of government monitoring citizenship status as it relates to the 2020 Census population count, eroding trust that was restored after the threat of a citizenship question on the Census was removed. The strength of that negative signal is visible in coverage of the PM in Spanish-language media, which is a trusted source of news within Latino and immigrant communities. Signals of a threat to the status of undocumented immigrants generate a well-documented "chilling effect" on public participation for immigrants, i.e., the perception of threat will erode trust that leads to a reduction in immigrant engagement with government programs and officials. The perception of immigration status-related threat generated by the PM will make undocumented and mixed-status households less likely to engage with the Census – particularly with enumerators conducting in-person Non-Response Follow-Up (NRFU). The reduction in response rates among undocumented immigrant and mixed-status households will result in the Census Bureau using proxy-response and imputation techniques that are error-prone and tend to undercount immigrant households. However, subsequent official action to counteract such threats – either court orders or changes in agency policy – have positive effects on trust and engagement.

15. My review of news accounts following President Trump's July 21 PM finds there was widespread coverage, particularly within Spanish-language news media. Whether through television, print, or online outlets, the message relayed by the media was that the PM singled out immigrants through a process that invoked citizenship status, or a lack thereof, as part of the 2020 Census, in an effort to exclude them from the apportionment process. Spanish-language news journalists reported that as a result of the PM there was confusion, fear, and anxiety in immigrant communities about fully participating in the 2020 Census. According to a journalist

for Telemundo[1] who spoke with many people familiar with the PM, "activists have already reported that this attempt may have scared many people off from responding to the Census, which is particularly detrimental to states with high immigrant populations such as California, Texas, and New York." This sentiment was widely reported across Spanish-language news in the days and weeks following the July 21 PM.

16. Extensive research studies show Spanish-language media acts as a catalyst for engaging, informing and mobilizing Latino and immigrant communities. Spanish-language journalists and news anchors act as a medium for the feelings and concerns prevalent within Latino immigrant communities, specifically those who are undocumented. Spanish-language media plays a central role in mobilizing and educating the immigrant community on immigration issues in particular. The high levels of trust in Spanish-language media amongst immigrants plays a key role when listening and learning about the issues that matter most to them, in particular those related to immigration policy. Research studies have documented that many immigrants take direct cues related to civic engagement and participation from what they hear, read, and watch on Spanish-language media.

17. The Census Bureau acknowledges that Spanish-language media and community based organizations are important to getting an accurate count and has formed official partnerships with both Spanish TV networks and Latino and immigrant serving organizations. These groups are not independent actors, but rather what the Census called "trusted voices" within an official Census network of partners who attempt to increase trust in immigrant communities.

18. Undocumented immigrants are deeply intertwined into the fabric of American communities. Research and statistical reports have repeatedly found that undocumented immigrants see themselves as part of American society and indeed have longstanding ties in the cities and towns in which they permanently live. A clear majority of undocumented immigrants

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[1] Telemundo. "Trump Ordena Al Censo Que No Incluya a Los Indocumentados En El Recuento Que Determina El Reparto De Escaños Del Congreso," July 21, 2020. https://www.telemundo.com/noticias/noticias-telemundo/inmigracion/trump-ordena-al-censo-que-no-incluya-los-indocumentados-en-el-recuento-que-determina-el-tmna3823616.

have lived in the United States for over five years and have families, hold jobs, own houses, and are part of their community. A survey of Latino undocumented immigrants[2] found that 89% had lived in the U.S. over five years, that 74% have children living with them in the U.S. and 85% have a family member in the U.S. who is a U.S. citizen, and indeed that 87% of undocumented immigrants themselves said they hoped to one day become U.S. citizens if legislation were passed to provide that opportunity.

19. Following the June 2019 ruling by the U.S. Supreme Court blocking the inclusion of a citizenship question, Census partners known as *Trusted Voices* conducted extensive outreach to undocumented immigrants to assure them that the federal government would not be monitoring their citizenship status as it relates to the 2020 Census. The new PM frustrates those efforts, as it sends a signal of government monitoring citizenship status as it relates to the 2020 Census population count, significantly eroding trust.

20. The published literature is quite clear: a critical component to ensure an accurate response rate on any survey, including the Census, is trust between the public and the survey administrator. The prior published studies conclude that response rates will fall without a high degree of trust. The new PM erodes the trust that many community-based organizations with experience serving immigrants had built up over the past year.

21. Trust is particularly important in communities with undocumented populations, as many prior reports and publications by the Census Bureau have made clear. The Census Bureau has identified vulnerable population subgroups concerned about the potential misuse of personal information provided to the Census as at-risk for low participation rates and for undercounts. From this perspective, the new PM lowers trust and makes it much harder to stimulate participation in the Census from vulnerable populations such as immigrant[3] and minority communities, if such communities do not trust the Census.

22. Far-ranging social science research documents a phenomenon called "the chilling effect" in which immigrant communities withdraw and avoid interactions with government

[2] https://latinodecisions.com/wp-content/uploads/2019/06/NALEO_AV_Undoc_Results.pdf
[3] Here we mean persons who are foreign-born and emigrated to the United States.

officials or agencies if they believe there could be a risk of adverse consequences for their own immigration status or the status of others in the community. Specifically, studies have found that Census participation rates drop in immigrant communities when federal immigration enforcement is perceived to be connected to the Census. In fact, the Census Bureau has published studies pointing to fears over the federal government learning their about citizenship status as a major obstacle in some immigrant communities.

23. Social science research since the 1990s, but especially so in more recent years, is near consensus in finding evidence of the "chilling effect," i.e., strong patterns of avoidance, withdrawal, and exclusion during times of increased immigration enforcement. This research is often community-focused and highlights how increased attention to immigration status or immigration monitoring by authorities, results in noticeable withdrawal in that specific context. Immigrants, and often their children and others in their close network, will purposely avoid or withdraw from an environment where they fear potential immigration enforcement. The fear associated with detention, separation from their children or family, and possible deportation is so paralyzing that many immigrants – when faced with possible immigration enforcement – avoid even necessary public services such as police protection, health services, going to work, sending their children to school, or attending court to defend their rights. The takeaway is clear – increased negative attention to citizenship status issues decreases trust in those specific agencies or actors and leads to immigrant withdrawal.

24. If trust is low, attempts to re-interview or re-contact households for Census purposes will be far less successful. Census respondents must believe that there is no jeopardy or threat of disclosure to ensure their participation in a survey, regardless of how many attempts one might make to prompt their participation.

25. Already, a prior study from 2018 about perceptions of the 2020 Census found that levels of trust in immigrant and minority communities in the United States were low as a result of concerns over citizenship. The extensive media attention to the citizenship question resulted in high levels of fears among immigrants. When asked about the protection of their and their family members' sensitive information, including citizenship status, immigrant respondents were

statistically less likely to trust that the Trump administration will protect their information and not share it with other federal agencies (just 35% were trusting). Among Latino respondents overall, just 31% trust the Trump administration to protect their personal information, which is statistically lower than among non-Latinos. While the June 2019 SCOTUS decision partially alleviated these fears by striking the citizenship question, the July 2020 PM effectively re-confirms those immigrant fears because it sends a renewed signal to immigrant communities that the Trump administration will be monitoring their citizenship status so it may subtract these participants from the 2020 base population count for the apportionment base. In essence, Trump has returned the immigrant community to a condition of wariness similar to when the citizenship question was to appear on the Census. They believe their participation is either no longer safe, or not required due to the PM of July 2020 to specifically single out undocumented immigrants.

26. The survey also found that large percentages of immigrants and minorities are concerned specifically that their personal information reported on the Census will be shared with Immigration and Customs Enforcement (ICE). Overall, 41% of immigrants surveyed state they are concerned about this, along with 40% of Latinos.

27. The Census conducted a pilot study in June-August 2019 to assess the potential impact of including a citizenship question ("2019 Census Test"). The 2019 Census Test reported that Latinos, non-English speakers, and non-citizens had statistically lower response rates in the presence of a citizenship question. In other words, the Trump administration's own 2019 study confirmed what their own internal research reports[4] had already suggested, that an environment which increases threat to non-citizens results in lower response rates on the Census.

28. When households do not initially self-respond to the Census, the Census relies on nonresponse follow up (NRFU) to re-contact households to encourage them to respond. Research has found that NRFU is less successful when immigrant communities have fears about information concerning their citizenship status being collected or revealed.

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[4] De La Puente, Manuel. 1995. "Using Ethnography to Explain Why People Are Missed or Erroneously Included by the Census: Evidence from Small Area Ethnographic Studies." *Center for Survey Methods Research, US Census Bureau.*; De La Puente, Manuel. *Census 2000 Ethnographic Studies*. Bureau of the Census, 2004.

29. Larger households will be the most difficult to successfully convert from non-participation to participation if there are fears about citizenship status data being collected or monitored, further undermining an accurate count. Existing research has found that among immigrants who would take the Census upon NRFU re-contact, their average household size is 2.91 compared to an average household size of 3.94 for immigrants who would not participate upon re-contact, leaving them, and their larger households uncounted.

30. One of the ways Census Bureau officials try to account for people who fail to respond to the Census is to mathematically account for non-responders through statistical methods such as "substitution" or "imputation." Both of these methods use information on responding households to estimate population information on non-responding households. However, when fears about citizenship status are introduced, non-responding households are statistically different from responding households on a variety of critical demographics, which violates an important assumption of substitution or imputation. For these methods to serve as viable alternatives, missing units and reported units should be roughly equivalent. However, the existing research reveals that when fears over citizenship status emerge, non-responding households are more likely to be larger in size, be foreign-born, and have different age and educational outcomes than responding households. This will make substitution and imputation inaccurate and unreliable, and makes it highly likely that there will be a net undercount of households refusing to respond to the Census due to the citizenship question.

31. To be clear, this declaration reviews dozens of published academic and Census Bureau studies on the topic of perceived threat and participation among immigrants which point to a chilling effect and withdrawal (Montoya 1992; Stepick 1992; Velasco 1992; De La Puente 1995; Berk & Schur 2001; Arbona 2010; Abrego 2011; Menjivar 2011; Yoshikawa 2011; Szkupinski et al 2014; Watson 2014; Dreby 2015; Vargas 2015; O'Hare et al 2016; Kissam 2017; Pedraza and Osorio 2017; Terry et al 2017; Cruz-Nichols, LeBrón, and Pedraza 2018; Michelson and Montforti 2018; Amuedo-Dorantes & Arenas-Arroyo 2019; Desai 2019; Garcia 2019; Kissam 2019; Asad 2020). <u>Without exception, every single research study finds that when a new threat emerges, immigrants, especially the most vulnerable, will withdraw and reduce</u>

civic participation. I am aware of no rigorous published social science research that finds increased threat has no debilitating effect.

