In the Supreme Court of the United States

DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES,
ET AL., APPELLANTS

v.

STATE OF NEW YORK, ET AL.

*ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK*

JOINT APPENDIX

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UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK
(FOLEY SQUARE)

———————

Case No. 1:20-cv-05770-JMF

STATE OF NEW YORK; STATE OF COLORADO; STATE
OF CONNECTICUT; STATE OF DELAWARE; DISTRICT OF
COLUMBIA; STATE OF HAWAII; STATE OF ILLINOIS;
STATE OF MARYLAND; COMMONWEALTH OF
MASSACHUSETTS; STATE OF MICHIGAN; STATE OF
MINNESOTA; STATE OF NEVADA; STATE OF NEW
JERSEY; STATE OF NEW MEXICO STATE OF NORTH
CAROLINA; STATE OF OREGON; COMMONWEALTH OF
PENNSYLVANIA; STATE OF RHODE ISLAND; STATE OF
VERMONT; COMMONWEALTH OF VIRGINIA; STATE OF
WASHINGTON; CITY OF CENTRAL FALLS; CITY OF
CHICAGO; CITY OF COLUMBUS; CITY OF NEW YORK;
CITY OF PHILADELPHIA; CITY OF PHOENIX; CITY OF
PITTSBURGH; CITY OF PROVIDENCE; CITY AND
COUNTY OF SAN FRANCISCO; CITY OF SEATTLE;
COUNTY OF CAMERON; COUNTY OF EL PASO; COUNTY
OF HIDALGO; COUNTY OF MONTEREY; UNITED STATES
CONFERENCE OF MAYORS; STATE OF MAINE; STATE
OF WISCONSIN AND HOWARD COUNTY, PLAINTIFFS

NEW YORK IMMIGRATION COALITION; CASA;
AMERICAN-ARAB ANTI-DISCRIMINATION COMMITTEE;
ADC RESEARCH INSTITUTE; MAKE THE ROAD NEW
YORK, CASA; FIEL HOUSTON INC.,
CONSOLIDATED PLAINTIFFS

v.

DONALD J. TRUMP, IN HIS OFFICIAL CAPACITY AS
PRESIDENT OF THE UNITED STATES; UNITED STATES
DEPARTMENT OF COMMERCE; WILBUR L. ROSS, IN
HIS OFFICIAL CAPACITY AS SECRETARY OF
COMMERCE; BUREAU OF THE CENSUS;

(1)

STEVEN DILLINGHAM, IN HIS OFFICIAL CAPACITY AS
DIRECTOR OF THE UNITED STATES CENSUS BUREAU
DEFENDANTS

———

DOCKET ENTRIES

DATE	DOCKET NUMBER	PROCEEDINGS
7/24/20	1	COMPLAINT against Bureau of the Census, Steven Dillingham, Wilbur L. Ross Jr., Donald J. Trump, United States Department of Commerce. (Filing Fee $ 400.00, Receipt Number ANYSDC-20838691) Document filed by County of El Paso, County of Cameron, State of Washington, State of Illinois, City of Philadelphia, State of Colorado, Commonwealth of Pennsylvania, State of New York, State of Rhode Island, City and County of San Francisco, State of Oregon, City of New York, City of Phoenix, City of Pittsburgh, State of New Mexico, Commonwealth of Virginia, City of Columbus, State of Michigan, City of Seattle, County of Monterey, State of Minnesota, City of Central Falls, City of Chicago, State of New Jersey, City of Providence, State of Hawaii, State of Connecticut, Commonwealth of Massachusetts, State of Nevada, State of

DATE	DOCKET NUMBER	PROCEEDINGS
		North Carolina, State of Maryland, State of Delaware, County of Hidalgo, State of Vermont, District of Columbia. (Attachments: # 1 Exhibit 1 (Presidential Memorandum of July 21, 2020)). (Colangelo, Matthew) (Entered: 07/24/2020)
		* * * * *
8/3/20	34	AMENDED COMPLAINT amending 1 Complaint against Bureau of the Census, Steven Dillingham, Wilbur L. Ross Jr., Donald J. Trump, United States Department of Commerce. Document filed by County of El Paso, County of Cameron, State of Washington, State of Illinois, City of Philadelphia, State of Colorado, Commonwealth of Pennsylvania, State of New York, State of Rhode Island, City and County of San Francisco, State of Oregon, City of New York, City of Phoenix, City of Pittsburgh, State of New Mexico, Commonwealth of Virginia, City of Columbus, State of Michigan, City of Seattle, County of Monterey, State of Minnesota, City of Central Falls, City of Chicago, State of New Jersey, City of

DATE	DOCKET NUMBER	PROCEEDINGS
		Providence, State of Hawaii, State of Connecticut, Commonwealth of Massachusetts, State of Nevada, State of North Carolina, State of Maryland, State of Delaware, County of Hidalgo, State of Vermont, District of Columbia, United States Conference of Mayors, State of Maine, State of Wisconsin, Howard County. Related document: 1 Complaint. (Attachments: # 1 Exhibit 1 (Presidential Memorandum)). (Goldstein, Elena) (Entered: 08/03/2020)
		* * * * *
8/3/20	43	ORDER re: (42 in 1:20-cv-05781-JMF) Letter, filed by Wilbur L. Ross, Jr., United States Department of Commerce, Bureau of the Census, Donald J. Trump, Steven Dillingham, (37 in 1:20-cv-05770-JMF) Letter, filed by United States Department of Commerce, Bureau of the Census, Wilbur L. Ross Jr., Steven Dillingham, Donald J. Trump. In their joint later dated August 3, 2020, the parties state that they agree that 20 Civ. 5770 and 20 Civ.

DATE	DOCKET NUMBER	PROCEEDINGS
		5781 should be consolidated pursuant to Fed. R. Civ. P. 42(a)(2). 20-CV- 5770, ECF No. 37, at 1; 20-CV-5781, ECF No. 42, at 1. In light of that, and because the actions involve common questions of law and fact, it is hereby ORDERED that, pursuant to Rule 42(a)(2) of the Federal Rules of Civil Procedure, the two cases are consolidated under the case number 20-CV-5770 (JMF). The Clerk of Court is directed to consolidate 20-CV-5770 (JMF) and 20-CV-5781 (JMF) under case number 20-CV-5770 (JMF), and to close 20-CV-5781 (JMF). All future filings should be in 20-CV-5770 (JMF) alone. (Signed by Judge Jesse M. Furman on 8/4/2020) Filed In Associated Cases: 1:20-cv-05770-JMF, 1:20-cv-05781-JMF (nb) (Entered: 08/04/2020)
		* * * * *
8/5/20	58	LETTER MOTION for Leave to File Plaintiffs' request for a statutory three-judge court pursuant to 28 U.S.C. 2284 addressed to Judge Jesse M. Furman from Matthew Colangelo dated August 5, 2020. Document filed by State of New

DATE	DOCKET NUMBER	PROCEEDINGS
		York. (Colangelo, Matthew) (Entered: 08/05/2020)
		* * * * *
8/6/20	62	AMENDED COMPLAINT amending 1 Complaint against Bureau of the Census, Steven Dillingham, Wilbur L. Ross Jr., Donald J. Trump, United States Department of Commerce. Document filed by American-Arab Anti-Discrimination Committee, Make the Road New York, Casa, CASA, ADC Research Institute, New York Immigration Coalition. Related document: 1 Complaint. (Ho, Dale) (Entered: 08/06/2020)
		* * * * *
8/6/20	65	LETTER RESPONSE to Motion addressed to Judge Jesse M. Furman from AUSA Allison Rovner dated August 6, 2020 re: 58 LETTER MOTION for Leave to File Plaintiffs' request for a statutory three-judge court pursuant to 28 U.S.C. 2284 addressed to Judge Jesse M. Furman from Matthew Colangelo dated August 5, 2020. Document filed by Bureau of the

DATE	DOCKET NUMBER	PROCEEDINGS
		Census, Steven Dillingham, Wilbur L. Ross Jr., Donald J. Trump, United States Department of Commerce. (Rovner, Allison) (Entered: 08/06/2020)
		* * * * *
8/7/20	<u>68</u>	REQUEST TO THE CHIEF JUDGE OF THE U.S. COURT OF APPEALS FOR THE SECOND CIRCUIT FOR APPOINTMENT OF A THREE-JUDGE PANEL PURSUANT TO 28 U.S.C. § 2248(b) granting <u>58</u> Letter Motion for Leave to File Document. Plaintiffs request is GRANTED, substantially for the two reasons set forth in their letter-motion. Accordingly, and substantially for the reasons set forth in Plaintiffs letter-motion, the Court respectfully requests that the Chief Judge of the United States Court of Appeals for the Second Circuit promptly appoint a three-judge panel to preside over the claims presented by this litigation. Should the Chief Judge of the Second Circuit need any additional information or have any inquiries, this Court is available any time. Respectfully Submitted.

DATE	DOCKET NUMBER	PROCEEDINGS
		(Signed by Judge Jesse M. Furman on 8/7/20) (yv) Transmission to Appeals Clerk. Transmission to Office of the Clerk of Court for processing. (Entered: 08/07/2020)
		* * * * *
8/7/20	<u>74</u>	MOTION for Partial Summary Judgment *[PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT OR PRELIMINARY INJUNCTION]*. Document filed by ADC Research Institute, American-Arab Anti-Discrimination Committee, CASA, City and County of San Francisco, City of Central Falls, City of Chicago, City of Columbus, City of New York, City of Philadelphia, City of Phoenix, City of Pittsburgh, City of Providence, City of Seattle, Commonwealth of Massachusetts, Commonwealth of Pennsylvania, Commonwealth of Virginia, County of Cameron, County of El Paso, County of Hidalgo, County of Monterey, District of Columbia, FIEL Houston Inc, Howard County, Make the Road New York, Casa, New York Immigration Coalition, State of Colorado,

DATE	DOCKET NUMBER	PROCEEDINGS
		State of Connecticut, State of Delaware, State of Hawaii, State of Illinois, State of Maine, State of Maryland, State of Michigan, State of Minnesota, State of Nevada, State of New Jersey, State of New Mexico, State of New York, State of North Carolina, State of Oregon, State of Rhode Island, State of Vermont, State of Washington, State of Wisconsin, United States Conference of Mayors. (Colangelo, Matthew) (Entered: 08/07/2020)
8/7/20	75	RULE 56.1 STATEMENT. Document filed by ADC Research Institute, American-Arab Anti-Discrimination Committee, CASA, City and County of San Francisco, City of Central Falls, City of Chicago, City of Columbus, City of New York, City of Philadelphia, City of Phoenix, City of Pittsburgh, City of Providence, City of Seattle, Commonwealth of Massachusetts, Commonwealth of Pennsylvania, Commonwealth of Virginia, County of Cameron, County of El Paso, County of Hidalgo, County of Monterey, District of Columbia, FIEL Houston Inc, Howard County, Make the Road

DATE	DOCKET NUMBER	PROCEEDINGS
		New York, Casa, New York Immigration Coalition, State of Colorado, State of Connecticut, State of Delaware, State of Hawaii, State of Illinois, State of Maine, State of Maryland, State of Michigan, State of Minnesota, State of Nevada, State of New Jersey, State of New Mexico, State of New York, State of North Carolina, State of Oregon, State of Rhode Island, State of Vermont, State of Washington, State of Wisconsin, United States Conference of Mayors. (Colangelo, Matthew) (Entered: 08/07/2020)
8/7/20	76	DECLARATION of Matthew Colangelo in Support re: 74 MOTION for Partial Summary Judgment *[PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT OR PRELIMINARY INJUNCTION]*. Document filed by ADC Research Institute, American-Arab Anti-Discrimination Committee, CASA, City and County of San Francisco, City of Central Falls, City of Chicago, City of Columbus, City of New York, City of Philadelphia, City of Phoenix, City of Pittsburgh, City of Providence, City of

DATE	DOCKET NUMBER	PROCEEDINGS
		Seattle, Commonwealth of Massachusetts, Commonwealth of Pennsylvania, Commonwealth of Virginia, County of Cameron, County of El Paso, County of Hidalgo, County of Monterey, District of Columbia, FIEL Houston Inc, Howard County, Make the Road New York, Casa, New York Immigration Coalition, State of Colorado, State of Connecticut, State of Delaware, State of Hawaii, State of Illinois, State of Maine, State of Maryland, State of Michigan, State of Minnesota, State of Nevada, State of New Jersey, State of New Mexico, State of New York, State of North Carolina, State of Oregon, State of Rhode Island, State of Vermont, State of Washington, State of Wisconsin, United States Conference of Mayors. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3, # 4 Exhibit 4, # 5 Exhibit 5, # 6 Exhibit 6, # 7 Exhibit 7, # 8 Exhibit 8, # 9 Exhibit 9, # 10 Exhibit 10, # 11 Exhibit 11, # 12 Exhibit 12, # 13 Exhibit 13, # 14 Exhibit 14, # 15 Exhibit 15, # 16 Exhibit 16, # 17 Exhibit 17, # 18 Exhibit 18, # 19 Exhibit 19, # 20

