

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF THE DISTRICT OF COLUMBIA**

CITIZENS FOR CONSTITUTIONAL  
INTEGRITY,  
P.O. Box 43074,  
Washington, DC 20010,

Plaintiff,

v.

THE U.S. DEPARTMENT OF  
COMMERCE,  
1401 Constitution Ave NW  
Washington, DC 20230;

THE CENSUS BUREAU,  
4600 Silver Hill Road  
Washington, DC 20233; and

GINA RAIMONDO, Secretary of  
Commerce, in her official capacity,  
U.S. Department of Commerce  
1401 Constitution Ave NW  
Washington, DC 20230;

Defendants.

Case No.

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**COMPLAINT**

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## INTRODUCTION

1. For over two years, Citizens for Constitutional Integrity has waited for the U.S. Department of Commerce, the Census Bureau, and Secretary of Commerce Gina Raimondo (collectively, Commerce) to produce a single, specific document in response to Citizens’ Freedom of Information Act (FOIA), 5 U.S.C. § 552, request.

2. Congress directed Commerce to send a report, every ten years, on “[t]he tabulation of total population by States as required for the apportionment of Representatives.” 13 U.S.C. § 141(b). In April 2021, Commerce sent that year’s report (the 2021 Report). In May 2021, Citizens requested it under FOIA. Commerce never produced it.

3. After filing a second request, emailing, following up, and appealing, Commerce still failed to produce the 2021 Report. All FOIA deadlines have long passed. FOIA compels Commerce to produce the 2021 Report immediately.

## CAUSE OF ACTION, JURISDICTION, AND VENUE

4. United States Code Title 28, sections 1331 and 1361, assign this Court jurisdiction both because this case presents a federal question and because it is “in the nature of mandamus to compel” United States officers and agencies “to perform a duty owed to” Citizens. *See Califano v. Sanders*, 430 U.S. 99, 105 (1977).

5. FOIA and the Administrative Procedure Act (APA), 5 U.S.C. §§ 701-706, waive sovereign immunity. 5 U.S.C. § 552(a)(4)(B); 5 U.S.C. § 702.

6. The District of Columbia sets the proper venue for six reasons:

- a. On information and belief, Ms. Raimondo works in the geographic boundaries of the District (here), *see* 28 U.S.C. § 1391(b)(1),

- b. On information and belief, Commerce and Secretary Raimondo sent the 2021 Report to the President here, *see id.* § 1391(b)(2),
- c. Defendants are either U.S. officers or agencies, *see id.* § 1391(e)(1)(A), (B),
- d. Citizens maintain their principal office here, and this case involves no real property, *see id.* § 1391(e)(1)(C); 5 U.S.C. § 552(a)(4)(B),
- e. The records are situated here, *see* 5 U.S.C. § 552(a)(4)(B), and
- f. This is the District of Columbia. *See id.*

### **PLAINTIFF**

7. Citizens for Constitutional Integrity is a nonprofit organization that researches and advocates for legislation, regulations, and government programs. Its purposes include improving the United States Constitution's integrity, democratic elections, and government accountability. It maintains its principal office in Washington, D.C.

8. Citizens suffered procedural and informational injury by Commerce's failure to produce the 2021 Report. Citizens seek to protect interests germane to its purposes, and individual members need not participate to advance the claims or to obtain the relief Citizens seek.

9. Citizens filed a separate lawsuit against the Census Bureau, Commerce, Secretary Raimondo, and Census Bureau Director Robert Santos. *Citizens v. Census Bureau*, No. 1:21-cv-3045-CJN-JRW-FYP (D.D.C. Nov. 17, 2021). That Court dismissed that lawsuit on April 18. ECF No. 37.

### **DEFENDANTS**

10. The Census Bureau is a component of the Department of Commerce, and the Department of Commerce oversees and directs the Census Bureau.