IV. LITERATURE REVIEW AND RESEARCH FINDINGS

A. The July 21 Presidential Memorandum Received Wide Coverage in Spanish News Media and Created Confusion and Fear About the 2020 Census

32. On July 21, 2020 President Trump issued a Presidential Memorandum declaring that undocumented immigrants will be excluded from the Decennial Census for apportionment purposes.[5] Specifically, following the completion of the 2020 Census, the PM requires that individuals without lawful immigration status be excluded from the apportionment base for the purpose of the reapportionment of the U.S. House of Representatives. The PM refers to last year's Executive Order 13880,[6] which instructed executive departments and agencies to share information with the Department of Commerce . . . to obtain accurate data on the number of citizens, non-citizens, and illegal aliens in the country." This order signals to hard-to-count populations, such as undocumented immigrants and mixed status families, that the federal administration is compiling citizenship related data on them, and that they are to be excluded from the 2020 Census.[7] While, technically, the PM indicates that an undocumented immigrant may fill out the Census form, and then be deducted later, this nuance is lost on a community that has been under constant attack and threat from President Trump and his administration. A memorandum issued by the President stating that undocumented immigrants will be identified in specific communities and then excluded from the official Census population count sends a clear

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[5] Memorandum on Excluding Illegal Aliens From the Apportionment Base Following the 2020 Census (July 21, 2020), https://www.whitehouse.gov/presidential-actions/memorandum-excluding-illegal-aliens-apportionment-base-following-2020-census/

[6] Collecting Information About Citizenship Status in Connection With the Decennial Census (July 11, 2019), https://www.whitehouse.gov/presidential-actions/executive-order-collecting-information-citizenship-status-connection-decennial-census/

[7] Some point out that matching census and administrative data will lead to matching errors and exclude millions of U.S. citizens from the apportionment process. Randy Capps et al., Millions of U.S. Citizens Could Be Excluded under Trump Plan to Remove Unauthorized Immigrants from Census Data, Migration Policy Institute (July 2020), https://www.migrationpolicy.org/news/millions-us-citizens-could-be-excluded-under-plan-remove-unauthorized-immigrants-census

message of exclusion.

33. In particular, the PM reverses recent progress that has been made by community-based organizations following the June 2019 Supreme Court ruling which blocked the citizenship question from being added to the 2020 Census. In an effort to mitigate the challenge posed by the citizenship question, outreach advocates also sought to use the U.S. Supreme Court's decision as a starting point "to convince everyone to participate in the census count" and emphasize the benefits of participating in the Census.[8] Because the highest and definitive court in our country had struck down the citizenship question, outreach to immigrant communities could emphasize this as a selling point to fill out the Census without any fears about someone's immigration status being reported. For the Census Bureau's part, it would enact a public outreach plan that involved "working with local organizations to encourage Census participation among immigrants, communities of color and other groups the bureau considers hard to count" to combat the mistrust by these communities.[9]

34. The new PM undermines these efforts and implies the government is attempting to enumerate the undocumented immigrant population, which could undercut participation. Because of the 2019 Supreme Court decision, there is no direct mechanism for assessing whether a Census response includes data from an undocumented immigrant using Census responses. If the federal government is attempting to exclude undocumented immigrants from the Census count, immigrant communities are likely to draw two conclusions. First, undocumented immigrants, the people they live in the same household with, and others in immigrant communities may conclude that the government is attempting to find out their legal status through other means. This is a reasonable conclusion, given that the Trump administration has instructed federal agencies to use existing state and federal records to determine citizenship

[8] https://www.huffpost.com/entry/2020-census-citizenship-question_n_5d2f378ce4b02fd71dddf974

[9] https://www.npr.org/2019/07/31/746508182/push-for-a-full-2020-count-ramps-up-after-census-citizenship-question-fight

status (Levine, 2020)[10]. This could generate a chilling effect and incentivize households with undocumented immigrants to provide no additional information to the Federal Government that they feel would implicate their immigration status. Second, undocumented immigrants and those with ties to undocumented immigrants may conclude that the government will infer immigration status from their responses to questions asking about nativity or ethnic/racial group. Therefore, they will not fill out the Census form writ large since probabilistically, providing information on other characteristics might facilitate government efforts to track and identify undocumented immigrants.

35. After the President announced the PM, widespread reports about how the PM would seek to exclude undocumented immigrant populations from the reapportionment process were published by major news outlets throughout the U.S.[11] Major Spanish-language media and

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[10] For instance, Nebraska, South Dakota, and South Carolina voluntarily agreed to transfer citizenship data from their state driver's license and state ID records to the U.S. Census Bureau (Wang, 2020)

[11] Alex Daughery, *Florida Could Lose Power in Washington if Trump's New Immigration Order is Enacted*, MIAMI HERALD (July 21, 2020), https://www.miamiherald.com/news/politics-government/article244382462.html; Alexandra Alper and Nick Brown, *Trump Issues Memo To Stop Counting Undocumented Migrants In Next Round Of Redistricting*, HUFFINGTON POST (July 21, 2020), https://www.huffpost.com/entry/trump-executive-order-immigrants-redistricting_n_5f1709e0c5b615860bb7f415; Chris Megerian, *Trump Tries New Move to Restrict Census, Could Cut California's Seats in Congress*, L.A. TIMES (July 21, 2020), https://www.latimes.com/politics/story/2020-07-21/trump-new-tack-restrict-immigrants-census; David Jackson, *Trump Tells Census to Not Count Undocumented People for Purposes of Deciding House Apportionment*, USA TODAY (July 21, 2020), https://www.usatoday.com/story/news/politics/2020/07/21/trump-tell-census-not-count-undocumented-immigrants/5459873002/; Jill Colvin and Kevin Freking, *Trump to Exclude Those in US Illegally From Congressional Reapportionment Count*, CHICAGO SUN-TIMES (July 21, 2020), https://chicago.suntimes.com/2020/7/21/21333076/trump-to-llegally-from-congressional-reapportionment-count; Katie Rogers and Peter Baker, *Trump Seeks to Stop Counting Unauthorized Immigrants in Drawing House Districts*, N.Y. TIMES (July 21, 2020), https://www.nytimes.com/2020/07/21/us/politics/trump-immigrants-census-redistricting.html; Kevin Freking and Mike Schneider, *Trump's New Immigration Fight: How to Redraw House Districts*, HOUSTON CHRONICLE (July 21, 2020), https://www.chron.com/news/article/Trump-seeks-to-bar-illegal-aliens-from-15423258.php; Kevin Liptak et al., *Trump Signs Order Targeting Undocumented Immigrants in the US Census*, CNN (July 21, 2020), https://www.cnn.com/2020/07/21/politics/white-house-census-undocumented-immigrants/index.html; Tara Bahrampour, *Trump Administration Seeks to Bar Undocumented Immigrants From a Portion of the 2020 Census*, SEATTLE TIMES (July 21, 2020), https://www.seattletimes.com/nation-world/trump-administration-seeks-to-bar-undocumented-immigrants-from-a-portion-of-the-2020-census/

print news outlets throughout the nation also reported on the PM. They included Telemundo,[12] Univision,[13] Azteca America,[14] and Estrella TV[15] – all major media sources for Spanish-speaking viewers with hundreds of local television stations and affiliates throughout the U.S.[16] Newspapers and online media outlets for Spanish-speaking readers also reported on the PM's intention to leave out undocumented immigrants from the reapportionment process.[17] Whether

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[12] *Trump Ordena Al Censo Que No Incluya a Los Indocumentados En El Recuento Que Determina El Reparto De Escaños Del Congreso*, TELEMUNDO (July 21, 2020), https://www.telemundo.com/noticias/noticias-telemundo/inmigracion/trump-ordena-al-censo-que-no-incluya-los-indocumentados-en-el-recuento-que-determina-el-tmna3823616; *Trump Firma Decreto Para Excluir a Indocumentados del Censo 2020*, TELEMUNDO SAN ANTONIO (July 21, 2020), https://www.telemundosanantonio.com/noticias/la-casa-blanca/presidente-trump-decreto-indocumentados-censo-2020/2068275/.

[13] *Trump Ordena al Censo No Contar a Los Indocumentados en un Memo de Dudosa Legalidad y Difícil de Cumplir*, UNIVISION (July 21, 2020), https://www.univision.com/noticias/elecciones-en-eeuu-2020/trump-ordena-al-censo-no-contar-a-los-indocumentados-en-un-memo-de-dudosa-legalidad-y-dificil-de-cumplir.

[14] Ju Carpy, *Trump Firma Memo Para Excluir a Migrantes del Censo*, AZTECA AMERICA (July 21, 2020), https://aztecaamerica.com/2020/07/21/trump-firma-memo-para-excluir-a-migrantes-del-censo/

[15] Maria Teresa Sarabia, *Inmigrantes Indocumentados No Serán Contados*, ESTRELLA TV (July 21, 2020), http://noticiero.estrellatv.com/noticias/inmigrantes-indocumentados-no-seran-contados-noticiero-estrella-tv/

[16] *Owned Stations*, TELEMUNDO, https://www.nbcumv.com/owned-stations/telemundo-station-group/about?network=5266626 (last visited July 31, 2020); *Local Media*, UNIVISION COMMUNICATIONS INC., https://corporate.univision.com/partner-with-us/local/ (last visited July 31, 2020); *TV*, ESTRELLA TV, http://www.estrellamedia.com/programming/tv (last visited July 31, 2020); *Azteca America*, GRUPO SALINAS, https://www.gruposalinas.com/en/aztecaUS (last visited July 31, 2020).