DATE	DOCKET NUMBER	PROCEEDINGS
		Exhibit 20, # 21 Exhibit 21, # 22 Exhibit 22, # 23 Exhibit 23, # 24 Exhibit 24, # 25 Exhibit 25, # 26 Exhibit 26, # 27 Exhibit 27, # 28 Exhibit 28, # 29 Exhibit 29, # 30 Exhibit 30, # 31 Exhibit 31, # 32 Exhibit 32, # 33 Exhibit 33, # 34 Exhibit 34, # 35 Exhibit 35, # 36 Exhibit 36, # 37 Exhibit 37, # 38 Exhibit 38, # 39 Exhibit 39, # 40 Exhibit 40, # 41 Exhibit 41, # 41 Exhibit 42, # 43 Exhibit 43, # 44 Exhibit 44, # 45 Exhibit 45, # 46 Exhibit 46, # 47 Exhibit 47, # 48 Exhibit 48, # 49 Exhibit 49, # 50 Exhibit 50, # 51 Exhibit 51, # 52 Exhibit 52, # 53 Exhibit 53, # 54 Exhibit 54, # 55 Exhibit 55, # 56 Exhibit 56, # 57 Exhibit 57, # 58 Exhibit 58, # 59 Exhibit 59). (Colangelo, Matthew) (Entered: 08/07/2020)
8/7/20	77	MEMORANDUM OF LAW in Support re: 74 MOTION for Partial Summary Judgment *[PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT OR PRELIMINARY INJUNCTION]*. Document filed by ADC Research Institute, American-Arab Anti-Discrimination Committee, CASA, City and County of San

DATE	DOCKET NUMBER	PROCEEDINGS
		Francisco, City of Central Falls, City of Chicago, City of Columbus, City of New York, City of Philadelphia, City of Phoenix, City of Pittsburgh, City of Providence, City of Seattle, Commonwealth of Massachusetts, Commonwealth of Pennsylvania, Commonwealth of Virginia, County of Cameron, County of El Paso, County of Hidalgo, County of Monterey, District of Columbia, FIEL Houston Inc, Howard County, Make the Road New York, Casa, New York Immigration Coalition, State of Colorado, State of Connecticut, State of Delaware, State of Hawaii, State of Illinois, State of Maine, State of Maryland, State of Michigan, State of Minnesota, State of Nevada, State of New Jersey, State of New Mexico, State of New York, State of North Carolina, State of Oregon, State of Rhode Island, State of Vermont, State of Washington, State of Wisconsin, United States Conference of Mayors. (Colangelo, Matthew) (Entered: 08/07/2020)

* * * * *

DATE	DOCKET NUMBER	PROCEEDINGS
8/10/20	82	ORDER of USCA (Certified Copy) USCA Case Number 20-2630. ROBERT A. KATZMANN, Chief Circuit Judge: Having received a 68 request from United States District Judge Jesse M. Furman to appoint a three-judge panel to hear the above-mentioned matter pursuant to 28 U.S.C. § 2284(b)(1), I hereby designate United States Circuit Judge Richard C. Wesley and United States Circuit Judge Peter W. Hall to serve as members of the Court to hear and determine the action. Robert A. Katzmann, Chief Circuit Judge. Catherine O'Hagan Wolfe, Clerk USCA for the Second Circuit. Certified: 08/10/2020 (nd) Modified on 8/10/2020 (nd). (Entered: 08/10/2020)
8/10/20	83	MANDATE of USCA (Certified Copy) USCA Case Number 20-2630. ROBERT A. KATZMANN, Chief Circuit Judge: Having received a 68 request from United States District Judge Jesse M. Furman to appoint a three-judge panel to hear the above-mentioned matter pursuant to 28 U.S.C. § 2284(b)(1), I hereby designate United States Circuit

DATE	DOCKET NUMBER	PROCEEDINGS
		Judge Richard C. Wesley and United States Circuit Judge Peter W. Hall to serve as members of the Court to hear and determine the action. Robert A. Katzmann, Chief Circuit Judge. Catherine O'Hagan Wolfe, Clerk USCA for the Second Circuit. Issued As Mandate: 08/10/2020 (nd) Modified on 8/10/2020 (nd). (Entered: 08/10/2020)

* * * * *

| 8/12/20 | 86 | ORDER. On August 10, 2020, Chief Circuit Judge Robert A. Katzmann appointed a three-judge panel to hear this matter pursuant to 28 U.S.C. § 2284(b)(1). See ECF Nos. 82-83. Section 2284(b)(3) provides, in relevant part, that [a] single judge may conduct all proceedings except the trial, and with specified exceptions not yet relevant here enter all orders permitted by the rules of civil procedure. Nevertheless, mindful that the three-judge requirement in 28 U.S.C. § 2284 is jurisdictional, Kalson v. Paterson, 542 F.3d 281, 287 (2d Cir. 2008), and for avoidance of any doubt, the Court hereby adopts the orders |

DATE	DOCKET NUMBER	PROCEEDINGS
		previously entered in this matter, including but not limited to the scheduling order of August 5, 2020, see ECF No. 53, and the consolidation order of August 4, 2020, see ECF No. 43. Further, the Court grants to Judge Furman authority to act on the Court's behalf with respect to any pro hac vice motions filed in this matter. SO ORDERED. (Signed by Judge Jesse M. Furman, United States Circuit Judge Richard C. Wesley and United States Circuit Judge Peter W. Hall on 8/12/20) (yv) (Entered: 08/12/2020)
		* * * * *
8/14/20	106	MOTION for Leave to File Brief of The U.S. House of Representatives as Amicus Curiae in Support of Plaintiffs/*Notice of Unopposed Motion for Leave to File Brief*. Document filed by U.S. House of Representatives. (Letter, Douglas) (Entered: 08/14/2020)
8/14/20	107	MEMORANDUM OF LAW in Support re: 106 MOTION for Leave to File Brief of The U.S. House of Representatives as Amicus Curiae in Support of Plaintiffs/ *Notice of Unopposed Motion for*

DATE	DOCKET NUMBER	PROCEEDINGS
		Leave to File Brief. Document filed by U.S. House of Representatives. (Attachments: # 1 Exhibit (Proposed) Brief of The U.S. House of Representatives as Amicus Curiae in Support of Plaintiffs). (Letter, Douglas) (Entered: 08/14/2020)
8/14/20	108	CONSENT MOTION for Leave to File Amici Curiae Brief *of The League of Women Voters of the United States, The League of Women Voters of Texas, The League of Women Voters of Florida, and The League of Women Voters of California.* Document filed by The League of Women Voters of the United States, The League of Women Voters of Texas, The League of Women Voters of Florida, The League of Women Voters of California. (Attachments: # 1 Proposed Amici Curiae Brief). (Sills, Robert) (Entered: 08/14/2020)
8/14/20	109	MEMORANDUM OF LAW in Support re: 108 CONSENT MOTION for Leave to File Amici Curiae Brief *of The League of Women Voters of the United States, The League of Women Voters of*

DATE	DOCKET NUMBER	PROCEEDINGS
		Texas, The League of Women Voters of Florida, and The League of Women Voters of California. Document filed by The League of Women Voters of California, The League of Women Voters of Florida, The League of Women Voters of Texas, The League of Women Voters of the United States. (Sills, Robert) (Entered: 08/14/2020)
8/14/20	110	LETTER MOTION to File Amicus Brief addressed to Judge Jesse M. Furman from Antony L. Ryan dated August 14, 2020. Document filed by Margo Anderson, Andrew Beveridge, Rachel Buff, Libby Garland, J. Morgan Kousser, Erika Lee, Natalie Molina, Steven Ruggles. (Attachments: # 1 Proposed Brief). (Ryan, Antony) (Entered: 08/14/2020)
		* * * * *
8/19/20	117	MOTION to Dismiss. Document filed by Bureau of the Census, Steven Dillingham, Wilbur L. Ross Jr., Donald J. Trump, United States Department of Commerce. Responses due by 8/25/2020 Return Date set for 8/28/2020 at

DATE	DOCKET NUMBER	PROCEEDINGS
		11:59 PM. (Davis, Elliott) (Entered: 08/19/2020)
8/19/20	118	MEMORANDUM OF LAW in Opposition re: 74 MOTION for Partial Summary Judgment *[PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT OR PRELIMINARY INJUNCTION].*, 117 MOTION to Dismiss. Document filed by Bureau of the Census, Steven Dillingham, Wilbur L. Ross Jr., Donald J. Trump, United States Department of Commerce. (Davis, Elliott) (Entered: 08/19/2020)
8/19/20	119	DECLARATION of John M. Abowd in Opposition re: 74 MOTION for Partial Summary Judgment *[PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT OR PRELIMINARY INJUNCTION].*, 117 MOTION to Dismiss. Document filed by Bureau of the Census, Steven Dillingham, Wilbur L. Ross Jr., Donald J. Trump, United States Department of Commerce. (Attachments: # 1 Supplement John M. Abowd Professional Resume). (Davis, Elliott) (Entered: 08/19/2020)

DATE	DOCKET NUMBER	PROCEEDINGS
8/19/20	120	DECLARATION of Albert E. Fontenot, Jr. in Opposition re: 74 MOTION for Partial Summary Judgment *[PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT OR PRELIMINARY INJUNCTION].*, 117 MOTION to Dismiss. Document filed by Bureau of the Census, Steven Dillingham, Wilbur L. Ross Jr., Donald J. Trump, United States Department of Commerce. (Davis, Elliott) (Entered: 08/19/2020)
8/19/20	121	COUNTER STATEMENT TO 75 Rule 56.1 Statement. Document filed by Bureau of the Census, Steven Dillingham, Wilbur L. Ross Jr., Donald J. Trump, United States Department of Commerce. (Davis, Elliott) (Entered: 08/19/2020)

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DATE	DOCKET NUMBER	PROCEEDINGS
8/20/20	124	LETTER MOTION to File Amicus Brief addressed to Judge Jesse M. Furman from Gina M. D'Andrea dated 08/20/2020. Document filed by Immigration Reform Law Institute. (Attachments: # 1 Proposed Brief). (D'Andrea, Gina) (Entered: 08/20/2020)

DATE	DOCKET NUMBER	PROCEEDINGS
		* * * * *
8/25/20	149	DECLARATION of Elena Goldstein in Support re: 74 MOTION for Partial Summary Judgment *[PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT OR PRELIMINARY INJUNCTION].* Document filed by ADC Research Institute, American-Arab Anti-Discrimination Committee, CASA, City and County of San Francisco, City of Central Falls, City of Chicago, City of Columbus, City of New York, City of Philadelphia, City of Phoenix, City of Pittsburgh, City of Providence, City of Seattle, Commonwealth of Massachusetts, Commonwealth of Pennsylvania, Commonwealth of Virginia, County of Cameron, County of El Paso, County of Hidalgo, County of Monterey, District of Columbia, FIEL Houston Inc, Howard County, Make the Road New York, Casa, New York Immigration Coalition, State of Colorado, State of Connecticut, State of Delaware, State of Hawaii, State of Illinois, State of Maine, State of Maryland, State of Michigan, State

DATE	DOCKET NUMBER	PROCEEDINGS
		of Minnesota, State of Nevada, State of New Jersey, State of New Mexico, State of New York, State of North Carolina, State of Oregon, State of Rhode Island, State of Vermont, State of Washington, State of Wisconsin, United States Conference of Mayors. (Attachments: # 1 Exhibit 60 (Awawdeh Declaration), # 2 Exhibit 61 (Mendelsohn Declaration), # 3 Exhibit 62 (Supplemental Espinosa Declaration), # 4 Exhibit 63 (Supplemental Oshiro Declaration), # 5 Exhibit 64 (Supplemental Seon Declaration), # 6 Exhibit 65 (Barreto Expert Reply Declaration), # 7 Exhibit 66 (Thompson Expert Reply Declaration)). (Goldstein, Elena) (Entered: 08/25/2020)
8/25/20	150	MEMORANDUM OF LAW in Opposition re: 117 MOTION to Dismiss. *Plaintiffs' Consolidated Memorandum of Law in Opposition to Defendants' Motion to Dismiss and Reply in Support of Plaintiffs' Motion for Partial Summary Judgment or Preliminary Injunction.* Document filed by ADC Research Institute, American-Arab Anti- Discrimination Committee, CASA, City and

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		County of San Francisco, City of Central Falls, City of Chicago, City of Columbus, City of New York, City of Philadelphia, City of Phoenix, City of Pittsburgh, City of Providence, City of Seattle, Commonwealth of Massachusetts, Commonwealth of Pennsylvania, Commonwealth of Virginia, County of Cameron, County of El Paso, County of Hidalgo, County of Monterey, District of Columbia, FIEL Houston Inc, Howard County, Make the Road New York, Casa, New York Immigration Coalition, State of Colorado, State of Connecticut, State of Delaware, State of Hawaii, State of Illinois, State of Maine, State of Maryland, State of Michigan, State of Minnesota, State of Nevada, State of New Jersey, State of New Mexico, State of New York, State of North Carolina, State of Oregon, State of Rhode Island, State of Vermont, State of Washington, State of Wisconsin, United States Conference of Mayors. (Colangelo, Matthew) (Entered: 08/25/2020)

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DATE	DOCKET NUMBER	PROCEEDINGS
8/28/20	<u>154</u>	REPLY MEMORANDUM OF LAW in Support re: (117 in 1:20-cv-05770-JMF) MOTION to Dismiss. *(Defendants' Reply in Support of Motion to Dismiss).* Document filed by Bureau of the Census, Steven Dillingham, Wilbur L. Ross, Jr., Donald J. Trump, United States Department of Commerce, Bureau of the Census, Steven Dillingham, Wilbur L. Ross Jr., Donald J. Trump, United States Department of Commerce. Filed In Associated Cases: 1:20-cv-05770-JMF, 1:20-cv-05781-JMF. (Mauler, Daniel) (Entered: 08/28/2020)