11. Commerce Secretary Gina Raimondo, in her official capacity, oversees and directs the Department of Commerce.

### **LEGAL BACKGROUND**

12. The United States Code requires the Secretary of Commerce to send to the President, every ten years, a “tabulation of total population by States under subsection (a) of this section as required for the apportionment of Representatives in Congress among the several States . . . .” 13 U.S.C. § 141.

13. Separately, when “any person” requests agency “records” and “reasonably describes,” FOIA requires “each agency” to “make the records promptly available.” 5 U.S.C. § 552(a)(3)(A).

### **FACTUAL BACKGROUND**

14. In April 2021, the Census Bureau announced its apportionment of U.S. House of Representatives seats among the states. 2020 Census Apportionment Results Delivered to the President, Press Release, Ex. 1.

15. Three weeks later, Citizens requested the 2021 Report under FOIA from the Census Bureau. Request Confirmation, FOIA Online (May 10, 2021), Ex. 2.

16. In June 2021, the Census Bureau informed Citizens that, contrary to its press release, it did not possess the 2021 Report, so it forwarded the request to the Department of Commerce. Letter from Vernon E. Curry, FOIA/Privacy Act Officer Chief, FOIA Office, to Jared Pettinato (June 8, 2021), Ex. 3.

17. Citizens did not wait for that request to bounce around the government. It sent another FOIA request in July 2021. Request Confirmation, FOIA Online, DOC-

OS-2021-001781 (July 12, 2021), Ex. 4. The Commerce Department reassigned that request to the Internal Office of the Secretary. FOIA Tracking Number Change for request DOC-OS-2021-001781 (to DOC-IO-2021-001781) (July 13, 2021), Ex. 5.

18. Expecting Commerce would produce the document in due course, Citizens waited patiently for over a year. In August 2022, its counsel followed up with Commerce’s FOIA Officer. Email String among Jared Pettinato, Bobbie Parsons FOIA Officer, Immediate Office of the Secretary, Office of Privacy and Open Government, and Khadija Khaalis, FOIA Analyst (Contractor), U.S. Department of Commerce Office of Privacy and Open Government (OPOG) (August 31-October 21, 2022), Ex. 6.

19. In September 2022, Citizens appealed from Commerce’s failure to produce the 2021 Report. Preview Appeal, FOIA Online (Sept. 20, 2022), Ex. 7; Appeal Confirmation, FOIA Online (Sept. 20, 2022), Ex. 8.

20. Over eight months have passed since the appeal—over two years since the first FOIA request. Commerce still has not produced the 2021 Report.

### COUNT 1

21. Citizens hereby adopt by reference the previous paragraphs.

22. Commerce possesses the 2021 Report.

23. Citizens requested the 2021 Report under FOIA.

24. FOIA requires Commerce to produce the 2021 Report “promptly” upon a person’s request. *See* 5 U.S.C. § 552(a)(3)(A).

25. Commerce failed to produce the 2021 Report after two years.

26. Specifically, Commerce failed to determine Citizens' request within the statutory timeframe. *See* 5 U.S.C. § 552(a)(6). It failed to produce the document promptly. *See id.* § 552(a)(3)(A).

27. No circumstances justify a delay of two years to produce a single document.

28. Commerce violated FOIA by failing to produce the 2021 Report timely in response to a direct FOIA request for it.

### **PRAYER FOR RELIEF**

29. Citizens request the Court to issue the following relief:

- a. Enjoin Commerce from withholding the 2021 Report and order it to produce the Record;
- b. Declare Citizens are entitled to production of the 2021 Report;
- c. Issue a writ of mandamus directing Commerce to produce the 2021 Report;
- d. Award Citizens their reasonable attorneys' fees and costs under 5 U.S.C. § 552(a)(4)(E); and
- e. Provide further relief as necessary or appropriate.

Dated May 24, 2023,

/s/ Jared S. Pettinato  
JARED S. PETTINATO  
*Attorney for Plaintiff*