[17] Jesús García, Trump Firma Memorando Para Excluir a Inmigrantes Indocumentados del Censo, La Opinion (July 21, 2020), https://laopinion.com/2020/07/21/trump-firma-memorando-para-excluir-a-inmigrantes-indocumentados-del-censo/; Jesús García, Trump Firma Memorando Para Excluir a Inmigrantes Indocumentados del Censo, El Diario (July 21, 2020), https://eldiariony.com/2020/07/21/trump-firma-memorando-para-excluir-a-inmigrantes-indocumentados-del-censo/; Kevin Freking and Mike Schneider, Trump Firma Memo Que Afectaría Conteo de Migrantes, El Nuevo Herald (July 21, 2020), https://www.elnuevoherald.com/noticias/estados-unidos/article244382772.html ; https://www.msn.com/es-mx/noticias/mundo/ordena-trump-excluir-a-indocumentados-del-censo-en-eu/ar-BB171eMI ; https://cnnespanol.cnn.com/video/censo-elecciones-indocumentados-migrantes-trump-memorando-constitucion-estados-unidos-dusa-vo/ ; https://cnnespanol.cnn.com/2020/07/21/trump-firma-orden-para-excluir-inmigrantes-indocumentados-en-el-censo-2020/ ; https://es-us.noticias.yahoo.com/trump-firma-memorándum-excluir-indocumentados-193912301.html ; https://www.dallasnews.com/espanol/al-dia/estados-unidos/2020/07/21/donald-trump-pedira-al-

through television, print, or online mediums, the message relayed by the media was that the PM singled out immigrants through a process that invoked citizenship status, or a lack thereof, as part of the 2020 Census, in an effort to exclude them from the apportionment process. Since the PM was signed, it has prompted discussion by Spanish-language news segments on its implications for the immigrant community.[18] These reports have conveyed to Spanish-speaking audiences that millions of undocumented immigrants living in the U.S. would not be counted when deciding how to apportion congressional seats because of the PM, affecting states such as California, Florida, and Texas, each of which includes large undocumented immigrant populations within their communities.[19]

36. Across these news accounts, immigrants, as well as individuals who worked with community-based organizations that serve immigrants, and even journalists, stated that they believed the July 21 PM was an effort to sow confusion and distrust, and to reduce the count of Latinos and immigrants on the 2020 Census. Examples of some of the direct quotations from these news sources include:

a. *"Este memo obviamente causa miedo entre esta población en particular, te pregunto, ¿podría ser el miedo una de las razones por la que la comunidad hispana no participe en el Censo 2020 o se siente que su participación sea baja? Lamentablemente no es la primera ves que el Presidente Trump amenaza y amedrenta nuestra comunidad inmigrante indocumentada… y si, fomenta el miedo en nuestras comunidades. Una ves más, le dice a nuestra comunidad inmigrante, no se cuenten, no los necesitamos."* "This memo obviously causes

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censo-2020-que-no-cuente-a-los-indocumentados-segun-funcionario-de-la-casa-blanca/ ; https://laoferta.com/2020/07/21/trump-ordena-excluir-a-indocumentados-de-distribucion-electoral-tras-censo/ ; https://www.lavanguardiahoy.com/trump-firma-memorandum-que-busca-excluir-a-indocumentados-del-censo-2020/ ; https://www.excelsiorcalifornia.com/2020/07/22/trump-abre-nueva-polemica-al-ordenar-enxcluir-a-indocumentados-de-censo/

[18] https://www.telemundo62.com/videos/videos-noticias/implicaciones-de-remover-a-los-indocumentados-del-censo-2020/2063236/ ; https://www.univision.com/local/los-angeles-kmex/que-implicaciones-tiene-la-orden-de-trump-que-busca-excluir-a-los-indocumentados-del-censo-2020-video ; https://www.univision.com/local/philadelphia-wuvp/lideres-reaccionan-ante-peticion-de-trump-para-excluir-a-personas-indocumentadas-del-censo-2020-video

[19] https://www.chron.com/news/article/Orden-de-Trump-afecta-censo-en-California-15434405.php ; https://eldiariony.com/2020/07/21/enorme-oposicion-a-orden-de-trump-que-afectaria-a-millones-de-inmigrantes-y-que-califican-de-ilegal/ ; Mike Schneider, Orden de Trump afecta censo en California, Florida y Texas, El Nuevo Herald (July 25, 2020), https://www.elnuevoherald.com/article244496782.html

fear among this particular population, I ask you, could fear be one of the reasons why the Hispanic community does not participate in the 2020 Census or feels that their participation is low? Unfortunately, this is not the first time that President Trump has threatened and intimidated our undocumented immigrant community... and yes, he has fostered fear in our communities. Once again, he tells our immigrant community, don't count yourselves, we don't need you."[20]

b. *"Hay varias organizaciones que están reaccionando y no están de acuerdo con esta movida de la casa blanca porque ya llevan más de un año tratando de incentivar a la comunidad de indocumentados para que participen del censo, para que no tenga miedo y hagan escuchar su voz, ahora esta acción prácticamente se convierte en un golpe bajo para la comunidad de inmigrantes indocumentados en este país."* "There are several organizations that are reacting and do not agree with this move by the White House because they have been trying for more than a year to encourage the undocumented community to participate in the census, so that they are not afraid and make their voice heard, now this action practically becomes a low blow to the undocumented immigrant community in this country." [21]

c. *"Además, afirman que el anuncio del presidente "claramente" tiene la intención de promover el miedo y disuadir la participación en el censo de inmigrantes y sus familias, ya que se produce solo unas semanas antes de que los enumeradores estén programados para salir y alentar a los hogares a responder al censo."* "In addition, it claims that the president's announcement is "clearly" intended to promote fear and discourage participation in the census by immigrants and their families, since it comes just weeks before enumerators are scheduled to leave and encourage households to respond to the census."[22]

d. *"Algunos oponentes afirman que es un intento para suprimir el creciente poder político de los latinos en Estados Unidos y discriminar a las comunidades inmigrantes de otras minorías no blancas."* "Some opponents claim it is an attempt to suppress the growing political power of Latinos in the United States and to discriminate against other non-white, minority immigrant communities"[23]

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[20] Telemundo 62. "Implicaciones De Remover a Los Indocumentados Del Censo 2020." Telemundo 62. Telemundo 62, July 22, 2020. https://www.telemundo62.com/videos/videos-noticias/implicaciones-de-remover-a-los-indocumentados-del-censo-2020/2063236/.

[21] Univision. "Líderes Reaccionan Ante Petición De Trump Para Excluir a Personas Indocumentadas Del Censo 2020." Univision, July 22, 2020. https://www.univision.com/local/philadelphia-wuvp/lideres-reaccionan-ante-peticion-de-trump-para-excluir-a-personas-indocumentadas-del-censo-2020-video.

[22] EFE, Agencia. "Coalición De Fiscales Demanda Al Presidente Trump Por Su Acción Con El Censo." Yahoo! Yahoo! Accessed July 29, 2020. https://es-us.noticias.yahoo.com/coalici%C3%B3n-fiscales-demanda-presidente-trump-230425578.html.

[23] Mike Schneider. "Orden De Trump Afecta Censo En California, Florida y Texas." Houston Chronicle. Associated Press, July 29, 2020. https://www.chron.com/news/article/Orden-de-Trump-afecta-censo-en-California-15434405.php.

e. *"Es una manera de tratar de eliminarnos numéricamente del mapa, borrarnos en cuanto a números"* "It is a way of trying to wipe us out numerically, wipe us out in terms of numbers"

37. With respect to whether media coverage related to the Census can impact response rates, the Census Bureau agrees that media coverage of Census news can impact the general public – including coverage of court decisions related to the Census. The 2019 Census Test was conducted between June 13 and August 15. The U.S. Supreme Court decision concerning the validity of the citizenship question was issued on June 27 and there was media coverage of the issue both before and after the decision. In the full report on the 2019 Census Test, the Census Bureau wrote that "media coverage related to the Supreme Court decision on whether or not to include a citizenship question on the 2020 Census questionnaire <u>may have affected respondent behavior during this test</u>. There was media coverage on the citizenship question both before and after the Supreme Court decision was made public on June 27, 2019. <u>Public opinion on the topic may have influenced response behavior for this test</u>. The degree to which public awareness and public opinion is different between this test and the 2020 Census may influence how applicable the results of this test are to the 2020 Census. The impact of media coverage may have also affected the treatments differently."

38. The PM has threatened to upend a year's worth of outreach efforts by groups focused on hard-to-count populations. These groups now face a big challenge: reach out to people who haven't filled out their Census form yet who are now worried the federal administration will use whatever information they provide in the 2020 Census to target them. Solving this challenge is now more urgent for these groups given the Census Bureau's recent decision to shorten the period for collecting responses, including NRFU operations, by 31 days.[24]

39. According to Arturo Vargas, the CEO of NALEO, one of the nation's top civic engagement organizations in the Latino and immigrant community, the new PM is a setback that creates fear in the immigrant community. NALEO has been identified by the Census Bureau itself as one of the most important "trusted voices" to earn trust in the Latino community.

[24] https://www.npr.org/2020/07/30/896656747/when-does-census-counting-end-bureau-sends-alarming-mixed-signals

Vargas stated on Twitter[25]: "With a successful #NALEOVirtual Conference done, time now to refocus on #Census2020 - which just got even MORE DIFFICULT with @POTUS effort to exclude immigrants from the apportionment numbers and cutting short @uscensusbureau's time to finish the count. Our community is scared." Vargas went further to note[26] that the new PM was undoing progress made after striking the citizenship question, "#Census2020 is the most challenging to promote participation I have seen in my career. After @SCOTUS stopped a citizenship question, we had a fighting chance. Now @POTUS has made it much harder by his July 21 memo and by cutting off @uscensusbureau's field work early. @NALEO"

B. <u>Spanish-Language News Media is a Trusted Source for Immigrants</u>

40. Studies show Spanish-language media acts as a catalyst for engaging and mobilizing Latino and immigrant communities. Spanish-language journalists and news anchors act as mediums for the feelings and concerns felt amongst Latino immigrant communities, in particular among undocumented immigrants. Green-Barber discuss these trends in Spanish-speaking media.[27] She found that Spanish-speaking households have high utilization of internet and Spanish TV and radio, indicating the large presence and critical role of the Spanish-language media has in Spanish speaking homes. She also found that the Spanish-speaking media plays a central role in mobilizing and educating Latino communities on immigration issues in particular.

41. Research shows that households that more closely follow Spanish-language news rely on that information when it comes to civic and political engagement.[28] Garcia-Rios and Barreto (2016) investigated media habits of Latino immigrants and found that people with high rates of Spanish-language news consumption were more informed and had high rates of immigrant identity, meaning that they were particularly aware and responsive to immigration-

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[25] https://twitter.com/ArturoNALEO/status/1291764313405812737?s=20
[26] https://twitter.com/ArturoNALEO/status/1291792560390729728?s=20
[27] Lindsay Green-Barber, Latinos and the media: Patterns, changes and ideas for more connection, Center for Investigative Reporting.
[28] Barreto, Matt. Garcia-Rios, Sergio. "Politicized Immigrant Identity, Spanish-Language Media, and Political Mobilization in 2012." RSF: The Russell Sage Foundation Journal of the Social Sciences. January 06, 2016

related news and current affairs.[29] In 2012, a positive association between Spanish news coverage of President Obama's Deferred Action for Childhood Arrivals (DACA) program and immigrant identity spurred naturalized citizens to vote at higher rates. In other instances, exposure to negative information can lead to withdrawal.

42. Research on Spanish-language media by Federico Subervi-Velez (2008) notes "the intersection between media and Latinos when assessing political socialization and mobilization of Latinos."[30] To put it simply, Spanish-language media is a critical bridge that informs and influences immigrants in politics and is often a direct reflection of Latino immigrant opinion in America. One example is the reliance on Spanish-language radio to share and spread information about anti-immigrant legislation in the U.S. Congress (Felix et. al, 2008). Research found that Spanish media personalities such as Almendarez Coello (El Cucuy), Eduardo Sotelo (El Piolin), and Christina Saralei presented and educated the community on the anti-immigration rhetoric that was becoming prominent in politics (Felix et al, 2008). Coello and Sotelo's provided daily updates and created awareness about H.R. 4437, a bill that could negatively impact immigrant communities. In particular, research has found that the high levels of trust in Spanish-language media plays a key role when Latino immigrants read or hear about the issues that matter most to them, like immigration policy.