*   *   *   *   *

8/31/20	<u>158</u>	ORDER. At the oral argument scheduled for September 3, 2020 at 10:00 a.m., the parties should be prepared to address the following topics and questions as further set forth in this Order. Each side should anticipate having 20-30 minutes for its oral argument. Only one lawyer from each side will be permitted to speak on a given issue. SO ORDERED. (Signed by United States Circuit Judge Richard C. Wesley, United

DATE	DOCKET NUMBER	PROCEEDINGS
		States Circuit Judge Peter W. Hall and Judge Jesse M. Furman on 8/31/20) (yv) (Entered: 08/31/2020)
		* * * * *
9/10/20	164	OPINION AND ORDER re: 74 MOTION for Partial Summary Judgment *[PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT OR PRELIMINARY INJUNCTION].* filed by County of El Paso, City of Central Falls, City of Seattle, State of Rhode Island, State of Minnesota, United States Conference of Mayors, State of Michigan, City of Phoenix, State of Vermont, City of Philadelphia, State of New Jersey, State of Illinois, Commonwealth of Virginia, ADC Research Institute, City of Providence, New York Immigration Coalition, State of North Carolina, State of Maine, State of Delaware, Howard County, City of Pittsburgh, CASA, City of New York, State of Maryland, FIEL Houston Inc, Make the Road New York, Casa, State of Hawaii, Commonwealth of Pennsylvania, State of Connecticut, Commonwealth of Massachusetts,

DATE	DOCKET NUMBER	PROCEEDINGS
		State of Nevada, County of Monterey, County of Hidalgo, State of Oregon, City of Columbus, District of Columbia, County of Cameron, American-Arab Anti-Discrimination Committee, State of Wisconsin, City and County of San Francisco, State of New Mexico, State of New York, State of Colorado, State of Washington, City of Chicago, 117 MOTION to Dismiss. filed by Donald J. Trump, Steven Dillingham, Bureau of the Census, Wilbur L. Ross Jr., United States Department of Commerce. There is no dispute that the President has "accustomed supervisory powers over his executive officers," Franklin, 505 U.S. at 800, and thus retains some discretion in the conduct of the decennial census and resulting apportionment calculation. Nevertheless, where the authority of the President (or other members of the Executive Branch) to act is derived from statutes passed by Congress, the President must act in accordance with, and within the boundaries of, the authority that Congress has granted. For the reasons discussed above, we conclude that

DATE	DOCKET NUMBER	PROCEEDINGS
		the President did not do so here and that the Presidential Memorandum is an ultra vires violation of Congress's delegation of its constitutional responsibility to count the whole number of persons in each State and to apportion members of the House of Representatives among the States according to their respective numbers under 2 U.S.C. § 2a and 13 U.S.C. § 141. Accordingly, Plaintiffs' motion for summary judgment with respect to their statutory ultra vires claims is GRANTED, Defendants (other than the President) are ENJOINED as set forth above, and the Presidential Memorandum is DECLARED unlawful. We need not and do not reach the merits of Plaintiffs' other claims and need not address their request, in the alternative, for a preliminary injunction. Finally, Defendants' motion to dismiss for lack of jurisdiction is DENIED and their motion to dismiss for failure to state a claim is DENIED as moot. The Clerk of Court is directed to terminate ECF Nos. 74 and 117 and to close this case. SO ORDERED.

DATE	DOCKET NUMBER	PROCEEDINGS
		(Signed by United States Circuit Judge Richard C. Wesley, United States Circuit Judge Peter W. Hall and Judge Jesse M. Furman on 9/10/20) (yv) Transmission to Orders and Judgments Clerk for processing. (Main Document 164 replaced on 9/14/2020) (ab). (Entered: 09/10/2020)
9/10/20	165	FINAL JUDGMENT AND PERMANENT INJUNCTION: Final judgment is entered for Plaintiffs and against Defendants on Plaintiffs' claims arising from an ultra vires violation of 2 U.S.C. § 2a and 13 U.S.C. § 141 (namely, the Fifth Claim for Relief in the Governmental Plaintiffs' Amended Complaint and Count Two in the NGO Plaintiffs' Amended Complaint). The July 21, 2020 Memorandum on Excluding Illegal Aliens from the Apportionment Base Following the 2020 Census (the "Presidential Memorandum"), announcing that it is the policy of the United States to exclude from the apportionment base aliens who are not in a lawful immigration status, is DECLARED unlawful as an ultra vires violation of Congress's delegation of authority to conduct the

DATE	DOCKET NUMBER	PROCEEDINGS
		decennial census and apportionment calculation pursuant to 2 U.S.C. § 2a and 13 U.S.C. § 141. The Secretary of Commerce in his official capacity, the Director of the Census Bureau in his official capacity, the U.S. Department of Commerce, and the U.S. Census Bureau, and any successors to those offices, together with their agents, servants, employees, attorneys, and other persons who are in active concert or participation with the foregoing, see Fed. R. Civ. P. 65(d)(2), are PERMANENTLY ENJOINED from including in the Secretary's report to the President pursuant to Section 141(b) any information permitting the President to exercise the President's discretion to carry out the policy set forth in section 2 of the Presidential Memorandum that is, any information concerning the number of aliens in each State who are not in a lawful immigration status under the Immigration and Nationality Act. SO ORDERED. (Signed by Judge Richard C. Wesley, Judge Peter W. Hall and Judge Jesse M. Fur-

DATE	DOCKET NUMBER	PROCEEDINGS
		man on 9/10/2020) Filed In Associated Cases: 1:20-cv- 05770-JMF, 1:20-cv-05781-JMF (kv) (Entered: 09/10/2020)
9/14/20	<u>166</u>	ERRATA ORDER: The Court has substituted a new version of its September 10, 2020 Opinion and Order of at 20-CV-5770, ECF No. 164, to correct the following three typographical errors . . . (See ORDER.) (Signed by Judges Jesse M. Furman, Richard C. Wesley, and Peter W. Hall on 9/14/2020) Filed In Associated Cases: 1:20-cv-05770-JMF, 1:20-cv-05781-JMF (ab) (Entered: 09/14/2020)
		* * * * *
9/16/20	<u>170</u>	CORRECTED NOTICE OF APPEAL re: (61 in 1:20-cv-05781-JMF, 168 in 1:20-cv-05770-JMF) Notice of Appeal, (164 in 1:20-cv-05770-JMF) Memorandum & Opinion (165 in 1:20-cv-05770-JMF, 55 in 1:20-cv-05781-JMF) Judgment. Document filed by Bureau of the Census, Steven Dillingham, Wilbur L. Ross, Jr., Donald J. Trump, United States Department of Commerce, Bureau of the Census, Steven Dillingham,

DATE	DOCKET NUMBER	PROCEEDINGS
		Wilbur L. Ross Jr., Donald J. Trump, United States Department of Commerce. Filed In Associated Cases: 1:20-cv-05770-JMF, 1:20-cv-05781-JMF. (Mauler, Daniel) (Entered: 09/16/2020)
9/16/20	171	MOTION to Stay re: (165 in 1:20-cv-05770-JMF, 55 in 1:20-cv-05781-JMF) Judgment *(Motion for Stay of Judgment Pending Appeal)*. Document filed by Bureau of the Census, Steven Dillingham, Wilbur L. Ross, Jr., Donald J. Trump, United States Department of Commerce, Bureau of the Census, Steven Dillingham, Wilbur L. Ross Jr., Donald J. Trump, United States Department of Commerce. Filed In Associated Cases: 1:20-cv-05770-JMF, 1:20-cv-05781-JMF. (Mauler, Daniel) (Entered: 09/16/2020)
9/16/20	172	MEMORANDUM OF LAW in Support re: (64 in 1:20-cv-05781-JMF, 171 in 1:20-cv-05770-JMF) MOTION to Stay re: (165 in 1:20-cv-05770-JMF, 55 in 1:20-cv-05781-JMF) Judgment *(Motion for Stay of Judgment*

DATE	DOCKET NUMBER	PROCEEDINGS
		Pending Appeal). Document filed by Bureau of the Census, Steven Dillingham, Wilbur L. Ross, Jr., Donald J. Trump, United States Department of Commerce, Bureau of the Census, Steven Dillingham, Wilbur L. Ross Jr., Donald J. Trump, United States Department of Commerce. Filed In Associated Cases: 1:20-cv-05770-JMF, 1:20-cv-05781-JMF. (Mauler, Daniel) (Entered: 09/16/2020)
		* * * * *
9/18/20	174	NOTICE OF APPEAL TO THE SUPREME COURT from (164 in 1:20-cv-05770-JMF) Memorandum & Opinion (165 in 1:20-cv-05770-JMF, 55 in 1:20-cv-05781-JMF) Judgment. Document filed by Bureau of the Census, Steven Dillingham, Wilbur L. Ross, Jr., Donald J. Trump, United States Department of Commerce, Bureau of the Census, Steven Dillingham, Wilbur L. Ross Jr., Donald J. Trump, United States Department of Commerce. Filed In Associated Cases: 1:20-cv-05770-JMF, 1:20-cv-05781-

DATE	DOCKET NUMBER	PROCEEDINGS
		JMF.(Mauler, Daniel) (Entered: 09/18/2020)
		* * * * *
9/23/20	176	MEMORANDUM OF LAW in Opposition re: 171 MOTION to Stay re: (165 in 1:20-cv-05770-JMF, 55 in 1:20-cv-05781-JMF) Judgment *(Motion for Stay of Judgment Pending Appeal)*. Document filed by ADC Research Institute, American-Arab Anti-Discrimination Committee, CASA, Make the Road New York, Casa, New York Immigration Coalition. (Ho, Dale) (Entered: 09/23/2020)
		* * * * *
9/29/20	180	OPINION AND ORDER re: 171 MOTION to Stay re: (165 in 1:20-cv-05770-JMF, 55 in 1:20-cv-05781-JMF) Judgment *(Motion for Stay of Judgment Pending Appeal)*. filed by Wilbur L. Ross, Jr., United States Department of Commerce, Wilbur L. Ross Jr., Bureau of the Census, Donald J. Trump, Steven Dillingham. In sum, Defendants have not come close to carrying "the[ir] burden of showing that the circumstances

DATE	DOCKET NUMBER	PROCEEDINGS
		justify an exercise" of our discretion to grant a stay. Nken, 556 U.S. at 433-34. They fail to show that they are likely to succeed on the merits or that a stay would be in the public interest. And more significantly, in the face of their own prior admissions that a final resolution of these cases in 2021 would cause no harm because the President could revise his apportionment statement to Congress, Defendants' arguments about irreparable harm and urgency are frivolous. Accordingly, Defendants' motion for a stay is DENIED. The Clerk of Court is directed to terminate ECF No. 171. SO ORDERED. (Signed by Judge Jesse M. Furman on 9/29/2020) (ks) (Entered: 09/29/2020)
10/16/20	181	ORDER of USCA (Certified Copy) as to (63 in 1:20-cv-05781-JMF, 170 in 1:20-cv-05770-JMF) Corrected Notice of Appeal, filed by Wilbur L. Ross, Jr., United States Department of Commerce, Wilbur L. Ross Jr., Bureau of the Census, Donald J. Trump, Steven Dillingham. USCA Case Number 20-3142. The Government has

DATE	DOCKET NUMBER	PROCEEDINGS
		appealed to this Court and to the Supreme Court to challenge the judgment and permanent injunction issued on September 10, 2020 by the three-judge district court. The Government now requests that the Court hold this appeal in abeyance pending the Supreme Court's resolution of New York v. Trump, Supreme Court Docket No. 20-366. Both sides agree that this appeal should be held in abeyance. IT IS HEREBY ORDERED that the motion is GRANTED. If the Supreme Court determines that this Court is the appropriate forum for appellate review of the district court's judgment and permanent injunction, the parties shall immediately alert this Court. Catherine O'Hagan Wolfe, Clerk USCA for the Second Circuit. Certified: 10/16/2020. Filed In Associated Cases: 1:20-cv-05770-JMF, 1:20-cv-05781-JMF. (nd) (Entered: 10/16/2020)

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UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK
(FOLEY SQUARE)

————

Case No. 1:20-cv-05781-JMF

NEW YORK IMMIGRATION COALITION; CASA;
AMERICAN-ARAB ANTI-DISCRIMINATION COMMITTEE;
ADC RESEARCH INSTITUTE; MAKE THE ROAD NEW
YORK, CASA; FIEL HOUSTON INC., PLAINTIFFS

v.

DONALD J. TRUMP, IN HIS OFFICIAL CAPACITY AS
PRESIDENT OF THE UNITED STATES; UNITED STATES
DEPARTMENT OF COMMERCE; WILBUR L. ROSS, IN
HIS OFFICIAL CAPACITY AS SECRETARY OF
COMMERCE; BUREAU OF THE CENSUS, AN AGENCY
WITHIN THE UNITED STATES DEPARTMENT OF COM-
MERCE; STEVEN DILLINGHAM, IN HIS OFFICIAL
CAPACITY AS DIRECTOR OF THE UNITED STATES
CENSUS BUREAU, DEFENDANTS

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DOCKET ENTRIES

DATE	DOCKET NUMBER	PROCEEDINGS
7/24/20	1	COMPLAINT against Stephen Dillingham, Wilbur Ross, Donald J. Trump, United States Bureau of the Census, United States Department of Commerce. (Filing Fee $400.00, Receipt Number ANYSDC-20842473) Document filed by FIEL Houston Inc, American-

DATE	DOCKET NUMBER	PROCEEDINGS
		Arab Anti-Discrimination Committee, CASA, ADC Research Institute, The New York Immigration Coalition, Make The Road - New York. (Freedman, John) (Entered: 07/24/2020)
		* * * * *
9/16/20	63	CORRECTED NOTICE OF APPEAL re: (61 in 1:20-cv-05781-JMF, 168 in 1:20-cv-05770-JMF) Notice of Appeal (164 in 1:20-cv-05770-JMF) Memorandum & Opinion (165 in 1:20-cv-05770-JMF, 55 in 1:20-cv-05781-JMF) Judgment. Document filed by Bureau of the Census, Steven Dillingham, Wilbur L. Ross, Jr., Donald J. Trump, United States Department of Commerce, Bureau of the Census, Steven Dillingham, Wilbur L. Ross Jr., Donald J. Trump, United States Department of Commerce. Filed In Associated Cases: 1:20-cv-05770-JMF, 1:20-cv-05781-JMF. (Mauler, Daniel) I (Entered: 09/16/2020)
		* * * * *
9/18/20	67	NOTICE OF APPEAL TO THE SUPREME COURT from (164 in

DATE	DOCKET NUMBER	PROCEEDINGS
		1:20-cv-05770-JMF) Memorandum & Opinion (165 in 1:20-cv-05770-JMF, 55 in 1:20-cv-05781-JMF) Judgment. Document filed by Bureau of the Census, Steven Dillingham, Wilbur L. Ross, Jr., Donald J. Trump, United States Department of Commerce, Bureau of the Census, Steven Dillingham, Wilbur L. Ross Jr., Donald J. Trump, United States Department of Commerce. Filed In Associated Cases: 1:20-cv-05770-JMF, 1:20-cv-05781-JMF. (Mauler, Daniel) (Entered: 09/18/2020)
		* * * * *
10/16/20	69	ORDER of USCA (Certified Copy) as to (63 in 1:20-cv-05781-JMF, 170 in 1:20-cv-05770-JMF) Corrected Notice of Appeal, filed by Wilbur L. Ross, Jr., United States Department of Commerce, Wilbur L. Ross Jr., Bureau of the Census, Donald J. Trump, Steven Dillingham. USCA Case Number 20-3142. The Government has appealed to this Court and to the Supreme Court to challenge the judgment and permanent injunction issued on September 10,

DATE	DOCKET NUMBER	PROCEEDINGS
		2020 by the three-judge district court. The Government now requests that the Court hold this appeal in abeyance pending the Supreme Court's resolution of New York v. Trump, Supreme Court Docket No. 20-366. Both sides agree that this appeal should be held in abeyance. IT IS HEREBY ORDERED that the motion is GRANTED. If the Supreme Court determines that this Court is the appropriate forum for appellate review of the district court's judgment and permanent injunction, the parties shall immediately alert this Court. Catherine O'Hagan Wolfe, Clerk USCA for the Second Circuit. Certified: 10/16/2020. Filed In Associated Cases: 1:20-cv-05770-JMF, 1:20-cv-05781-JMF. (nd) (Entered: 10/16/2020)

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

————————

20-CV-5770 (JMF)

STATE OF NEW YORK, ET AL., PLAINTIFFS

v.

DONALD J. TRUMP, IN HIS OFFICIAL CAPACITY
AS PRESIDENT OF THE UNITED STATES, ET AL.,
DEFENDANTS

————————

20-CV-5781 (JMF)

NEW YORK IMMIGRATION COALITION, ET AL.,
PLAINTIFFS

v.

DONALD J. TRUMP, IN HIS OFFICIAL CAPACITY
AS PRESIDENT OF THE UNITED STATES, ET AL.,
DEFENDANTS

————————

Aug. 7, 2020

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**PLAINTIFFS' LOCAL RULE 56.1 STATEMENT OF
MATERIAL FACTS AS TO WHICH TEHRE IS NO
GENUINE ISSUE TO BE TRIED**

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Pursuant to Local Civil Rule 56.1, Plaintiffs the State of New York et al. and the New York Immigration Coalition et al. submit the following statement of material facts as to which there is no genuine issue to be tried.

EXCLUDING UNDOCUMENTED IMMIGRANTS FROM THE APPORTIONMENT BASE AFTER THE 2020 CENSUS WILL DEPRIVE CALIFORNIA AND/OR TEXAS OF CONGRESSIONAL SEATS

1.   Since 1790, no decennial census has excluded any category of persons who usually reside in the United States on their basis of their citizenship or immigration status for purposes of apportioning congressional representation. *See, e.g.*, *2020 Decennial Census Residence Rule and Residence Situations*, 80 Fed. Reg. 28,950, 28,950, (2015); Thompson Decl. ¶ 8 (Ex. 57).[1]

2.   Millions of undocumented immigrants live in the United States and many have lived in the United States for many years. *See* Office of Immigration Statistics, U.S. Dep't of Homeland Sec., *Population Estimates: Illegal Alien Population Residing in the United States: January 2015* at 2 (Dec. 2018), https://www.dhs.gov/sites/default/files/publications/18_1214_PLCY_pops-est-report.pdf.

3.   California and Texas are consistently the two states with the largest populations of undocumented residents. *Id.* at 4-5.

4.   According to the Department of Homeland Security, California had 2.9 million undocumented residents and Texas had 1.9 million undocumented residents in 2015. *Id.* at 2.

5.   As of the most recent Congressional reapportionment following the 2010 Decennial Census, the average population of each U.S. House district is 710,767

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[1] Citations to "Ex. __" are to the exhibits to the accompanying Declaration of Matthew Colangelo dated August 7, 2020.

people. *See* Kristin D. Burnett, *Congressional Apportionment*, U.S. Census Bureau (Nov. 2011), https://www.census.gov/prod/cen2010/briefs/c2010br-08.pdf (last visited July 30, 2020).

6. According to the United States Census Bureau, as of July 1, 2019, the population of the United States was estimated to be 328,239,523. U.S. Census Bureau, *Annual Estimates of the Resident Population for the United States, Regions, States, and Puerto Rico: Apr. 1, 2010 to July 1, 2019* (NST-EST2019-02), https://www.census.gov/data/tables/timeseries/demo/popest/2010s-state-total.html (last visited July 30, 2020).

7. If the July 1, 2019 Census Bureau estimate of the total United States population is divided by the total number of seats in Congress (435), the quotient is 754,574. *See id.*

8. The Memorandum states that "[i]ncreasing congressional representation based on the presence of aliens who are not in a lawful immigration status would also create perverse incentives encouraging violations of Federal law." *Memorandum on Excluding Illegal Aliens From the Apportionment Base Following the 2020 Census*, 85 Fed. Reg. 44,679, 44,680 (July 23, 2020) (the "Memorandum") (ECF No. 1-1).

9. The Memorandum states: "Current estimates suggest that one State is home to more than 2.2 million illegal aliens, constituting more than 6 percent of the State's entire population. Including these illegal aliens in the population of the State for the purpose of apportionment could result in the allocation of two or three more congressional seats than would otherwise be allocated." *Id.*

10. A state in which 2.2 million people represent 6 percent of the population would have a total population of more than 36 million residents.

11. According to the United States Census Bureau, as of April 1, 2010, the total population of the State of California was 37,253,956. U.S. Census Bureau, *Annual Estimates of the Resident Population for the United States, Regions, States, and Puerto Rico: Apr. 1, 2010 to July 1, 2019* (NST-EST2019-02), https://www.census.gov/data/tables/timeseries/demo/popest/2010s-state-total.html (last visited July 30, 2020).

12. According to the Census Bureau, as of July 1, 2019, the total population of the State of California was 39,512,223. *Id.*

13. The second most populous state in the United States is Texas. *Id.*

14. According to the United States Census Bureau, as of April 1, 2010, the total population of the State of Texas was 25,145,561. *Id.*

15. According to the United States Census Bureau, as of July 1, 2019, the total population of the State of Texas was 28,995,881. *Id.*

16. After California and Texas, the next most populous state is Florida, which, according to the Census Bureau, had a total population of 18,801,310 as of April 1, 2010, and an estimated total population of 21,477,737 as of July 1, 2019. *Id.*

17. Based on the Census Bureau's 2019 estimate, 2.2 million people would constitute approximately 7.6 percent of the estimated total population of Texas as of July 1, 2019. *See id.*

18.   Based on the Census Bureau's 2019 estimate, 2.2 million people would constitute over 10 percent of the estimated total population of Florida as of 2019.   *See id.*

19.   The Memorandum anticipates that excluding undocumented immigrants from the apportionment base would deprive California of at least one seat in the House of Representatives.   *See* 85 Fed. Reg. at 44,680.

20. Dr. Christopher Warshaw modeled the effects of excluding undocumented immigrants from the population count used to calculate Congressional reapportionment after the 2020 Census.   *See* Warshaw Decl. at ¶ 11 (Ex. 58).

21.   According to Dr. Warshaw, if undocumented immigrants are excluded from the apportionment basis, the probability that Texas will lose a seat in the House of Representatives is 98.3%.   *Id.* § 5.2, Tbl. 7.

22.   According to Dr. Warshaw, if undocumented immigrants are excluded from the apportionment basis, the probability that California will lose a seat in the House of Representatives is 72.1%.   *Id.*

THE POLITICAL INFLUENCE OF PLAINTIFFS CONSTITUENTS WILL BE DIMINISHED BY THE MEMORANDUM'S EXCLUSION OF UNDOCUMENTED IMMIGRANTS FROM THE APPORTIONMENT BASE

23.   Plaintiff the City and County of San Francisco, represented by and through its City Attorney, is a municipal corporation organized and existing under and by virtue of the laws of the State of California, and is a charter city and county.   Gov't Pls.' Am. Compl. ¶ 42 (ECF No. 34).

24.   Residents of the City and County of San Francisco will lose political power because of California's loss of at least one seat in the House of Representatives due to the exclusion of undocumented immigrants from the apportionment base.   *See* Warshaw Decl. § 5.2, Tbl. 7 (Ex. 58).

25.   Plaintiff Monterey County, California is a political subdivision of the State of California.   *See* Gov't Pls.' Am. Compl. ¶ 48 (ECF No. 34).

26.   Residents of the Monterey County will lose political power because of California's loss of at least one seat in the House of Representatives due to the exclusion of undocumented immigrants from the apportionment base.   *See* Warshaw Decl. § 5.2, Tbl. 7 (Ex. 58).

27.   Plaintiff Cameron County, Texas is a political subdivision of the State of Texas.   Gov't Pls.' Am. Compl. ¶ 44 (ECF No. 34).

28.   Residents of Cameron County will lose political power because of Texas' loss of at least one seat in the House of Representatives due to the exclusion of undocumented immigrants from the apportionment base. *See* Warshaw Decl. § 5.2, Tbl. 7 (Ex. 58).

29.   Plaintiff El Paso County, Texas is a political subdivision of the State of Texas.   Gov't Pls.' Am. Compl. ¶ 45 (ECF No. 34).

30.   Residents of El Paso County will lose political power because of Texas' loss of at least one seat in the House of Representatives due to the exclusion of undocumented immigrants from the apportionment base. *See* Warshaw Decl. § 5.2, Tbl. 7 (Ex. 58).

31. Plaintiff Hidalgo County, Texas is a political subdivision of the State of Texas. Gov't Pls.' Am. Compl. ¶ 46 (ECF No. 34).

32. Residents of Hidalgo County will lose political power because of Texas' loss of at least one seat in the House of Representatives due to the exclusion of undocumented immigrants from the apportionment base. *See* Warshaw Decl. § 5.2, Tbl. 7 (Ex. 58).

33. Plaintiff American-Arab Anti-Discrimination Committee ("ADC") is a membership-based not-for-profit organization. Khalaf Decl. ¶ 4 (Ex. 26).

34. ADC has several thousand dues-paying members nationwide, with members in all 50 states including California and Texas. *See New York*, 351 F. Supp. 3d at 608; Khalaf Decl. ¶ 5 (Ex. 26).

35. Dr. Souhail Toubia is a member of ADC and a resident of Orange County, California. Khalaf Decl. ¶ 17 (Ex. 26).

36. George Majeed Khoury is a member of ADC and a resident of San Diego, California. *Id.*

37. Because Dr. Toubia and Mr. Khoury reside in California, they will lose political power because of California's loss of at least one seat in the House of Representatives due to the exclusion of undocumented immigrants from the apportionment base. *See* Warshaw Decl. § 5.2, Tbl. 7 (Ex. 58).

38. George Majeed Khoury is a member of ADC and a resident of San Diego, California. Khalaf Decl. ¶ 17 (Ex. 26).

39. Because Dr. Toubia and Mr. Khoury reside in California, they will lose political power because of California's loss of at least one seat in the House of Representatives due to the exclusion of undocumented immigrants from the apportionment base. *See* Warshaw Decl. § 5.2, Tbl. 7 (Ex. 58).

40. Plaintiff FIEL Houston Inc. ("FIEL") is a membership-based not-for-profit organization based in Houston, Texas. Espinosa Decl. ¶ 2 (Ex. 18).

41. Today, FIEL has approximately 11,000 members in the greater Houston area. *Id.* ¶ 3.

42. Deyanira Palacios is a member of FIEL and a resident of Montgomery County, Texas. *Id.* ¶ 19.

43. Because Ms. Palacios resides in Texas, she will lose political power because of Texas' loss of at least one seat in the House of Representatives due to the exclusion of undocumented immigrants from the apportionment base. *See* Warshaw Decl. § 5.2, Tbl. 7 (Ex. 58).