43. The Census Bureau recognizes that Spanish-language media is trusted and important in the immigrant community, and it has worked hand-in-hand with Univision and Telemundo for decades. The Census Bureau has made clear on several instances that A) they have a formal partnership with Spanish-language media and Latino community groups; and B) they need close cooperation and cooperation with Spanish-language media and Latino community groups to implement an accurate 2020 Census. Raul E. Cisneros, director of national

[29] Barreto, Matt. Garcia-Rios, Sergio. "Politicized Immigrant Identity, Spanish-Language Media, and Political Mobilization in 2012." RSF: The Russell Sage Foundation Journal of the Social Sciences. January 06, 2016, p. 78.

[30] Subervi-Vélez, Federico A., ed. 2008. The Mass Me- dia and Latino Politics: Studies of U.S. Media Content, Campaign Strategies and Survey Re- search: 1984–2004. New York: Routledge.

partnerships for the U.S. Census Bureau wrote on a census.gov website[31] that the Census Bureau was planning a "massive effort, a collaboration between Univision and two Census Bureau programs," which included not only Spanish-language media, but also "representatives from major advocacy groups, from the National Association of Latino Elected and Appointed Officials to the League of United Latin American Citizens, along with representatives from Univision affiliates in California." The Census Bureau has described Spanish-language media and Latino community groups as "national partners during the 2020 Census." As recently as March 2020, the Census Bureau continued to partner with Spanish-language media to promote information about the Census. And the Census Bureau continues to feature its partnership with Univision on its web site.[32]

44. Latino and immigration serving organizations are not "community activists," but rather Census partners. The official field operations plan for the 2020 Census highlights the necessity of working with these "trusted voices" in order to gain trust in the community and improve the likelihood of an accurate count. In his deposition during *N.Y. v. Department of Commerce*, Defendants' expert Dr. John Abowd stated that part of the Census Bureau's effort to communicate and convince the public to fill out the Census included "recruiting partner organizations" and later described community organizations as "a source of advice and outreach to many of the populations that we – that it's important to have partnerships with when you collect the data."[33] Importantly, Dr. Abowd stated these trusted partnerships are important during field operations (i.e., "when you collect the data"), and the Census is currently in field collecting data, which means now is the key time to shore up community partnerships with Latino and other immigrant-facing organizations. In his own expert report submitted in the citizenship question case, Dr. Abowd explained on page 15 that trust can be a barrier in

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[31] Raul E. Cisneros, *Univision Hosts Meeting to Discuss Challenges, Solutions*, U.S. Census Bureau, Oct. 16, 2018, https://www.census.gov/library/stories/2018/10/tv-network-advocacy-groups-support-complete-census-count.html.

[32] U.S. Census Bureau, *Partner Spotlight: Univision*, https://2020census.gov/en/partners/partner-spotlight-archive/univision-tv.html.

[33] Deposition of Dr. John Abowd in *State of New York v. U.S. Dep't of Commerce*, at 298 (Aug. 29, 2018).

communities with low response rates and that having the so-called *trusted voices* is critical to getting an accurate final count.[34] In this very section of his September 2018 expert report, Dr. Abowd mentions the National Association of Latino Elected Officials (NALEO) as one of the "major organizations" they will need to work with as a trusted voice. The Census Bureau's "trusted voices" in the Latino community, including Spanish-language media and organizations such as NALEO, state clearly that the PM will make data collection more difficult, as explained clearly in paragraphs above. Indeed, this is consistent with extensive research by Census ethnographer de la Puente (2004) who writes that: "based on this research it appears that Immigrant centered community-based organizations could be important conduits that attract distrustful and growing undocumented populations."

C. Trust and Socio-Political Context are Two Key Factors That Impact Survey Response Rates and Accuracy

45. The decennial Census is a population survey. There have been extensive studies across the social sciences documenting the best practices and potential pitfalls in collecting accurate survey data. With respect to evaluating the 2020 Census there are two key takeaways that are quite clear in the published literature. First, trust between the public and the survey administrator is crucial. Prior studies conclude that response rates will fall without a high degree of trust, leading to a biased survey project because it excludes people from the data and is no longer representative. Second, the social and political context during survey implementation can greatly impact trust, confidence, and participation rates. This is especially the case for vulnerable populations when they perceive an unwelcoming environment or context. Of these key takeaways, the hallmark of cooperation in any survey is trust. Subjects are more likely to participate in a survey, to complete survey items accurately, and respond fully to survey items when they trust the survey administrator. When potential respondents are suspicious, uncertain, anxious or untrusting, non-response rates significantly increase. An early study on this topic framed the issue as how much threat potential respondents perceive through the source of the

[34] Expert Report of Dr. John Abowd in *State of New York v. U.S. Dep't of Commerce*, at 15 (Sept. 21, 2018).

survey (Ball 1967; Bradburn et al. 1978). When subjects identify the survey as being implemented on behalf of authorities who they perceive could use their answers against them, they are likely to not-respond, or to respond untruthfully (Ball 1967). From this perspective, newfound fears about citizenship status due to the July 21 PM will make securing participation of immigrant communities much harder than if the PM had never been issued.

46. A research study by the U.S. Government Accountability Office in 2003 (GAO-03-605) laid out the most appropriate approaches to surveying the Latino population specifically. The report was commissioned because prior government surveys, in particular the Census, were characterized by high rates of non-response with Latino respondents. The report stated that distrust – especially of those representing the government – was a leading factor in Latino immigrant non-response. To fix this, the report recommended increasing trust so that potential survey respondents are not fearful of their participation, and not suspicious of the Census questions being asked, or the Census enumerators visiting their community. The July 21 PM related to undocumented immigrants does precisely the opposite, increasing *distrust* and, therefore, making it substantially less likely that members of the Latino immigrant subgroups will respond to the Census.

47. De la Puente (1995) examined issues related to trust, confidentiality, and fear among potential Census respondents in El Paso, Texas and found that fear and apprehension on part of the sample area residents led to concealment of information from the Census Bureau and from the ethnographers, due to their belief that the government will not keep their information private or confidential when it comes to highly sensitive questions. This research establishes that the Census Bureau already knows it has challenges with trust in some immigrant communities and attempts to overcome those challenges by not asking sensitive questions that make it very difficult to persuade communities with low trust. While the threat of a citizenship question was dropped, the July 21 PM instills a new sense of confusion and fear and will result in increased problems with trust in such communities and a corresponding reduction in Census response.

48. In a follow-up study a decade later, de la Puente (2004) concluded that individuals with unstable immigration statuses were much less likely to trust the government and specifically

less likely to fill out the Census questionnaire. Indeed, properly counting undocumented immigrants has long been a concern for the Census Bureau. De la Puente's research demonstrated that respondents with irregular immigration statuses are unlikely to directly cooperate with the Census if they perceive their immigration status will be revealed. The July 21 PM diminishes cooperation because it sends a strong signal to undocumented immigrants that the federal government is collecting data about them, and will match various government records to find and exclude certain immigrants. One respondent in the de la Puente study, who did have legal status as a student, was afraid to participate in the Census because she feared that at some point in the future she may go out of status and that the information she provided to the Census Bureau might be used to track her down. According to de la Puente, it is critical that immigrant respondents clearly understand that their immigration status is not associated with the Census population count.

49. An important practice that ensures higher participation rates in surveys is respondent anonymity, particularly when there might be concerns over immigration status. The Census violates anonymity by requiring the respondent to list the names of all household members. If respondents do not trust the survey administrator, and there is no anonymity, vulnerable respondents are far less likely to participate. Tourangeau and Yan (2007) explain how the "threat of disclosure" can result in non-response. Generally, people have concerns about the possible consequences of participating in a survey, or giving a truthful answer should information become known to a third party with enforcement powers. The authors explain a survey may be "sensitive" if it raises fears about the likelihood or consequences of disclosure of the answers to agencies or individuals directly, or not directly involved in the survey. As an example, Tourangeau and Yan (2007) discuss asking a question about marijuana use to a group of teenagers. If the teens suspect that the answers could be shared with their parents, they opt out of the survey or lie. But if the survey is completely anonymous and implemented by their peers, they are much more likely to participate and be truthful. The *perceived* threat of disclosure to authorities is what matters. With the July 21 PM, the federal government has clearly created a perception of threat for immigrants and the 2020 Census.

50. A review of findings across different surveys suggest that the likelihood of survey response largely depends on timing and contextual factors, including the respondent's personal situation and the features of the data collection, such as the degree of privacy it offers. The exact same survey might be highly sensitive and risk non-participation in one setting, but be acceptable and proper in another. To this point, a comprehensive review of survey environment research indicates that highly sensitive surveys will be disruptive, produce non-response, or result in biased data when the respondent is concerned that their answers could be known by authorities. However, if the respondent feels secure and has total privacy and anonymity, they are likely to participate and provide truthful answers (Tourangeau and Smith 1996). In particular, Krysan (1998) found evidence that respondents greatly modified their answers to questions and issues related to views about race, ethnicity, and immigration based on how they felt the interviewer would perceive or judge their responses.

51. Concerns about confidentiality are likely to exacerbate the unwillingness of certain communities to respond to the Census in the current socio-political context created by the July 21 PM. A study of immigrant communities' knowledge and awareness of the Census found that one major concern was confidentiality of personal information (Raines 2001). Beyond the Latino immigrant community, this study reported evidence that immigrants from Laos, Somalia, Iraq, Bosnia, and Haiti expressed concerns over anonymity and confidentiality. The general takeaway is that as additional private, personal, or sensitive questions are added, the degree of concern over anonymity and confidentiality raises considerably. Even if the Census Bureau provides assurances, many may not believe or trust those assurances. In part, this might be due to the current social and political context (laid out above in paragraphs A.32-A.37) or could also be due to prior experiences in their home country with authoritarian regimes and government data collection. Thus, for a population survey to be accurate, it is critical that respondents truly believe their answers to questions will always remain confidential and not used against them. The July 21 PM opens the door to that exact fear because the federal government plans to use administrative data and records to exclude undocumented immigrants from the base population count.

52. The Census Bureau's own pilot study of the citizenship question in June-August 2019 did show statistically significant decreases in response rates in areas with significant non-citizen, Hispanic, and Asian populations. In an article summarizing the results of the 2019 Census Test published on the Census Bureau's web site, Dr. Victoria A. Velkoff, the Census Bureau's Associate Director for Demographic Programs, wrote "there was a statistically significant difference in the proportion of respondents who identified as Hispanic between the forms"[35] with the form including a citizenship question reducing Hispanic participation. Thus, even in the preliminary analysis of the 2019 Census Test, the Census Bureau found that there were significantly disparate response rates by different communities when the Census implicated citizenship status. The full report issued by Census Bureau in January 2020, revealed further, and more significant differences. The Census Bureau wrote: "in some areas and for some subgroups, there were statistically significant lower self-response rates for the test questionnaire with the citizenship question than for the test questionnaire without the citizenship question."[36] In particular, the 2019 Census Test report found lower response rates due to the citizenship questions in areas designated bilingual, high numbers of noncitizens, high density Hispanic and higher density Asian. Additionally, the Census study found statistically higher rates of disconnect, and discontinuing responses in the Internet sample for the version containing the citizenship question, noting that "breakoffs occurred during the collection of person demographics at a higher rate for the treatment with the citizenship question." Thus, it is clear that the 2019 Census Test indicates that increasing threat over immigration status leads to withdrawal and declining participation for immigrant communities.