44. Karen Ramos is a member of FIEL and a resident of Harris County, Texas. Espinosa Decl. ¶ 20 (Ex. 18).

45. Because Ms. Ramos resides in Texas, she will lose political power because of Texas' loss of at least one seat in the House of Representatives due to the exclusion of undocumented immigrants from the apportionment base. *See* Warshaw Decl. § 5.2, Tbl. 7 (Ex. 58).

46. Plaintiff Ahri for Justice ("Ahri") is a membership-based not-for-profit organization based in Los Angeles, California. Seon Decl. ¶ 2 (Ex. 43).

47. Ahri has roughly 220 individual members, with most residing in Southern California, and particularly in

Orange and Los Angeles Counties. Some but not all of these members are U.S. citizens. *Id.* ¶ 4.

48. Julie Kim is a member of Ahri and a resident of Orange County, California *Id.* ¶ 20.

49. Because Ms. Kim resides in California, she will lose political power because of California's loss of at least one seat in the House of Representatives due to the exclusion of undocumented immigrants from the apportionment base. *Id.*

50. Simon Lee is a member of Ahri and a resident of Los Angeles County, California. *Id.* ¶ 21.

51. Because Mr. Lee resides in California, he will lose political power because of California's loss of at least one seat in the House of Representatives due to the exclusion of undocumented immigrants from the apportionment base. *See* Warshaw Decl. § 5.2, Tbl. 7 (Ex. 58); Seon Decl. ¶ 21 (Ex. 43).

DATED: Aug. 7, 2020

Respectfully submitted,

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Exhibit 3

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

———

20 Civ. 5770 (JMF)

STATE OF NEW YORK, ET AL., PLAINTIFFS

v.

DONALD J. TRUMP, IN HIS OFFICIAL CAPACITY
AS PRESIDENT OF THE UNITED STATES, ET AL.,
DEFENDANTS

———

DECLARATION OF ALLISON ARWARDY

———

Pursuant to 28 U.S.C. § 1746(2), I, Allison Arwady, hereby declare as follows:

1.   I am over the age of eighteen and have personal knowledge of all the facts stated herein.

2.   My name is Allison Arwady, M.D., and I make this Declaration in connection with *State of New York, et al., v. Trump, et al.*   I was confirmed by the Chicago City Council as Commissioner of the Chicago Department of Public Health ("CDPH") in January 2020.   I lead the City's public health response to the COVID-19 pandemic, ensuring through data analysis, testing, case investigation and contact tracing, quarantine/isolation, health care system support, and the dissemination of public guidance that the outbreak has remained well controlled.   Under my leadership, CDPH has also been instrumental in enacting an expansion of services and strengthened policies for mental health, violence prevention, and environmental health.   CDPH is now preparing to launch Healthy Chicago 2025, a four-year plan

created with more than 200 partner organizations and residents to advance health equity by reducing the city's racial life expectancy gap.

3. As the chief executive of CDPH, my primary responsibility is to assure the health and wellbeing of Chicago's 2.7 million residents. My duties include managing the human, financial, and physical resources of CDPH to reduce health inequities while improving the health of the entire population. CDPH does this by establishing policies, developing systems, and implementing programs that meet community health needs.

4. To assure the health and wellbeing of Chicago residents—prioritizing the populations and neighborhoods of greatest need—CDPH relies on complete and accurate census data. Monitoring the health status of Chicago residents requires citywide and subpopulation level data, such as the numbers of individuals by race/ethnicity, age, gender, socioeconomic status, and neighborhood of residence. Without accurate census data, CDPH will have difficulty assuring appropriate allocation of resources to the most appropriate populations and neighborhoods. We also will be unable to track progress or identify the best possible interventions to achieve our overarching goal of reducing the city's racial life expectancy gap.

5. The census data for Chicago is particularly important in 2020 as there have been unprecedented sociodemographic population shifts by race, ethnicity, and geography over this last decade. These changes include greater economic stratification, with many Latinos moving to different neighborhoods due to gentrification, African Americans leaving the city in record numbers, and the population of young, upper-income White residents

on the rise. An incomplete count would strike at the core of our work as these underlying population numbers are how we calculate disease prevalence rates, measure racial and geographic disparities, and adjust rates for differences in population distribution by age. We use this data to monitor birth outcomes (e.g. teen birth), mortality (e.g. heart disease, diabetes, infectious disease), and morbidity (e.g., HIV, lead poisoning prevalence, opioid overdose rates, asthma ED visits, traffic crash injury, mental health hospitalizations).

6. Complete and accurate data is critical to CDPH's response to the COVID-19 pandemic. This data affects where we target our interventions including testing, communications, and policies to strengthen the local safety net and increase access to care. In the coming years, we will also use this data to inform how and where we provide vaccines to stop the virus from continuing to spread in Chicago.

7. CDPH uses decennial census data to weight our Healthy Chicago Survey and the Youth Risk Behavioral Survey data so that the survey sample accurately reflects the entire population. All estimates of behavior (e.g. smoking), health screening (e.g. mammograms), access to care (e.g. regular doctor visits), and percent of the population with certain health conditions (e.g. obesity, hypertension, diabetes) would be compromised by undercounts in Census 2020.

8. CDPH uses citywide and subpopulation disease and health behavior prevalence rates to:

a. Determine disease and health behavior disparities for geographic, racial/ethnic, gender, and socioeconomic subpopulations;

b. Inform where to provide services directly. For example, CDPH locates our clinical services (e.g., immunizations, STI, mental health) in high-need neighborhoods and focuses public awareness campaigns in communities with high rates of disease or disease promoting behaviors;

c. Allocate financial resources. CDPH defines and prioritizes high-risk populations and neighborhoods and requires applicants to describe their ability to provide services for these populations; and

d. Identify and respond to outbreaks of disease. CDPH uses population data to establish and monitor baseline patterns of disease so that aberrations in disease patterns can be detected and appropriate interventions can be implemented. As mentioned, this data is especially important to our response to the COVID-19 pandemic.

9. An incomplete count or inaccurate information on demographics from the census would undermine the interpretation of health data until at least the next decennial census (2030). Both today and a decade from now, lacking comparable data to previous years would make it much more difficult to track trends, particularly in sensitive areas where we as a city are at a critical juncture in making progress, like youth quality of life, HIV incidence, youth vaping, and, crucially, the chronic diseases that increase mortality rates from COVID-19.

10. Understanding and monitoring the relationship between health outcomes and the social determinants of health could be impacted by an incomplete or inaccurate census count. The decennial census is the gold-standard

data source for measuring population and neighborhood characteristics related to factors such as poverty, employment, use of public benefits, housing, educational outcomes, and commuting behaviors, with an eye toward the needs of vulnerable populations like the disabled, elderly individuals living alone, and those who face impediments to mobility. The proposed change to census apportionment, and its resulting impact on census data counts could have a profound impact on interventions related to community development—and on emergency preparedness to deal with outbreaks and other urgent threats.

I declare under penalty of perjury that, to the best of my knowledge, the foregoing is true and correct. Executed on this 4th day of Aug., 2020

/s/   <u>ALLISON ARWADY</u>
      ALLISON ARWADY
      Commissioner, Chicago Department of
      Public Health

Exhibit 4

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

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20 Civ. 5770 (JMF)

STATE OF NEW YORK, ET AL., PLAINTIFFS

v.

DONALD J. TRUMP, IN HIS OFFICIAL CAPACITY
AS PRESIDENT OF THE UNITED STATES, ET AL.,
DEFENDANTS

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**DECLARATION OF MARC BALDWIN IN SUPPORT
OF PLAINTIFF STATE OF WASHINGTON**

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Pursuant to 28 U.S.C. § 1746(2), I, Marc Baldwin, hereby declare as follows:

1.   I am over the age of eighteen and, unless otherwise noted, I have personal knowledge of all the facts stated herein.

2.   I am an Assistant Director for Washington State's Office of Financial Management (OFM).   I oversee OFM's Forecasting and Research Division, which includes the Population Unit.   The Population Unit is the section of OFM that is working to ensure a complete count during the 2020 Census.   I have been employed by OFM since 2013.

3.   OFM's Population Unit is the primary state agency responsible for the compilation and maintenance of population data for Washington State.   We provide Washington's official demographic data and information to other state agencies, local governments, tribal governments, local planning agencies, institutions of higher

education, special purpose districts, and the public. Nearly all of our daily work relies on census data or analyses derived from census data, most of which fall under the broad umbrellas of population estimates and population forecasts.

Efforts to Ensure a Complete Count in the 2020 Census in Washington State

4. The Population Unit oversees Washington's annual population estimate (which is largely based on the decennial census) and also serves as the official state liaison to the Census Bureau. The Population Unit has managed the state's Complete Count Committee since 2018. The Unit oversees the Committee's 2020 budget of $15 million, which is allocated to support community efforts to promote and ensure a complete count in the 2020 Census. Washington's $15 million budget represents one of the largest state investments nationwide for census efforts (and sharply contrasts with 2010, when Washington invested no state dollars in the national census effort). The Washington Legislature made the decision to allocate these funds to the 2020 Census complete count efforts after various stakeholders raised concerns that federal funding, procedures, and policies would disadvantage our state's diverse populations.

5. In the last two years, the Complete Count Committee effort has generated a complete statewide network of local complete count committees and organizing activity run by local and tribal governments and community organizations. The Population Unit has worked with this network to provide information and resources needed to enable local trusted messengers to raise awareness about the importance of the 2020 Census and to instill confidence in the confidentiality of responses as a

means of encouraging participation in the 2020 Census. Washington has seen a heightened need for these efforts as national activity around the 2020 Census has called into doubt how the federal government may use census information in other contexts and whether sufficient resources have been allocated to national efforts to ensure an accurate count of hard-to-count populations.

6. Since October 2018, Washington's Complete Count Committee has met nine times. Its existence has led to the establishment of local Complete Count Committees throughout the state, representing local and tribal governments, regions, or specific ethnic or professional groups. Over 300 local and tribal governments and community organizations have mobilized statewide to train trusted messengers, to organize Questionnaire Assistance Centers at food banks and drive-thru events, to sponsor Census challenge events or competitions, and to hold live social media events and regularly post reminders to complete the Census on social media. In addition, approximately $2.5 million in state funds have been invested in advertising and production of promotional materials.

7. Washington State's self-response rates have been relatively high since the start of the 2020 Census. As of the end of July, Washington ranks 6th in the nation with 68.2 percent self-response. However, closer examination of the self-response locations clearly indicates that census tracts with traditionally hard-to-count populations (people of color, renters, lower income households, rural communities, foreign born, etc.) are a large part of the 31.8 percent who have not yet responded to the 2020 Census.

Impacts of the Presidential Memorandum and COVID-19 on Response Rates

8.   Reports to our office out of both King and Snohomish counties, which contain significant urban populations, indicate that the July 21 Presidential Memorandum raised alarm within the immigrant communities there and cast a chill on our state and local continuing efforts to encourage self-response. People are renewing their concerns about the confidentiality of their responses and are confused about the impact of the Presidential Memorandum on the ongoing Census. As a result, a new toolkit for community organizations was hastily produced to provide new assurances to reinforce the message that there is no citizenship question on the census.

9.   Census coordinators in both King and Snohomish counties report receiving alarming calls from community partners expressing concerns and confusion after the Presidential Memorandum. For example, one concerned census advocate in an email to our office stated: "I've heard from some people who have expressed some regret in participating in the census and even fear as to where they will be getting the information to determine how many and who is here legally." Several statewide meetings of community organizations have been convened to strategize on how to respond to these community concerns.

10.   Traditionally, Census workers reach out directly to follow up with hard-to-count populations to encourage full census participation. COVID-19 has impaired such efforts; specifically, the inability to send individuals into communities due to COVID-19 has hampered the

trusted messenger strategy of encouraging Census completion through face-to-face interaction. Equally concerning, Washington has been forced to close libraries, churches, and community centers due to COVID-19, which in turn eliminated these important venues for community contact. The Commerce Department's temporary suspension of its "Update Leave operation" due to COVID-19 has particularly impacted response rates in Washington's more rural counties, which have high numbers of immigrant farmworkers, which did not receive invitations to participate in the census until as late as the end of June. In addition, response rates are lower in urban census tracts that have higher concentrations of immigrant communities, such as south King County.

11. Educating the public in light of the Presidential Memorandum presents enormous challenges, particularly with the Census deadline potentially sooner than anticipated; the primary Census educational and awareness materials were printed and published long ago. Despite this, OFM has produced and disseminated information on the Presidential Memorandum and its impact on Census data collection despite the additional costs and challenges. The additional cost has been mainly staff time to research and prepare talking points and toolkits and to convene stakeholders for strategic communications.

12. The chilling effect of suggesting that immigrant status would be identifiable and lead to exclusion cannot be viewed in isolation from the pattern of administrative uncertainty that emerged early in the 2020 Census effort with the potential addition of an immigration status

question. The Presidential Memorandum has resurfaced and exacerbated many respondents' concerns and mistrust, requiring redoubling of efforts to remind respondents that the census does not contain the proposed citizenship question.

13. The Memorandum's focus on immigration status may have a uniquely toxic effect in Washington given the state's history with internment and Japanese communities.[1] The state has invested significant resources and made extensive efforts to assure Washingtonians that their data is safe, that it will not be used for purposes outside the census, and that their community characteristics will be accounted for. The Presidential Memorandum seriously undermines that investment and those efforts. Washington's Use of Census Data and the Importance of Data Quality

14. OFM is also responsible for producing annual state, county, and city population estimates for state planning and fund distribution. About 200 million dollars of state shared revenues are distributed to counties and cities on a per capita basis annually. We rely on the decennial census data for these estimates because it is the only available count of the entire population for a single time point, repeated with a consistent methodology over time. The federal census is the definitive source from which almost all other demographic data analyses are based, even demographic products sold by

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[1] *See, e.g.*, J. Burton, et al., *A Brief History of Japanese American Relocation During World War II*, (Nat'l Park Serv., Apr. 1, 2016), https://www.nps.gov/articles/historyinternment.htm; *Inside-Out: Japanese Americans during World War II*, (Wash. State Univ. Libraries Digital Exhibits), http://digitalexhibits.libraries.wsu.edu/exhibits/show/jaincarceration/jaincarcerationintro.

private companies. Conducting a census is prohibitively expensive for most governments and private companies, leading almost everyone to rely on the national decennial census.

15. OFM produces annual estimates of state population by age, sex, race and ethnicity, Small Area Estimates of total population and housing, and Small Area Demographic Estimates, which include the characteristics of age, race, gender and ethnicity. We also produce estimates of populations with Limited English Proficiency. All of these estimates rely heavily on the accuracy of the decennial census data. For example, decennial census counts of county and city population housing by characteristic are the foundation of our annual county and city estimates program. Although an oversimplification, our annual estimates can be thought of as federal census data plus locally reported change. The impact of the accuracy of the decennial census data extends beyond just the population totals, as OFM derives household size and occupancy rates from the census for use in these local estimates. Even small deviations in these rates, after being applied to all housing units in the state, can cause large inaccuracies. These issues last for the entire decade, likely getting worse as time goes on. At a minimum, bad data will certainly lead to inaccurate distribution of funding within Washington, impacting all levels of government for a decade. These estimates also form the foundation for all of our other estimates products, making any baked-in inaccuracies even more impactful.

16. OFM produces our Small Area Estimates and Small Area Demographic Estimates using the decennial census as a base. Our Small Area Estimates apply to

statutorily defined areas and are used for planning and revenue distribution such as highway urban areas, public transportation benefit areas, and the thermal electric generating facilities area and non-statutory areas such as water resource inventory areas, hospital districts and fire protection areas. Our Small Area Demographic Estimates—which rely heavily on accurate census age, sex, race, and origin data—are distributed to every local health jurisdiction in the state through the Washington Department of Health's Community Health Assessment Tool or in reports such as the Washington Department of Social and Health Services Community Risk Profiles.

17. In addition to these estimates, OFM also produces annual forecasts that again rely on census data. We annually produce a state population forecast by age and sex with a 30-year horizon. On years ending with a 2 or 7, we also produce a county population forecast series to satisfy the state's Growth Management Act requirements (Ch. 36.70A, Wash. Rev. Code). Among other things, Washington's Growth Management Act is a unique economic development statute that guides planning for development and land preservation within the state, and it relies heavily on the geographic and demographic data in the census.

18. Our primary forecast model is a cohort component model, which uses the most detailed age and sex data available from the census combined with birth, death, and migration data from other sources. The census age and sex data is a key piece of this model because it determines how a population will age forward, how many women are of childbearing age, and how many people are at risk of dying. This state-level forecast is

the baseline for all of our other forecasts. Even a difference of 0.25% in the state total population in 2020 would result in a difference of over 20,000 people just 20 years later in 2040 under current assumptions.

19. Our Growth Management Act forecast extends our statewide forecast to the county level, which entails an increased level of detail and a greater need for accuracy in census data. Accurate census age, sex, race and ethnicity data are essential for understanding, estimating, and forecasting county populations because the differences within those characteristics play a large part in determining why counties increase or decrease in population size over time. For example, Whitman County has an extremely high proportion of men and women in their low twenties. Census group quarter counts help us understand how many of these young people are attending Washington State University and if they are likely to move upon graduation. Unlike young people in other parts of the state, Washington State University students are historically unlikely to settle in Whitman County and raise families there. A break in the data series caused by poor-quality decennial census data would skew the historic patterns and relationships we use to estimate and forecast population at the county level, resulting in more uncertainty for counties and other end-users of our data.

20. Many of the models we use to inform these forecasts rely on the relationships of the federal census counts from one decade to the next. Consistency in counting is extremely important for trend analysis and statistical modeling. Again, small differences in these relationships can result in large differences in predicted value when applied to hundreds of thousands of households

over many years. Accordingly, the U.S. Census Bureau recognizes the importance of consistency and has historically used a very rigorous process to assess the impacts of even the smallest changes in their questionnaire. This is one reason why the Census Bureau's announcement that it will cut short the Nonresponse Followup (NRFU) operation is very disturbing: this lack of follow up with hard-to-count populations will almost certainly compromise the quality of 2020 Census data, resulting in potentially exponential errors.

21. OFM strives to provide the highest-quality, unbiased demographic data possible so Washington decision-makers have the best information available to do their work. Accuracy is a driving force in our work and it is why we have participated in every available 2020 Census preparation program.

22. In addition to the specific state responsibilities listed above, our office works closely with the Census Bureau. We are the lead census State Data Center, the official Federal State Cooperative for Population Estimates representative, and the state certifying office for city boundaries and annexation boundary changes that are submitted through the Boundary Annexation Survey and Boundary Validation Program. We have represented Washington State by participating in every 2020 Census program available to us, including: Local Update of Census Addresses, Count Review Operation, Early Nonresponse Followup, New Construction Program, Participant Statistical Areas Program, Group Quarter and Transitory Location Identification project, and Urban Growth Area Boundary Delineation program. Our office has been the lead organization for the 2020 Census State Complete Count Committee, which is

dedicated to achieving a true count of the population, specifically through increasing self-response and awareness of non-response follow up.

Reduced Census Self-Response Rates Undermine Data Quality

23. A census, by definition, is a count of everyone. If 2020 Census follow-up efforts are cut short, it will no longer be a census, but instead a sample. As the name "sample" implies, not everyone will be counted—and certain areas will suffer more as a result, because response rates are different across population groups in different areas.

24. We know variation in response rates is not randomly distributed. The U.S. Census Bureau has done extensive research and documented which areas had low self-response rates in the 2010 Census and which areas are likely to have low response rates in the 2020 Census. Their predictive "Hard To Count" scores are a guide to which communities are likely to be adversely impacted by an incomplete census. The Census Bureau itself notes that these communities are likely to have higher concentrations of racial and ethnic minorities, people with lower incomes, homeless individuals, undocumented immigrants, children and young people, those with less consistent internet access, and those with higher levels of distrust for the government, among other characteristics. The current 2020 Census self-response rate map and data show many of the predicted Hard To Count areas do indeed have lower 2020 response rates at this time. If the 2020 Census is rushed or ended early, areas with low rates now are likely to have low rates when the census is complete. In the end, areas that are under-counted are likely to receive fewer resources than

they deserve because the census data will show proportionally fewer people there.

25. In terms of modeling, a botched census will impact population forecasts for years. A general rule of thumb in forecasting is that you need an indicator that goes back in time as far as you are forecasting forward in time. As mentioned above, OFM annually creates a 30-year population forecast by age and sex. As a result, the 2020 census data will be used in forecasting until at least the 2050 census data is available, and probably longer. Many estimate and forecast models rely on information about changes in trends over time. An inaccurate census this year will change the relationships in the data between censuses and make all future estimates and forecasts based on these trends less accurate. Those communities with low response rates are more likely to have less accurate estimated and forecasted populations than areas with consistent complete counts. Unreliable census data will impact the resources areas receive based on estimated or forecasted population.

26. Many of our estimates and forecasts use a "top down approach" (which the Census Bureau also uses for its own estimates). With the top down approach, we first estimate or forecast the state's total population, and all political subdivisions are aligned with (or "fit") to the state total. This fitting is not random: it is based on existing data sources. The federal decennial census is one of the most important data sources in that process. Fitting is often done on a proportional basis. If federal census counts are low in some but not all areas, the areas with low counts are likely to be allocated fewer people over time.

27. To take an example, local officials in several communities in Eastern Washington have reported that, following a series of fires there in 2014 and 2015, they were denied FEMA aid because too few people were reported to live there—a result directly attributable to low census self-response rates that resulted in an undercount in 2010. While anecdotal, this example illustrates how low self-response rates, resulting in low official population counts, can impact communities during times of crisis.

28. Poor quality census data will harm Washington's ability to carry out the population data functions required by law both in the short term and the long term. We have been working with state and local partners for decades. OFM has very good working relationships because we produce high quality data products people can rely upon. A poor census could jeopardize those relationships as inaccurate or unreliable census data filters into our estimates, reflecting poorly on us. Broken relationships and lost trust are not in the State's best interest: they will cost the state in the long run.

I declare under penalty of perjury that, to the best of my knowledge, the foregoing is true and correct.

Executed on this 5th day of Aug., 2020.

/s/ <u>MARC BALDWIN</u>
MARC BALDWIN, PH.D.

Exhibit 11

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

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20 Civ. 5770 (JMF)

STATE OF NEW YORK, ET AL., PLAINTIFFS

v.

DONALD J. TRUMP, IN HIS OFFICIAL CAPACITY
AS PRESIDENT OF THE UNITED STATES, ET AL.,
DEFENDANTS

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DECLARATION OF SUSAN BROWER

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Pursuant to 28 U.S.C. § 1746(2), I, Susan Brower, hereby declare as follows:

1. I am over the age of eighteen and have personal knowledge of all the facts stated herein. Because I have not yet served as State Demographer during a redistricting cycle, some of what I know and expect to occur related to my role in redistricting is based on information available to me as State Demographer, including business records.

2. I obtained my Ph.D. in sociology and population studies from the University of Michigan.

3. I am the State Demographer for the State of Minnesota. As State Demographer, I oversee the Minnesota State Demographic Center ("the Center"). By statute, I am appointed by the Commissioner of Administration. Minn. Stat. § 4A.02(a). My duties are identified in Section 4A.02(b), and include gathering and developing demographic data relevant to the state; serving as the liaison to the United States Bureau of the Census;

coordinating state and federal demographic activities; and aiding the state legislature in preparing a census data plan and form for each decennial census. I have been employed as the Minnesota State Demographer since 2012.

4. The Center works to ensure a full count and reduce non-response rates and undercounting. In Minnesota, the groups that are more likely to be undercounted include: (a) those with language barriers; (b) residents who are highly mobile and/or homeless; (c) residents who are lower income; (d) residents with lower education levels; (e) children; (f) people of color because of the correlation with high mobility, low income, and low education levels; (g) rural populations; and (h) immigrants and non-citizens.

5. Based on the 2010 census mail return rates, 150,000 Minnesota residents (or about 2.5%) are considered hard to count. *See* https://www.censushardtocount maps2020.us/; https://www.censushardtocountmaps2020. us/img/Census2020HTCmap_overview_Sept2017.pdf; https://mn.gov/admin/demography/census2020/ccc/hard tocount/.

6. You can also estimate hard to count numbers by using the ROAM database. This is a census bureau database called the 2018 planning database. ROAM visually maps the 2018 planning database. Using a regression analysis, ROAM estimates what proportion of each tract will not respond to the census by mail. For Minnesota, the estimate is 941,000 (or about 17%). These individuals are those who are not likely to return their mailed census forms, and require additional follow up to obtain survey responses. This is based on the American Community Survey, that reflect changes that

have occurred in Minnesota since the last census. *See* U.S. Census Bureau, 2018 Planning Database, Minnesota State Demographic Center Population Estimates.

7.   Over the past few years, thousands of Minnesotans representing non-profit groups, communities of color, communities of faith, the business community, tribal nations, and local governments have been working together with the Center to reduce non-response rates and make sure all Minnesotans are counted in the 2020 Census. By making sure we count each resident of Minnesota, we ensure that Minnesota gets proper representation in the federal government, state legislative districts are drawn to take into account all the people who live there, and assure the proper allocation of over $15 billion in federal funds that help support Minnesota's schools, hospitals, agriculture, first responders, roads, businesses, and households.   The Center's budget for these efforts is a total of $1,885,00, across three years; that does not include the $95,000 budgeted for the Local Update of Census Addresses program.

8.   The Center's efforts to ensure a complete count have included hiring additional communications staff; grants and training for local Complete Count Committees; targeted mailing of print materials to residents with PO boxes; sending over 1 million text messages to residents on Census Day; apartment canvassing; working with the Minnesota Department of Commerce to provide Census information with LIHEAP application materials; working with the Minnesota Department of Revenue to provide Census information with communications about low income tax credits; and training librarians to set up questionnaire assistance centers.

9.   Once the COVID-19 pandemic began, the Center shifted its efforts to mailing print materials and online phone banking.   The Center has been tracking response rates and targeting residents living in areas with the lowest response rates.

10.   To date, approximately 30% of Minnesotans still needs to be counted.   This group largely consists of the hard-to-count populations described above.   The recent decision to shorten the non-response follow up period by one month will make a complete count even more challenging.

11.   Furthermore, I anticipate that the Presidential Memorandum about who will be counted for apportionment will have a negative impact in Minnesota.   Based on my training, education, and experience, I am concerned that Minnesota residents will be less likely to respond to the census due to the Presidential Memorandum.   The Memorandum sends the message that undocumented immigrants do not count, which conflicts with our "We Count. Minnesota." messaging that emphasizes "Counting Every Minnesotan."   *See, e.g.*, https://mn.gov/admin/2020-census/.