53. Additionally, the PM involves more direct targeting of undocumented immigrants than did the 2019 Census Test. While the citizenship status question would have been

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[35] Victoria A. Velkoff, *2019 Census Test Preliminary Results*, U.S. Census Bureau, Oct. 31, 2019, https://www.census.gov/newsroom/blogs/random-samplings/2019/10/2019_census_testpre.html.

[36] Poehler, Elizabeth A., Dorothy A. Barth., Lindsay Longsine, Sarah K Heimel, *2019 Census Test Report*, U.S. Census Bureau, at ix-x, Jan. 3, 2020, https://www2.census.gov/programs-surveys/decennial/2020/program-management/census-tests/2019/2019-census-test-report.pdf (*2019 Census Test Report*).

threatening (as reflected in the reduced participation reported in the 2019 Census Test), the PM is an official Presidential policy statement targeting the removal of undocumented persons from the Census count. It is more explicit than the 2019 Census Test in calling for "excluding these illegal aliens." To this point, the Census Bureau wrote that "the environment in which [the 2019 Census Test] was conducted will differ from the 2020 Census environment in terms of advertising and media attention."[37] Indeed, they are correct, there has been widespread media attention to the PM which will reduce participation in immigrant communities.

54. The single most important takeaway from the 2019 Census Test is that the citizenship question did result in statistically lower response rates for Latinos, Asians, non-English speakers and non-citizens. The largest gap reported was in high-density Hispanic areas where the 2019 Census Test reported a drop-off of 1.1%, which would reduce the Hispanic count by over 670,000 according to the Census Bureau's data.

55. Original Table 12 from 2019 Census Test Report[38]

Table 12. Total Self-Response Rates for Areas with Different Proportions of Hispanic Residents

Proportion of Hispanic Residents	Experiment (no Citizenship)	Control (with Citizenship)	Difference	P-Value
Areas with more than 49.1 percent Hispanic residents	36.6 (0.3)	35.5 (0.3)	1.1 (0.5)	0.02*
Areas with between 10.6-49.1 percent Hispanic residents	48.3 (0.2)	47.9 (0.2)	0.4 (0.3)	0.15
Areas with less than 10.6 percent Hispanic residents	55.9 (0.3)	55.4 (0.3)	0.4 (0.5)	0.41

Source: U.S. Census Bureau, 2019 Census Test; DRB Approval Number: CBDRB- FY20-ACSO002-B0002
Note: Minor additive discrepancies are due to rounding. Standard errors are in parentheses. An asterisk (*) indicates a statistically significant result. Significance was tested based on a two-tailed t-test at the α=0.1 level.

[37] 2019 Census Test Report, at 12.
[38] Tables 12, 9, 8 all from: https://www2.census.gov/programs-surveys/decennial/2020/program-management/census-tests/2019/2019-census-test-report.pdf

56. Original Table 8 from 2019 Census Test Report

Table 8. Total Self-Response Rates by Contact and Language Strategy Areas

Contact and Language Strategy	Experiment (no Citizenship)	Control (with Citizenship)	Difference	P-Value
Internet First English	56.1 (0.2)	55.7 (0.2)	0.4 (0.3)	0.21
Internet First Bilingual	37.9 (0.3)	36.9 (0.4)	1.0 (0.5)	0.06*
Internet Choice English	42.6 (0.4)	42.3 (0.4)	0.3 (0.8)	0.68
Internet Choice Bilingual	33.2 (0.4)	32.0 (0.4)	1.3 (0.5)	0.02*

Source: U.S. Census Bureau, 2019 Census Test; DRB Approval Number: CBDRB- FY20-ACSO002-B0002
Note: Minor additive discrepancies are due to rounding. Standard errors are in parentheses. An asterisk (*) indicates a statistically significant result. Significance was tested based on a two-tailed t-test at the α=0.1 level.

57. Original Table 9 from 2019 Census Test Report

Table 9. Total Self-Response Rates for Areas with Different Proportions of Noncitizens

Noncitizen Proportions	Experiment (no Citizenship)	Control (with Citizenship)	Difference	P-Value
High: Areas with more than 11.1 percent noncitizens	41.4 (0.2)	40.5 (0.2)	0.9 (0.3)	<0.01*
Medium: Areas with between 4.9-11.1 percent noncitizens	51.2 (0.2)	50.7 (0.2)	0.5 (0.2)	0.06*
Low: Areas with less than 4.9 percent noncitizens	55.7 (0.3)	55.4 (0.3)	0.3 (0.6)	0.58

Source: U.S. Census Bureau, 2019 Census Test; DRB Approval Number: CBDRB- FY20-ACSO002-B0002
Note: Minor additive discrepancies are due to rounding. Standard errors are in parentheses. An asterisk (*) indicates a statistically significant result. Significance was tested based on a two-tailed t-test at the α=0.1 level.

58. The PM is potentially even more disruptive because of its timing. When taking a survey, the researcher generally wants to avoid introducing any unnecessary, extraneous conditions during the response period that may bias respondents or harm response rates. The Census Bureau began its promotion of the 2020 Census in July 2019, inviting most U.S. households to respond to the Census starting on March 12, 2020 and, as of the date the PM was published on July 21, 2020, the Census Bureau planned to continue the response period until October 31. That means that the PM was introduced 131 days from the start of the count and 102 days from the end of the count – and only days before the start of critical NRFU operations. The PM remains in effect while Census enumerators are in the field, visiting households for in-person interviews as well as on-going NRFU. Given the PM's explicit connection to the 2020 Census and its direct contradiction of the core messaging of the outreach efforts conducted by the Census Bureau itself and the non-governmental organizations, particularly in immigrant

communities and communities of color, it would be an anathema to sound survey research to publish such a document during the response period. Notwithstanding that the PM only purports to affect the count *after* the close of the enumeration period, the timing of the PM's release will likely lead to significant declines in Census response rates because households in immigrant communities will be deterred from responding now, and will not wait to find out whether they are actually excluded from the apportionment count later on.

D. <u>The Threat of Non-Response is Real and Immediate</u>

59. The overall national sociopolitical environment has raised awareness and alertness among immigrant communities, but by itself, the national context does not depress immigrant participation. Instead the published literature is clear that immigrants react to specific threats as they develop, and they engage fully when those threats are removed. Indeed, in areas with low levels of immigration enforcement and threat of deportation, or in so-called sanctuary cities, research does not find evidence of a chilling effect or withdrawal (e.g. Garcia 2019). However, the national context does cause immigrants to take more notice of their surroundings and be aware of the potential for a negative interaction with immigration officials. When immigration enforcement is heightened, the current (2017-2020) national sociopolitical climate can result in a more significant withdrawal. Put simply, President Trump has put the immigrant community on edge. In June of 2019, they had the protection of the U.S. Supreme Court which gave assurances that their citizenship status could not be connected to the 2020 Census. The July 21 PM changed the risk of threat in the minds of many immigrants who hear Trump's words as connecting a federal monitoring program of undocumented immigrants to the 2020 Census. They may not do the full research to realize they can still fill out the Census safely, because they hear the news which is connecting the July 21 PM to Trump's longstanding desire to increase deportation of undocumented immigrants. Further, the July 21 PM sends the signal to undocumented immigrants that there is no affirmative reason to participate in the Census, because they will not be counted regardless. If the President issues a memorandum saying you will not be counted on the Census base population count, and you have a lingering fear over your citizenship status, there is virtually no reason at all to transmit your entire household's personal

information to the federal government. Existing research makes clear that when new threats emerge due to changes in policy, immigrants take note and withdraw.

60. Perhaps the best summary of how the combination of federal policies and political environments interact is found in a new book by Angela Garcia, *Legal Passing: Navigating Undocumented Life and Local Immigration Law* (2019). In this book, Garcia reviews a plethora of data and research on how immigrant communities respond and react to both threatening and accommodating environments, and how a national climate of hostility does not automatically create a chilling effect for immigrants everywhere. Rather, Garcia showed with extensive evidence that specific context and the proximate threat of immigration enforcement versus accommodation is what matters the most. Instances with the highest levels of threat produce the most withdrawal. In her study of more accommodating or welcoming environments, Garcia finds immigrants are able to navigate life effectively, writing "At the same time, this book also argues against the popular depictions of undocumented immigrants being pushed underground, their perception of threat so strong that they avoid engaging in public life. … As compared to restrictive destinations, the integrative outcomes of accommodating locales that I describe in this book are evident in undocumented Mexicans' ease of physical navigation, deeper willingness to interact with local police, and place-based sense of belonging." Of particular importance is the timing of when threats pop up or become visible. Garcia describes "initial reactions immediately after new clampdowns – sweeps, raids, and checkpoints" being the most intense periods of avoidance. However eventually immigrants learn how to navigate their communities, and to avoid locations of particular threat, but otherwise effectively go about their day.

61. Thus, the literature demonstrates that the current era is a particularly anxiety-inducing period in American history for undocumented immigrants, and those concerned about immigration enforcement. However, this just serves to frame the environment, it does not by itself lead to wholesale withdrawal. Rather, the literature points to the importance of specific instances of threat that result from new policies that create fear, anxiety and avoidance.

62. Prior survey research in January 2020[39] assessed how Latinos in New York reacted to information about whether or not ICE was present in and around state courthouses. The question there was whether increased threat of immigration enforcement resulted in immigrant withdrawal. ICE was sporadically conducting immigration-related searches in or near state courthouses across New York. In our survey experiment, we randomly assigned one set of respondents to a condition in which we reminded them of ICE presence at state courthouses, while other respondents were randomly assigned to a condition without the information about ICE presence.

63. Across the full sample of Latinos in New York, the survey experiment results demonstrate that being informed about ICE presence at state courthouses has a strong, and statistically significant causal effect on increasing avoidance behavior and withdrawal. This effect is consistent across eight different types of engagement. When confronted with information about ICE conducting arrests and detention at courts in New York, Latino participants reduced their intention to attend state court as a witness, as a defendant, to accompany a family member, to protect their rights, or to testify about a housing complaint. In addition, they were less likely to go to the police as witness, or to call the local police if they witness a crime, or to submit a police report as a victim. This suggests that when Latinos and immigrants learn about a new threat, they respond immediately with reduced intention to participate or engage.