12.   In addition, the Memorandum could harm the quality of the census data.   If the Census Bureau were to rely more heavily on proxy responses in the 2020 Census, it would degrade the quality of the data and impact the usability of the data for Minnesota.   The Census Bureau's own research shows that proxy responses have higher item non-response than those responses collected by household members.   This means that detailed information such as race, age, sex is more likely

to be left unanswered with some types of proxy respondents. See https://www.census.gov/pred/www/rpts/O.5.PDF

13. For questions that are answered by proxy respondents, there is evidence that some types of information are reported less accurately. Data on the age of household members, for example, are more likely to reported in numbers ending in 5 or 0 when a proxy is the respondent. See http://www.asasrms.org/Proceedings/y2005/files/JSM2005-000443.pdf This type of rounding error, called "age heaping" has a range of implications for the usability of the data. It degrades the quality of the data for any purpose that relies on accurate information about the age of residents—including rates of death, disease prevalence, disability, and rates geographic mobility, among many others.

14. The Center needs accurate age data to be able to produce high-quality population projections which are then are used by the state, regional planners, counties and school districts to plan for future transportation, education, and housing needs. For example, the Center has provided the following services that would be impacted by poorer quality census data:

- State planning related to COVID-19. I recently provided an analysis for a state agency based on census data to show the number of children to parents of essential workers and the number of children and families potentially impacted by school closings.

- The Center has provided race and ethnicity data to the state courts, to ensure racial proportionality in jury pool selection.

- The Center has detailed differing local community conditions (poverty, age structure, labor force participation, etc.) to help equitably distribute resources, such as the Small Cities Development Grant program and Public Facilities Authority infrastructure funds, both administered the Minnesota Department of Employment and Economic Development.

- The Center has compiled age and sex data annually for the Minnesota Department of Health's biennial report to the MN Legislature describing the burden of cancer.

- Detail the number and percent of children under age 18 living in poverty for the Minnesota Department of Education's needs assessment of the Preschool Development Grant.

- The Center has estimated the migration of young Minnesotans to help the Minnesota Office of Higher Education understand the implications of setting up college savings accounts for young children.

- The Center has produced estimates of the voting-age population by city for the Minnesota Secretary of State's office.

15. A Census undercount will also negatively affect redistricting in Minnesota. As liaison between the Census Bureau and the State of Minnesota with respect to redistricting, I inform the Census Bureau about the type of and format of data the State of Minnesota needs and wants to complete its redistricting. In order to identify what the State needs and wants in connection with redistricting, I anticipate communicating with the State of

Minnesota legislative redistricting committees. Those committees have not been formed yet for the 2020 Census; based on the process for redistricting following the 2010 census, I expect each party caucus (one Republican and one Democratic Farmer Labor ("DFL")) to form one committee per legislative chamber, such that there are four redistricting committees. I also anticipate working with the redistricting committees to send them the census data file from the Census Bureau and help them understand the data.

16. The federal decennial census has an effect on redistricting. Public Law 94-171 establishes that the Census Bureau must provide population data to all states within one year of the day the census is conducted. In Minnesota, upon receipt of the population data, the Governor then files a certified copy of the official census population counts with the Office of the Secretary of State. Minn. Stat. § 600.18. Those certified census results are the official counts that are used to determine the population of every political subdivision in Minnesota. Minn. Stat. § 600.18. Specifically, the Minnesota Legislature and local governments use "block" population counts to redistrict election districts.

17. State statute also provides that the political subdivisions of the state "for all purposes . . . shall be deemed to have the population thereby disclosed [in the certified copy of the federal census]." Minn. Stat. § 600.18.

18. In Minnesota, congressional and state legislative districts are redrawn after each U.S. Census. Even if the number of federal districts remains the same, the district borders are changed to make sure each district has approximately the same number of people in it. In

Minnesota, there are 67 state senate districts; each senate district is divided into two house districts, for a total of 201 state legislative districts. Right now, Minnesota has eight congressional districts. Minnesota's nonpartisan Legislative Coordinating Commission is responsible for assisting the legislature in carrying out its redistricting responsibilities under Minn. Stat. § 2.91. New congressional and legislative districts must be determined at least twenty-five weeks before the primary election in the year ending in two (i.e., 2022). Minn. Stat. § 204B.14, subd. 1a. The redistricting process may happen through consensus among the four legislative caucuses (House Republican Caucus, House DFL[1] Caucus, Senate Republican Caucus, and the Senate DFL Caucus), which is then passed by the legislature and signed by the Governor. Or, the redistricting process may occur as a result of a special redistricting panel appointed by the Minnesota Supreme Court Chief Justice, which occurred following the 2010 census.

19. A census undercount would negatively affect Minnesota's representational interest. For example, if residents do not participate in the census, due to higher numbers of noncitizens in Minneapolis, an undercount means that Minneapolis will likely lose representation in the state legislature, and other parts of the state will have greater representation. Cities in Minnesota with the highest number of noncitizens are Rochester, Brooklyn Park, Minneapolis, and St. Paul.

20. A loss of representation in the state legislature would harm residents in Minneapolis and other cities

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[1] DFL stands for Democratic-Farmer-Labor, Minnesota's Democratic party.

where the population is undercounted, because residents of those undercounted areas have less voice in their state government, and the one person, one vote standard is potentially violated.

21.   I am also aware of the impact of decennial census population counts on state/local funding and budgets. A number of programs use the census data in formulas for distributing funding.

22.   For example, the distribution of road funds is affected by the decennial census.   *See* Minn. Stat. §§ 162.09 (census determines populations of cities for municipal state-aid street fund), 162.13 (funds are distributed in part based on the percentage that the population bears to the total population of all cities qualifying for municipal state-aid street fund).   In 2017, $173,218,364 in municipal state-aid street funds were apportioned by the State to 148 municipalities.   *See* http://www.dot.state. mn.us/safinance/appmt/mnutdf-2017.pdf.   Trunk highway funds are distributed based on population.   Minn. Stat. §§ 161.081, subd. 3, 162.081, subd. 4. In 2017, $1,214,069,182 in trunk highway funds were spent by the State.

23.   Education funding is also affected by census data.   The population of a school district is to be certified from the most recent federal census, except in any year in which no federal census is taken.   Minn. Stat. § 275.14.   Community education programs provide learning and involvement opportunities for people of all ages including providing school district residents with the opportunity to utilize educational facilities and programs during non-school hours.   The amount of money available to school districts for community education funding

is affected by the district's population, as defined by Section 275.14. *See* Minn. Stat. § 124D.20.

24. Local Government Aid ("City LGA"), one mechanism to determine "population" is the "most recent federal census." Minn. Stat. § 477A.011. The funding provided to cities and towns is a function of their population. *See* Minn. Stat. §§ 477A.011, subd. 34 (city revenue "need" is determined by population, or housing percentage, which is defined by Census data), 477A.013, subd. 1 (town aid based in part on population), 477A.013, subds. 8-9 (city funds based in part on funding "need"). In 2018, the total amount of LGA certified for all cities was $534,398,012. Minn. Stat. § 477A.03, subd. 2a.

25. In my experience, these funding formulas are designed based on the Legislature's intent to target funding to certain populations—of certain sizes or specific characteristics. If the funding formula assumptions are incorrect—for example, based on inaccurate census data numbers—then the funding will not be distributed consistent with the Legislature's intent. It also means certain residents will not have access to the same amount of funding they would otherwise be entitled to, had the count been accurate.

I declare under penalty of perjury that, to the best of my knowledge, the foregoing is true and correct.

Executed on this 6th day of Aug., 2020

/s/ <u>SUSAN BROWER</u>
SUSAN BROWER
Minnesota State Demographer

Exhibit 14

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

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20-CV-5770 (JMF)

STATE OF NEW YORK, ET AL., PLAINTIFFS

v.

DONALD J. TRUMP, IN HIS OFFICIAL CAPACITY
AS PRESIDENT OF THE UNITED STATES, ET AL.,
DEFENDANTS

———————

20-CV-5781 (JMF)

NEW YORK IMMIGRATION COALITION, ET AL.,
PLAINTIFFS

v.

DONALD J. TRUMP, IN HIS OFFICIAL CAPACITY
AS PRESIDENT OF THE UNITED STATES, ET AL.,
DEFENDANTS

———————

DECLARATION OF STEVEN K. CHOI

———————

STEVEN K. CHOI, pursuant to the provisions of 28 U.S.C. § 1746, declares under penalty of perjury as follows:

1.   I am the Executive Director of the New York Immigration Coalition ("NYIC").   In that capacity, I am responsible in part for NYIC's education and outreach efforts around the 2020 Census.   I am also one of the NYIC executives responsible for the organization's budgeting, fundraising, and policy priorities.   I have been the Executive Director of NYIC for over seven

years. I am over 18 years old. I have personal knowledge of the facts set forth in this declaration.

2. NYIC is an umbrella policy and advocacy organization for nearly 200 groups in New York State, representing the collective interests of New York's diverse immigrant communities and organizations. NYIC is headquartered at 131 West 33rd St, New York, NY 10001.

3. NYIC's mission is to unite immigrants, members, and allies so that all New Yorkers can thrive. NYIC envisions a New York State that is stronger because all people are welcome, treated fairly, and given the chance to pursue their dreams. NYIC pursues solutions to advance the interests of New York's diverse immigrant communities and advocates for laws, policies, and programs that lead to justice and opportunity for all immigrant groups. It seeks to build the power of immigrants and the organizations that serve them to ensure their sustainability, improve people's lives, and strengthen New York State.

4. As Executive Director of NYIC, I have extensive familiarity with NYIC's membership and I am aware that NYIC's 200 plus member and partner organizations that are committed to advancing work on immigrant justice, empowerment, and integration. NYIC's member organizations—located throughout New York State and beyond—all share NYIC's mission to serve and support the empowerment of immigrant communities. NYIC's members include grassroots community groups, social services providers, large-scale labor institutions, and organizations working in economic, social, and racial justice. Representatives of NYIC's member organizations serve on the NYIC Board of Directors.

5.   The Decennial Census is a critical and constitutionally-mandated data-gathering instrument, used to distribute hundreds of billions of dollars in federal resources and to apportion political power at the federal, state, and local levels. NYIC has an ongoing commitment to promoting engagement in the 2020 Decennial Census among its members and constituents because a complete and accurate Census count is critical to ensuring that our members receive the government funding and full political representation to which they are entitled to. We, our members, their members, and all New Yorkers benefit when our state has its full complement of Congressional representatives and electoral votes, as well as adequate funding for the facilities, programs, and services they use which receive Census-guided federal funding. These facilities and services include parents with children enrolled in schools that receive funding under Title I of the Elementary and Secondary Education Act; families whose children benefit from insurance funded by the State Children's Health Insurance Program; drivers who use interstate highways and mass transit on a daily basis and thus depend on federal highway funds to perform their jobs; and people who rely on housing assistance through various funding provided under Section 8, among other Census-guided funding streams. Promoting Census response can help ensure that the programs, services, and facilities that our members rely upon are adequately funded.

6.   As such, NYIC, its member organizations, and the communities we serve all have a fundamental interest in ensuring as complete and accurate a Decennial Census as possible.

7.   I have been extensively and personally involved in the research, development, and implementation of NYIC's 2020 Census education and outreach programs. To develop programs that achieve NYIC's goals of encouraging greater Census participation in the communities we serve, I have researched and gained familiarity with the importance of data gathered from the Census in apportioning political representation and the allocation of some government funding sources.   I have researched the concerns of our members and the communities we serve around the Census for the purpose of developing effective Census communications directed at immigrant communities.   I have also researched how the communities we serve would be impacted by an undercount toward the end of designing communications and organizing strategies that address those concerns and increase their civic engagement, and Census participation in particular.

8.   Because a complete and accurate count is critical to ensuring that our member organizations and the communities they serve receive the government funding and full political representation to which they are entitled, NYIC has an ongoing commitment to promoting engagement in the Decennial Census among individuals served by its member organizations.

9.   Because the Decennial Census requires a direct inquiry of every person in the United States, NYIC has invested significant organizational resources in encouraging our members and the immigrant communities we serve to respond to the Census.

10. NYIC's education and outreach efforts for the 2020 Census have been underway for more than two years now. Since the beginning of 2018, it has helped

form New York Counts 2020, a growing, non-partisan coalition of more than 100 diverse organizational stake-holders across New York to advocate for a fair and complete enumeration, for which it serves as facilitator and convenor. This broad-based coalition, which was formally launched in March 2018, is composed of racial, ethnic, immigrant, religious, health, education, labor, housing, social services, and business groups working in partnership with state and local government officials. NYIC has invested resources to solidify the work and reach of New York Counts 2020 through robust advocacy, outreach, and mass educational forums, including coordinating "train the trainer" sessions throughout the state to equip leaders with tools to educate their communities on the importance of the Census; devising effective messaging to convince hard-to-reach communities to participate; empowering coalition members to assist their communities in completing the Census online; hosting conferences; developing and disseminating toolkits and advocating to ensure that there are no unnecessary barriers impeding marginalized communities from being counted while also ensuring their privacy is protected.

11. NYIC has also invested in Census education and outreach work in addition to the organization's work with the New York Counts 2020 Coalition. This work includes, among other things, general education programs, workshops for members, presentations to service organizations, such as legal service organizations, at "Key to the City" Events, and person-to-person outreach through phone and text-banking. We have also engaged in digital organizing around the Census, including through webinars and presentations streamed over Facebook

Live. NYIC has continued Census education and outreach during the pandemic and plans to continue encouraging people to fill out the questionnaire, and supporting its membership in doing so, until the response period closes.