64. Because the overall sample size of the survey was large (n=1,001) the New York courthouse research included additional analyses on immigrant segments within the main sample. The results of the subset analysis are consistent with the extant literature and expectations, with much stronger causal effects of avoidance and withdrawal among the foreign-born Latinos, and much stronger effects among non-citizens, and the strongest causal evidence of the chilling effect among Latinos are acquainted with an undocumented immigrant. These analyses provide very strong evidence that is theoretically motivated and consistent with decades

[39] Survey conducted as part of the expert declaration by Matthew A. Barreto in NY v. ICE lawsuit.

of social science research on the immediate chilling effect of immigration enforcement.

65. A newer study conducted during the period of Trump's presidency finds similar results. The Violence Against Women Act (VAWA) allows women who are victims of domestic violence to petition to change their immigration status and was used effectively when women felt safe enough to call immigration officials. However, in February 2017 the Trump administration reactivated the Secure Communities program which coordinated local police databases with ICE. As such, in areas of increased ICE presence, the study found that fewer and fewer women initiate police reports of domestic violence. The authors explain this is due to fears over being reported to, or detained by ICE. As the authors conclude, "intensified immigration enforcement might increase misreporting due to fear of being over scrutinized and, potentially, placed in a position that jeopardizes the possibility of staying in the country." (Amuedo-Dorantes and Arenas-Arroyo 2019). This is yet another example of a before/after study which finds direct and immediate evidence of immigrant withdrawal after a change in policy, in this case, by the Trump administration.

E. Extensive Research Confirms Fears About Immigration Enforcement and The Chilling Effect

66. Additional ethnographic research has revealed that undocumented immigrants and mixed-status households are likely to avoid government contact when they suspect it is not safe to participate (de la Puente 1995). This is especially the case when sensitive topics will be potentially discussed or revealed. Velasco (1992) maintains that undocumented immigrants in his sample area in San Diego, CA avoided contact with government. He argues that this avoidance was one of the important contributing factors to census omission, and estimates that over half of the sample area residents were undocumented immigrants. Similar situations were also reported in the Miami, FL sample area (Stepick 1992) and in the 26 rural Marion County, OR sample areas (Montoya 1992). However, the ethnographic research all concludes that participation barriers can be overcome by not including worrisome questions about citizenship status and by working with community based organizations and cultural facilitators to increase trust and confidence in data privacy.

67. Levels of trust in immigrant and minority communities are very low with respect to issues related to citizenship. In a prior national survey about the 2020 Census, when asked about protecting sensitive information, including citizenship of themselves and family members, only 35% of immigrants expressed trust that the Trump administration will protect their information and not share it with other federal agencies. Among Latino respondents overall, just 31% trust the Trump administration to protect their personal information. According to my prior survey research, a very large percent of immigrants and minorities believe the Trump administration will share their personal information with other federal agencies.

68. Research related to the 2020 Census suggests that the Census Bureau was well aware of potential issues related to non-response over immigration fears. A comprehensive study by the Census Bureau's Center for Survey Measurement presented at the National Advisory Committee on Racial, Ethnic, and Other Populations Fall Meeting 2017 (Meyers 2017) reported an increase in respondents expressing concerns to researchers and field staff about confidentiality and data access related to immigration, legal residency, and citizenship status, and their perception that certain immigrant groups are unwelcome. There was an observation of increased rates of unusual respondent behaviors during pre-testing and production surveys, including item-nonresponse, break-offs, and refusals, especially when the questions involved citizenship status. The most commonly occurring finding was that respondents appeared visibly nervous about disclosing their private information and who would have access to such data. The current political climate was of concern to respondents: in one Spanish interview, a respondent stated, "the possibility that the Census could give my information to internal security and immigration could come and arrest me for not having documents terrifies me."

69. As this finding makes clear, immigrant communities can be especially vulnerable to the social and political context surrounding the implementation of a survey. A study of immigrants in California and Texas found that respondents' fear over citizenship status correlated with their non-participation in the health sector (Berk and Schur 2001). This study found strong evidence that a threatening context can lead immigrants to withdraw and limit their access to public services, including access to medical care which they greatly needed. Likewise,

anxiety and fear over immigration status has been found to reduce utilization of services related to health care, law enforcement, and education (Pedraza and Osorio 2017). In particular, research has identified the context of heightened "immigration policing" as one that erodes trust in other public institutions and creates an environment in which immigrant communities are very selective as to where, when, and how they engage with government agencies (Cruz Nichols, LeBrón and Pedraza 2018). The finding is not just limited to first-generation immigrants themselves; the research also finds a strong spillover effect to U.S.-born Latinos who have immigrant parents, or feel connected to the immigrant community, and also demonstrates non-participation during times of threatening context.

70. Studies have shown that the political context after 2016 and the election of Donald Trump has significantly diminished Latinos' trust of the federal government. For instance, Michelson and Monforti (2018) find that Latinos, including those who are undocumented, were less trusting of government in 2016 than in 2012. In 2012, trust amongst Latinos was strong across all subgroups of Latino immigrants – citizens, non-citizens with legal status, and undocumented immigrants. Four years later, Latinos registered lower levels of trust in government, with fewer than 1 in 20 Latinos in any subgroup responding that they trust the government "just about always." In addition, Sanchez and Gomez-Aguinaga (2017) report that an overwhelming majority of Latinos described Trump and his policies as scary (74%), dangerous (77%), hostile (78%), and unwelcoming (80%) and they conclude that the current context is creating tension, anxiety, and nervousness among Latinos and immigrants. While the June 2019 Supreme Court decision striking the citizenship question allowed community outreach groups to push reset and create a campaign that citizenship would not be associated with the Census at all, the new PM reinjects concerns about citizenship status into the 2020 population count.

71. Beyond the Latino and immigrant communities, there is also reason to expect that increased fears about citizenship could increase non-response rates among Arab and Middle Eastern Americans. Research by Oskooii (2016) and Lajevardi and Oskooii (2018) demonstrates that American Muslims and those of Arab and Middle Eastern ancestry currently perceive a high

rate of discrimination and an unwelcoming environment. Oskooii (2016) explains how perceived social exclusion can result in withdrawal and non-participation by these communities and documents this fact empirically in his published research. In research by the Center for Survey Measurement, focus groups conducted in Arabic among immigrants from the Middle East revealed the potential for Census non-response due to questions about citizenship status in light of the current political climate. (Meyers 2017). Some focus group participants referred to the "Muslim Ban" when expressing why they would be nervous about reporting their immigration and citizenship status to the federal government.

72. This context is particularly important as it relates to the issues about citizenship status, because this is the point of tension for many in the immigrant community today. That is, there is grave concern over providing information to the federal government given the perceived high rates of immigrant policing. And now that newfound distrust and fear is directly related to citizenship status as a result of the July 21 PM, a considerable non-response is the likely outcome.

73. A clear implication identified in the relevant literature on surveys is that when respondents perceive a threatening survey, and if trust is low, non-participation will result in an inaccurate survey. Further, attempts to re-interview or re-contact households will be less successful, and some re-contact may only serve to further erode trust. Survey respondents must believe that there is no potential jeopardy before participating. Once a respondent believes that participation in the survey could bring them harm, and that the survey enumerator is acting on behalf of an official agency, attempts at repeated re-contact typically do not result in a completed survey (Ball 1967). In interviews with the enumerators themselves, there is a sense that the issues related to citizenship status will make their jobs harder, if not impossible (Meyers 2017).

74. Prior experiences with census data collection efforts that overlapped with anti-immigrant contexts provide evidence that NRFU will be much more difficult in 2020 given the political climate and the PM. Terry et al. (2017) describe the connection between a threatening context and Census non-response in Arizona and Texas among immigrant communities: "the wider social context also had an important role in enumeration. Just before the NRFU

enumeration program started in 2010, Arizona passed a very strong anti-immigration law that coincided with legal ordinances in two Dallas-area cities. These ordinances were aimed at identifying illegal immigrants through police stops or the reporting of immigration status of applicants wishing to rent apartments. The new law provoked heightened tensions around the country, particularly in the Dallas/Fort Worth-area Hispanic community. As a result, these reports conclude that non-response was high and that NRFU was less successful.

75. Undocumented immigrants may already fear providing their information to the government. They are a hard-to-reach population that is difficult for enumerators to gain access to and follow-up on in the event of non-response. To overcome these difficulties, non-governmental organizations and the Census Bureau have engaged in targeted messaging toward immigrant communities that participation in the Census would help increase access to public resources, federal funding, and political representation (Levine, 2020; Liptak et al., 2020; Smith, 2020). However, the PM, by excluding the count of undocumented immigrants from the apportionment base, undercuts this incentive to participate. Undocumented immigrants are likely to perceive that there is no benefit to participation, as the July 21 PM states they will not count, and there is now an increased risk of their information being linked to immigration records and facing immigration enforcement.

76. It is important to note undocumented immigrants and those with whom they live or have social ties are often risk-averse, assume the worst-case scenario, and are highly suspicious about whether their information would be shared with Federal immigration authorities (Yoshikawa, 2011; Dreby, 2015; Torres-Ardila, Bravo, and Ortiz, 2020). For example, even U.S.-citizen Latinos reduced their participation in Medicaid as a result of a punitive immigration enforcement environment (Watson, 2014; Vargas, 2015). It is unlikely Medicaid service providers will use their records to find undocumented friends or family, but the perception that immigration authorities might do so was sufficient to produce system-avoiding behaviors. In another research paper, U.S.-born children of undocumented immigrants avoided a variety of record-keeping institutions (e.g. banking, formal employment, voter registration) as a result of their social ties with an undocumented parent (Desai, Su, and Adelman, 2019).

77. Undercounting undocumented immigrants will have spillover effects on effectively counting the broader legal non-citizen and citizen population. Mixed-status households are affected by the PM. The PM suggests the government may be using various forms of information to identify undocumented immigrants. If undocumented immigrants are the head of the household or if the head of household is responsible for undocumented immigrant friends and/or family members, they may not respond or allow themselves to be contacted by follow-up enumerators in order to protect the anonymity of undocumented immigrants with whom they live or have social ties. This means citizen children, documented spouses of undocumented immigrants, documented partners of undocumented immigrants, and/or documented family of undocumented immigrants will be less likely to be counted in the Census.

78. One implication of the fear and unrest in the immigrant community is the increased mobility that could render any attempt at imputation or substitution incomplete and inaccurate. For imputation to work, the missing unit household cannot be vacant, and likewise cannot be a second home or vacation home of someone already counted. The missing unit household should have someone living there as their primary residence. However, as Frost notes that many undocumented immigrants who receive government letters or notices may pick-up and move their entire family, rather than wait around and figure out a way to interact with public officials. Similarly, this is documented by O'Hare (2017) who notes that Latino children are especially susceptible to being undercounted due to mobility. There is evidence that if immigrants are fearful of attempts by the federal government to obtain the personal information, identities, and citizenship statuses of all members of their household, they may vacate their homes and move to avoid being contacted again (Meyers 2017). To the extent this happens, attempts at imputation or substitution will be inaccurate, both on the national level, but especially on state and local levels.

79. In instances such as this, when we are asked to assess the impact of a new policy without the time required to conduct field research, the best practice in the social sciences is to A) closely examine the policy and place it within the context of other similar policies; and B) to review what happened when other similar policies were enacted. The research reviewed in my

Declaration supports my conclusion that the PM has caused an increased perceived threat and withdrawal or decline in participation in immigrant communities.

F. When Subsequent Official Action is Taken to Remove Threats Related to Immigration Status, Immigrants Respond with Participation

80. On January 9, 2018, a federal court in the Northern District of California issued a nationwide preliminary injunction against the Trump administration effort to phase-out the DACA policy. The January 2018 decision allowed existing DACA recipients to apply for renewals. Later, on February 13, 2018 a second federal court in the Eastern District of New York also issued a nationwide preliminary injunction to allow DACA renewals to continue. When the court enjoined the effort by the Trump administration to repeal DACA and allowed undocumented immigrants to begin applying for DACA, there was an immediate rush of applications by undocumented immigrants who held DACA status, but were expired. According to data from the United States Customs and Immigrant Services (USCIS), 64,210 immigrants applied for renewal immediately after the January 2018 injunction, and 31,860 were approved by March 31, 2018 and 32,280 were pending, with only 70 having been denied.[40] Over the course of 2018, USCIS reported 287,709 total requests for DACA renewal were made by undocumented immigrants.[41] Despite additional legal challenges, throughout 2019 the injunctions from Northern California and Eastern New York remained in place nationwide and 406,586 persons applied for DACA renewals across 2019.[42] Despite the Trump administration's continued legal challenges to DACA, public statements denigrating immigrants, once the courts issued the injunctions to protect DACA, undocumented immigrants became trusting of this program.

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[40] Approximate Count of DACA Receipts: Since January 10, 2018, As of Mar. 31, 2018 https://www.uscis.gov/sites/default/files/document/data/DACA_Receipts_Since_Injunction_Mar_31_2018.pdf

[41] Number of Form I-821D,Consideration of Deferred Action for Childhood Arrivals, Status, by Fiscal Year, Quarter, and Case Status: Aug. 15, 2012-Mar. 31, 2020 https://www.uscis.gov/sites/default/files/document/data/DACA_performancedata_fy2020_qtr2.pdf

[42] Number of Form I-821D,Consideration of Deferred Action for Childhood Arrivals, Status, by Fiscal Year, Quarter, and Case Status: Aug. 15, 2012-Mar. 31, 2020 https://www.uscis.gov/sites/default/files/document/data/DACA_performancedata_fy2020_qtr2.pdf

81. On July 2, 2015, the Priority Enforcement Program (PEP) was implemented by U.S. Immigration and Customs Enforcement (ICE). It was announced by then-DHS Secretary Jeh Johnson in a November 2014 memo, and was meant to replace the then-existing Secure Communities program, which coordinated local police databases with ICE. PEP implemented a series of mandates that immigration enforcement should prioritize individuals who have engaged in serious criminal activity or who pose national security threats. In short, it mandated that ICE cast a smaller net in identifying, detaining, and deporting undocumented immigrants. In addition, PEP made it more difficult for ICE to execute immigration detainers. ICE had to state probable cause (via reference to the priorities) in order to execute a detainer in addition to the local law enforcement agency having to serve a copy of the detainer request on the individual in order for it to take effect. The intent of the new policy was for police to collaborate less with ICE and to only focus their detention efforts on serious criminals. The Dallas County Sheriff, which controls the county jails and oversees the processing of immigrants detained agreed to participate in the PEP program to reduce the local prominence of ICE in Dallas.[43] A research paper analyzing Dallas Police Department (DPD) police reports finds clear evidence that the implementation of PEP increased crime reporting to DPD by Hispanic and immigrant subjects in Dallas.[44] The data shows Hispanic and immigrant engagement with police increased significantly in the immediate quarter after PEP was implemented. And in the six quarters following the change in policy, Hispanics and immigrants voluntarily reported around 6,000 more incidents to the police than they would have been if the enforcement priorities had not changed. Thus, reversals or limitations imposed on executive actions may have measurable consequences on promoting trust among immigrant communities and influencing behavioral

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[43] Dallas county jails complied with the PEP. Dallas County Sheriff Lupe Valdez formally agreed to participate in the program after meeting with ICE representatives in July and August 2015. In August 2015, Dallas County officials began reviewing ICE's request prior to honoring them with the vetting guidelines being similar to PEP priorities, ensuring only individuals who posed a threat to public safety were transferred to ICE's custody. This is evidenced in data by Jacome (2018), who finds total detainers dropped by roughly 1,000 by the end of 2015 due to decreases in detainers issued for individuals convicted of misdemeanors and those with no conviction.

[44] Jacome, Elisa. "The Effect of Immigration Enforcement on Crime Reporting: Evidence from the Priority Enforcement Program." *Available at SSRN 3263086* (2018).

interactions with various aspects of government.

82. In prior survey research in 2018 to test the impact of a citizenship question being included or excluded from the 2020 Census, there was a clear finding of increased Census participation after removing any fear of immigration status being exposed.[45] Initially, after being told about the citizenship question, a sizable share of respondents said they would not participate in the 2020 Census. Later in the survey, respondents were randomly assigned to a condition in which they were told the government changed its mind and would *not* include a citizenship question after all. A second set of participants were randomly assigned to a condition in which it was reaffirmed that the government would in fact include a citizenship question. Among Latinos who said they would not participate in the Census with a citizenship question, 80%changed their mind and said they would participate once they learned that the citizenship question would be removed. The mechanism here is whether or not those in the immigrant community believe their participation creates increased risk of exposing themselves to immigration enforcement. Members of immigrant communities are very concerned about their citizenship status being monitored or revealed. When they believe the threat is real, they will withdraw from the Census, and when that threat has been removed, they reengage. This provides very strong evidence that when fears about citizenship status being revealed are removed, a large share of Latinos will indeed increase their participation in Census 2020.[46]

Table 7: Percent of Non-Responders Who Change to Responders at Q7 / Q8

	Total	White	Latino	Black	AAPI	Other
Q8 Yes – with citizenship	45.2	49.5	38.9	62.2	0.2	17.2
Q7 Yes – without citizenship	84.3	89.3	80.1	78.6	53.3	94.9
Difference	-39.1	-39.7	-41.2	-16.5	-53.1	-77.7

83. Across the wide-ranging literature, a key finding is that immigrants are normally eager to engage in public life and with political institutions, but when there is a threat of negative

[45] *See* Tr. 687-89; Trial Ex. 677, *NY v. Dep't Commerce,* 351 F. Supp. 3d 502 (S.D.N.Y. 2019), *aff'd* 139 S. Ct. 2551 (2019). Barreto expert declaration NY v. Dept Commerce, September 7, 2018.

[46] *See id.*

consequences for their immigration status, avoidance behavior is likely. (e.g. Garcia 2019).

G. Use of Administrative Records and Imputation to Count Non-Responding Households Will Not Eliminate The Differential Undercount

84. Due to high levels of non-response, the Census Bureau relies on alternative statistical procedures such as triangulation via administrative records and imputation. Some of these alternative efforts might fail in immigrant communities. For example, finding administrative records that match households is likely to be more difficult for immigrant households, who may be less prone to providing personal or household information to various aspects of government and may not be eligible for a variety of government programs that keep records (Kissam, 2019; Asad, 2020). While the Trump administration may assume they can rely on administrative records, the reality is that this creates major methodological problems for NRFU and then imputation. The data is fraught with errors and inconsistencies and will lead to lower quality data and undercounts. Research by Bhaskar, Fernandez, and Porter (2018), who are Census Bureau researchers, indicates matching an administrative record to a household requires a Personal Identification Key (PIK). They also find foreign-born households are less likely to have a PIK than U.S.-born households. Lack of having a PIK is associated with more people in a household, living in a Census tract with a high density of foreign-born individuals, Latino/Hispanic race/ethnicity, non-citizen status, limited English or no English proficiency, and being a recent immigrant. IRS administrative records may not serve as effective proxies for enumeration given not all undocumented immigrants file income tax returns on a regular basis (Gee, Gardner, and Wiehe, 2016). Social Security Administration (SSA) records may be incomplete if immigrant workers have only worked in the informal or underground economy. Parents also may never apply for an SSN for foreign-born children without legal status. Foreign-born non-working spouses may have never applied for an SSN (Kissam, 2019). Often, the use of borrowed SSNs is prevalent among immigrant workers, which may result in potential undercounts or discrepancies in the count. Moreover, employer reports of employee's earnings do not provide reliable or exhaustive information on household size.

85. Even if a match to an administrative record is found for a specific address, it may

not accurately enumerate household size and composition because the record may be out of date or exclude peripheral household members who are not part of the primary core family living in the housing unit (Kissam, 2019). There may be discrepancies via administrative matching in neighborhoods where low-income renter households move often and administrative records may not update frequently in immigrant communities such that newly born children will be disproportionately omitted (Kissam, 2019). If information via administrative records or proxy interviews do not bear fruit, the Census Bureau may attempt to use hot-deck imputation to determine the characteristics of households that did not respond. The problem is that non-responding households in immigrant communities may be systematically larger than those that do respond. Thus, each imputation will contribute to a differential undercount given that "donor" households have less inhabitants (Kissam, 2019).

86. In addition to trying to match households to their administrative records, the Census Bureau has indicated that it may employ statistical imputation techniques to address nonresponse. During the collection of any survey, two types of nonresponse can emerge: unit nonresponse and item nonresponse. Unit nonresponse concerns an entire missing case resulting from either non-contact, refusal, or inability to participate. Item nonresponse concerns missing values on certain questions in the survey. Bias, or incorrect and faulty data, can emerge from nonresponse when the causes of the nonresponse are linked to the survey statistics being measured, which is referred to as nonignorable nonresponse (Groves et al 2004). By way of illustration, public health officials designed a survey to measure the prevalence of HIV in the population during the early days of the HIV epidemic. Despite incentives, cooperation rates among those who were HIV-positive were extremely low because of the stigma of the disease. Thus, the key statistic sought – namely, the percentage of HIV-positive people – was causally related to the likelihood of self-response; specifically, in that case, those who were HIV-positive did not want to participate in the study at all. Non-ignorable nonresponse is particularly egregious because even if the causal influence is known "there is no way that the statistic among respondents can be made free of nonresponse bias (without making heroic assumptions about the status of the nonrespondents)" (Groves et al. 2004). What this means is that if a factor

influencing the decision to not respond is correlated with an important outcome variable, imputation is impractical because you cannot observe the existence of the precise variable you are trying to count. In the case of the 2020 Census, the key outcome variable is producing an accurate count of total household size; yet, prior research establishes that larger households are more likely to not respond when the responder's citizenship status may be implicated. Thus, the decision whether to respond is correlated with household size, a key outcome variable of interest.

87. Some statistical tools are available to deal with nonresponse. At one end of the spectrum, if every variable of interest is known for the nonrespondent, except one, then we can use these variables to form an imputation model that will predict a value for the missing value – for example, we may know the existence of the respondent and that person's age, but may not know their income level and can use predictive models to impute income for that respondent. At the other end of the spectrum we have entire missing cases (unit nonresponse), where the existence of the person is unknown. Imputation for unit nonresponse, sometimes called "whole person imputation," is used almost exclusively in longitudinal surveys where ample data from prior waves exists for a missing respondent. It is extremely rare to impute for unit nonresponse if little is known about the nonrespondent case (Groves and Couper 1998). Unit nonresponse is typically dealt with by some form of post-stratification or response rate weighting adjustment[47] (Kalton 1983). While imputation can be useful for missing values in an otherwise completed survey form (item nonresponse), it is particularly problematic for imputing the existence of whole persons, and is especially likely to end up with an undercount in vulnerable communities. This is part of the reason that social scientists and government statisticians want the Decennial Census to be as non-burdensome and non-sensitive as possible, to ensure an overall accurate count through high rates of participation (Wines 2018).

88. In general, whole-person imputation itself relies on a number of assumptions to

[47] After the survey data are collected, statisticians can use the known universe of respondent demographics to apply weights and possibly correct for non-response, however this only corrects the dataset for use in a data analysis project or academic research paper, not necessarily population counts, which are supposed to serve as the baseline universe estimate in the first place.

work correctly. If data is missing completely at random (MCAR) (Rubin 1976), then non-response generally introduces less bias. Models are of less help with non-ignorable nonresponse, as noted above, where nonresponse depends on the values of a response variable. In this case, models can help but never eliminate all nonresponse bias (Lohr 1999). Indeed, recent reviews of cutting edge imputation procedures like "hot deck imputation" argue that "hot deck" methods for situations where nonresponse is non-ignorable have not been well explored (Andridge and Little 2010). Whole person imputation, then, has its dangers. The Census Bureau currently acknowledges that "whole person substitutions and whole person imputations are not very accurate." (See Abowd 30(b)(6) Deposition 2018).

89. With respect to the U.S. Census and counts of Latino and immigrant households, previous research has shown that whole person imputation efforts are seriously error-prone. Because family arrangements, housing styles and total household sizes vary considerably, attempts to impute the population of non-respondent households have been shown to undercount the population (Kissam 2017). First, many non-traditional housing units are simply not included in the imputation, leaving them as vacant when in reality they had tenants or dwellers. Second, the household size of missing units tends to be larger, on average, than of reported units. Reports also document differences by socioeconomic status. The end result is that even with imputation, there can still be a significant undercount of the Latino immigrant population.

90. Beyond the raw count being inaccurate, there is also evidence of misattribution of those imputed, because they rely on higher acculturated units for which there is data to make adjustments (i.e. substituting data on U.S.-born, English-speaking and college educated households when in fact missing cases are more likely to be foreign-born, Spanish-speaker, less educated households), suggesting the imputed data do not accurately describe the true population (Kissam 2017). The U.S. Government Accountability Office has itself admitted this is a problem with respect to getting a complete count of Latinos. In the 2003 report on trying to improve the Latino count, they wrote "even with the Bureau's guidelines and training, deciding whether a house is unfit for habitation or merely unoccupied and boarded-up can be very difficult. An incorrect decision on the part of the census worker could have caused the dwelling and its

occupants to get missed by the census." U.S GAO Report (2003) (GAO-03-605).

91. By examining data from a prior 2018 survey specifically about the Census, we can conclude that unit non-response on the 2020 Census will not be at random. Households that do not respond and represent missing units, are certain to have very different characteristics and demographics than the households that do respond. In this event, it makes it nearly impossible to impute or infer the population totals or any other demographic information about missing units (e.g. missing households) because we do not have enough reliable information on "matched" or similar units. Further, it is quite likely that unit non-response in 2020 will be clustered geographically, meaning that there will be fewer available adjacent units for imputation, and that analysts will have to rely on dissimilar households for imputation, thus violating the most important assumption needed for accurate imputation. In particular, non-responders were found more likely in dense urban areas and locales with high numbers of renters. These factors are known to be related to census undercounts and make NRFU difficult and result in erroneous imputation (U.S. GAO Report, 2003).

92. It is virtually certain that the reduced self-response caused by the July 21 PM related to citizenship status will lead to a net undercount among those populations with lower rates of self-response. Previous census reports have documented that high rates of non-response to the initial questionnaire result in undercounts, and that NRFU is not always successful in converting those cases into respondents. In addition, matching household to administrative records can be an unreliable method of enumerating the household, particularly for immigrant communities. Prior census reports have also documented that errors are made in imputation and that undercounts persist even after attempted imputation. Ultimately, the worse the initial non-response is, the worse the initial undercount is, making it increasingly more difficult to convert those cases into responding cases, and increasing more difficult to impute missing units (US Census Bureau 2017b; National Research Council 2002; 2004).

93. This problem has been documented to be worse in Latino and immigrant communities where the Census admits the undercount is problematic, and that their efforts at NRFU and imputation have errors (Ericksen and Defonso 1993; O'Hare et al. 2016). One

primary reason is that issues related to trust of government officials significantly hampers the NRFU process, and in 2020 the citizenship question will greatly exacerbate issues of trust in immigrant communities (See section below "Perceptions of Trust and Confidentiality" at paragraph 96). In particular, young children in Latino households have been found to be regularly undercounted by previous census efforts and that imputation methods do not appropriately find or count this population. The best assurance for an accurate count is high response rates on the initial census request for participation, which requires a high degree of trust (O'Hare et al. 2016; Casey Foundation 2018). Previous self-reports by the Census Bureau are clear: immigrant communities are already at-risk of an undercount because of lower levels of trust of government officials, and have particular anxiety over citizenship information being shared. What's more, these previous census reports have documented that low self-participation on round one of invitations ultimately leads to an undercount that administrative-record matching and imputation cannot correct. In 2020, the PM will only create more problems, more anxiety in immigrant communities, and less self-participation on round one. With nearly 17 million people, including 6 million citizen children, living in households with at least one person who is an undocumented immigrant (Casey Foundation 2018), there is enormous potential for a massive non-response with a newly created anxiety over citizenship status as a result of the July PM.

94. The PM provides household members in undocumented or mixed-status households with a reduced incentive to give federal Census enumerators *any* information at all because the President has just declared that their numbers will not be counted for the core purpose of the Census – apportionment. As a result, they will be less likely to open the door in the first place to cooperate with *any* interview. While the enumerator might only be looking for a population count, the household member does not know this. Instead, the only relevant recent information they may have is news about the PM attempting to exclude certain immigrant communities from the Census count. This is consistent with decades of research including de la Puente, the Census's own ethnographer, who has clear and consistent findings about how undocumented communities avoid the Census when they have concerns about immigration status (de la Puente 1995, 2004). According to de la Puente (2004): "individuals with an insecure

immigration status were much less likely to trust the government and specifically less likely to fill out the Census questionnaire. Undocumented immigrants have long been a concern for the Census Bureau. This research demonstrated that respondents with irregular immigration statuses are unlikely to directly cooperate with the Census."

95. Second, as noted above, research by Kissam (2019) is clear that immigrant households under-report non-immediate family members who may not be documented. Even when a simple count is requested, the immigrant household is far more likely to misreport household size when they believe the government is monitoring or checking about immigration status. The PM reinforces this concern.

H. <u>COVID-19 is Independent of the PM</u>

96. Defendants are certain to note that the 2020 Census data collection has been hampered by COVID-19. There is no doubt that COVID-19 has presented many challenges to American life and for 2020 Census outreach. However, these challenges are completely distinct from the effect the PM is having and will continue to have on efforts by the Census Bureau and its partners to encourage immigrant communities to respond to the 2020 Census. Indeed, while COVID-19 has contributed to a challenging environment for the enumeration, the PM adds new, significant challenges to an accurate and high-quality count because it sends a signal of exclusion and threat to the immigrant community which discourages them from responding to the Census. The PM's negative signal is an added and unnecessary one to send to the immigrant community while the Census Bureau is in a critical stage of the enumeration.

97. At any moment, a survey instrument such as the Census may face a variety of challenges to response rates; however, the existence of a greater or more broadly applicable threat to the response rate, such as COVID-19, does not negate the independent effect that a more targeted threat, such as the PM, may have a particular subgroup of respondents. The Decennial Census is a singularly large survey instrument and, according to Census Bureau officials (Fontenot Decl. ¶ 7), as of August 18, 2020 approximately 36% of U.S. households, amounting to over 50 million households, have yet to respond. The impact that any specific threat may have on response rates remains significant. For example, a potential respondent, such

as a grocery store employee or farmworker who has reported to work in-person every day of the pandemic, may be undeterred from responding to the Census due to COVID-19; however, they may be deterred by the PM's signal of threat and exclusion based on their own immigration status or the status of other household members. Although COVID-19 may have significant negative effects on outreach efforts and response rates, response rates can still suffer additional reductions as a result of new threats against immigrant communities that create more fear and confusion over their participation in the Census.

98. Nor does COVID-19 negate the differential undercount of immigrant communities that the PM will produce as a result of faulty imputation. While the Census Bureau may argue that the current pandemic will make it very difficult to predict which neighborhoods will need more, or less imputation, that unpredictability does not change the fact that the PM predictably will lead to unequal Census response rates to the Census and consequently to undercounting of immigrant communities despite the use of imputation. Extensive published literature discusses the difficulty of accurate imputation when response rates are low and uneven. Again, while acknowledging the significant and widespread difficulty that COVID-19 presents, the pandemic does not subsume and/or negate the impact of all other factors on the enumeration. The PM will make the enumeration even more difficult, with increasing non-response in specific communities – not at random – and the imputation models will not be able to see inside invisible households. It is clear that non-responding households are larger in size and more likely to be immigrant (Kissam 2019). Thus, when imputation models – which are based on *responding* households – are applied, they will under-count the number of people who live in non-responding households. Research indicated the inclusion of a citizenship question was also likely to have a negative impact on the accuracy of imputation, and the logical effect of the PM on imputation is the same. The new PM introduces a perceived threat in the immigrant community which leads to differential non-response which greatly undermines imputation. In effect, the PM serves to weaken the imputation model, because in the final phase of NRFU, households that may have responded pre-PM are not responding because of immigration concerns, and at differential rates than the general public. While the challenge of COVID-19

may affect Census participation regardless of the race or immigration status of a household, it is Latino and immigrant households which face the new and additional challenge presented by the PM, which has targeted the immigrants from being excluded from the Census apportionment.

99. After reviewing defendants report(s), I plan to offer rebuttal opinions as requested by plaintiffs.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on August 27, 2020 in Agoura Hills, California.

Matthew A. Barreto

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