12. Our education and outreach efforts to encourage our members and people in the communities we serve to respond to the Census emphasizes two essential purposes of the headcount: (1) Determining political apportionment, including the number of representatives each state will have in Congress, the number of electors per state in the electoral college, and the boundaries and composition of Congressional districts; and (2) Determining how much government funding communities will receive for matters such as education, public housing, transportation, and health care. Our education and outreach efforts also emphasize that the Census counts every resident of the United States, regardless of age, citizenship status, or ability to vote. This message is important because it affirms the humanity and dignity of all Americans and the responsibility that all Americans, including undocumented Americans, bear for responding to the Census and ensuring that their home states and communities are allocated their fair share of political power and government funding. An example of one of our Census education and outreach documents is available at https://newyorkcounts2020.org/nyic-getting-immigrants-counted/. We have relied upon information provided by the United States Census Bureau and other government agencies in drafting this document and other materials.

13. NYIC has been and remains committed to Census education and outreach work in part because immigrants and communities of color have been historically undercounted by the Census. Through my work and the work of my colleagues in immigrant communities, we understand that one reason that immigrants and communities of color have been undercounted is their reluctance to trust government officials and their fear of turning over personal information to the government due to potential adverse consequences with respect to their own immigration or the status of others in their households.

14. NYIC has already faced a challenging environment for conducting outreach and encouraging immigrant communities to respond to the 2020 Census because of the heightened fear of immigrant communities towards interacting with government workers as a result of the Trump Administration's persistently hostile and discriminatory actions and attitudes towards immigrants of color. Among the racist and xenophobic acts that the Trump Administration has undertaken include separating children from their families at the border and keeping immigrant children in cages; banning individuals from six majority Arab and/or Muslim countries from entering the United States; attempting to rescind the Deferred Action for Childhood Arrivals program, which allowed 800,000 individuals—90% of whom are Latino—brought to this country as children to legally reside and work in the United States; rescinding Temporary Protected Status programs for individuals from El Salvador, Honduras, Nicaragua, Haiti, and Nepal; calling for an end to the diversity visa lottery; dramatically increasing interior enforcement raids in communities across the United States; proposing to end family-

based immigration, which would disproportionately harm immigrants from Latin America and Asia; referring to some undocumented immigrants as "animals"; and attempting to include a citizenship question on the Census. instituting the "Public Charge" rule or "wealth test," which has undermined access to critical healthcare and deterred immigrant New Yorkers from seeking important services; conducting ICE enforcement activity at City and State courthouses, which has prevented immigrant New Yorkers from accessing justice; changing the rules of the asylum system, effectively cutting off humanitarian relief for those who need it most; attacking the family reunification immigration system and implementing an executive order shutting down most legal immigration into the United States. NYIC has consistently fought these efforts to intimidate and marginalize immigrants of color in the courts, in the streets, and at the ballot box.

15. In the course of developing, implementing, and supervising NYIC's Census education and outreach work with its members and the communities they serve, including NYIC's work with the New York Counts 2020 coalition, I have observed that New York immigrant communities' heightened fear of interacting with government workers has increased even further since the issuance of the July 21, 2020 Presidential Memorandum to the Secretary of Commerce on the subject of "Excluding Illegal Aliens from the Apportionment Base Following the 2020 Census" ("Presidential Memorandum"). The Presidential Memorandum is making our efforts to encourage Census participation more difficult. The Presidential Memorandum is sowing confusion and fear about the Census among the communities we serve.

16. The Administration's decision to exclude some non-citizens from the apportionment base directly and severely undermines our Census education and outreach materials and programming by contradicting its core messages and discouraging Census response.

17. First, by excluding undocumented people from the apportionment count, the Presidential Memorandum creates confusion by contradicting one of the two core purposes of the Census that NYIC, its members, and its New York Counts 2020 coalition partners highlight in their education and outreach programming. Because the President has said that the Census responses of some non-citizens will not be used for Congressional apportionment, some people may now neglect or decline to fill out the Census because of its diminished importance. The Presidential Memorandum dilutes the efficacy of our existing materials and programming, which will require NYIC to divert resources from other programmatic areas to conduct additional education and outreach to get the same number of people to respond to the Census questionnaire. By contradicting the message that filling out the Census is important to Congressional apportionment, people in the communities will discount the value of our current education and outreach materials or programs, requiring us to make new materials or conduct new outreach that addresses the Presidential Memorandum. We have engaged in member updates, press releases, press briefings and are now developing messaging and social media campaigns to address the fact that everyone can and should still be counted in the Census. NYIC staff members have also had to divert time from other activities to respond to inquiries from local media about this issue to assure peo-

ple that everyone, regardless of their immigration status, should fill out the Census questionnaire; that their responses to the Census are private, confidential, and will not be used against them by ICE or other law enforcement agencies; and that every person will be counted for apportionment purposes.

18.   Second, by excluding undocumented people from the apportionment count, the Presidential Memorandum dehumanizes and marginalizes undocumented residents by excluding them from the category of "persons" required by the Constitution to be included in the apportionment count. Furthermore, the exclusion of undocumented immigrants from the apportionment base in the Presidential Memorandum indicates efforts by the Administration to identify where undocumented immigrants live and their numbers in order to exclude them from the Census.   By undermining our messaging about the purpose of the Census and further marginalizing and confusing immigrants who are already among the population most often overlooked by the Census, the Presidential Memorandum makes it less likely that the immigrant communities and communities of color we serve will be responsive to our Census education and outreach efforts.

19.   Third, NYIC has also received an increased number of questions from our member organizations and the public about the privacy and confidentiality of responses to the Census questionnaire since the Presidential Memorandum.   NYIC's members and members of the communities we all serve are concerned that the Presidential Memorandum's exclusion of people "not in lawful immigration status" from the Census base count indicates that the Administration will use information from the

Census to attempt to identify undocumented immigrants for deportation or other adverse consequences. NYIC is planning to conduct more education and outreach than we would have otherwise to address those concerns and to assure people that they can respond to the Census without fear of immigration enforcement consequences for themselves or their families.

20. NYIC and its members will be forced to expend more resources than initially anticipated to try to reduce the negative effect of the President's announcement of the decision to exclude undocumented immigrants from the apportionment base on Census response rates in the immigrant communities of color it serves. NYIC expects that it will need to interact with its constituents more times than previously planned to try to convince them to participate in the 2020 census. NYIC expects that it will now need to spend more resources to reach the same number of people, and that ultimately, it will be less successful in convincing its constituents to participate in the 2020 Census due in large part to the Administration's decision to exclude undocumented immigrants from the apportionment base.

21. NYIC will have to increase staff time and spending devoted to its Census education and outreach efforts by approximately 20% percent over previously anticipated levels to address the Presidential Memorandum.

22. Because of the need to increase the time and money spent on Census outreach due to the fear and/or confusion generated by the Presidential Memorandum, NYIC will need to divert resources from other areas critical to its mission including civic engagement and community organizing on other issues, including helping the immigrant community navigate the impacts of

COVID-19 and the unfolding economic crisis/recession, and preparing for the upcoming federal elections, which are critical programmatic areas right now. I have personally spent at least ten hours on Census-related work that I would have otherwise spent on other areas of work, which includes the areas listed above in addition to organizational management to our additional education and outreach efforts.

23. NYIC puts significant resources in Census education and outreach work because our members and the immigrant communities we serve face significant negative consequences in the event of an undercount.

24. Unfortunately, NYIC will have less time than anticipated to address the fear and confusion caused by the Presidential Memorandum among the immigrant communities that NYIC serves. The actual counting period of the Census is only a few months, but the consequences of the Census in terms of political power and funding allocation last for a decade. At the time the President Memorandum was published on July 21, there were 102 days remaining in the enumeration period, which was then scheduled to end on October 31. However, on July 31, the Census Bureau abruptly accelerated the end of the enumeration period to September 30. With only 55 days left in the headcount, every single day remaining is a critical opportunity for NYIC, its members, and its coalition partners to conduct further Census outreach and increase response rates in New York that have been below national averages, particularly in counties with large immigrant populations. NYIC will have to accelerate its remaining Census education and outreach efforts to address the Presidential Memorandum's negative effect on Census responses.

25.   Since the Presidential Memorandum, NYIC has had to divert resources to change its Census outreach messaging to combat the misinformation about apportionment, as well as the discriminatory nature of the Presidential Memorandum and the President's remarks accompanying the memorandum.   NYIC has had to divert resources from other programs areas to increase its outreach efforts to undocumented and other immigrant communities in our organization's Get-Out-The-Count efforts.   At this late stage of the enumeration, NYIC had anticipated its Census efforts to be limited to education, strategy and outreach—with specific staff, including Muad Awawdeh, Meeta Anand, Wennie Chin, Lovelie Tejada and Ivan Larios dedicated to Get-Out-The-Count Efforts; however, due the Presidential Memorandum, NYIC must now divert significant time from senior leadership, communications, member engagement and communication engagement teams, constituting about 10 percent of their time, to combat the fear and disinformation resulting from this memorandum.

26.   As Executive Director, my decision to authorize NYIC's increased investment in Census education and outreach work has been driven in part by the concerns of our member organizations and the communities they serve have raised about the Presidential Memorandum. NYIC's management, including Ms. Joshi and Ms. Anand, remains in regular communication with staff and management at member organizations about the issues and policies affecting immigrant communities in New York.

27.   NYIC's member organizations, including AMPHS, Chhaya CDC, and Neighbors Link, have reported to Ms. Joshi and Ms. Anand, who each work with me in making

decisions for NYIC regarding our investments in Census outreach, that our member organizations and our communications teams are reporting that the immigrant communities of color they serve are expressing reluctance to participate in the Census since the announcement of the Presidential Memorandum, which contributes to the culture of fear. They have also reported to me through their work in NY Counts 2020 that counties working on the Census in New York State are concerned that the messaging around the Presidential Memorandum will depress the participation of immigrants in the Census. In particular, Ms. Joshi, Ms. Anand, and other NYIC staff have observed and reported to me that immigrants of color have expressed fear that the Presidential Memorandum indicates to them that answering the Census will give a hostile administration information that may be used by agencies like Immigration and Customs Enforcement or other parts of the Trump Administration that have been used to intimidate and marginalize immigrants.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: Aug. 6, 2020
        New York, New York

/s/ STEVEN K. CHOI
    STEVEN K. CHOI

Exhibit 15

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

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20 Civ. 5770 (JMF)

STATE OF NEW YORK, ET AL., PLAINTIFFS

v.

DONALD J. TRUMP, IN HIS OFFICIAL CAPACITY
AS PRESIDENT OF THE UNITED STATES, ET AL.,
DEFENDANTS

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DECLARATION OF MICHAEL E. CLINE

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Pursuant to 28 U.S.C. § 1746(2), I, Michael E. Cline, hereby declare as follows:

1.   I am over the age of eighteen and have personal knowledge of all the facts stated herein.

2.   I am the State Demographer of North Carolina and work in the North Carolina Office of State Budget and Management.   Annually, I estimate the total population of 100 counties and 551 municipalities, the projection of state and county populations, and analyze the implication of demographic trends for state agency planning and budgets.   I have been employed by the State of North Carolina since 2017 and have worked, in varying capacities, with decennial census data since after the 1990 Census.

3.   Housing, household, and demographic characteristics obtained every ten years are critical to the functioning of my office and the population estimates, population projections, and demographic analyses that I pro-

duce.   In turn, my population estimates are used in formulas that are used to distribute state revenues to local communities to support schools, transportation infrastructure, art programs, libraries, emergency services, parks programs, and other things.   In addition, annually, we produce county population estimates and population projections of up to twenty years into the future. These population estimates and projections provide detailed data by sex, race, age, and ethnicity for the state and for our 100 counties and are used within state government in order to plan for and fund schools, roads and public transportation programs, aging services, public health services, economic development, etc.   In addition, local governments, nonprofit groups and private industry use our demographic projections for their own programmatic and business planning.

4.   There is no other source for comprehensive population, household, and housing counts than the decennial census.   While our annual estimates are prepared by using data from other sources (including vital statistics and administrative data) the census provides an important benchmark for which to validate and adjust our models every ten years.   Of our municipalities, 60% (330) have populations of less than 5,000.   The decennial census is the most accurate source of information to obtain average household size and housing occupancy — critical values needed for the estimation of municipal populations (sample estimates produced by the American Community Survey for small areas such as these do not provide precise estimates).   Without this information, it will be more difficult to produce accurate population estimates for these smaller municipalities in future years.

5. In order to produce population projections, our office needs detailed historical census counts—including population by age, sex, race, and ethnicity. These data are essential for understanding trends in the different components of population change—natural increase (births minus deaths) and net migration (in-migration minus out-migration). These comprehensive historical benchmarks every ten years combined with vital statistics data help us understand how our state and counties in our state are changing in order to develop assumptions about future change (including assumptions regarding future birth, mortality, and migration rates). Census population counts are used in denominators to calculate rates and thus an undercount (or overcount) of any particular population grouping (by race/ethnicity/sex/age), can contribute to over- or underestimating certain populations and the total population overall. This may lead to a greater risk of the state and local governments to either be unprepared for future population needs (such as not building schools when school aged populations are under-estimated) or building infrastructure that is not needed (when populations are over-estimated).

6. According to the US Census Bureau's own analysis of the 2010 Census, at 7.6%, North Carolina had the seventh largest omission rate among the 50 states and District of Columbia[1]. These omission rates were

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[1] Mule, Thomas, "Census Coverage Measurement Estimation Report: Summary of Estimates of Coverage for Persons in the United States," U.S. Census Bureau, Decennial Statistical Studies Division, May 22, 2012.

highly correlated with mail-in response rates (as response rates decreased—omission rates increased)[2]. While imputation methods and differentials in undercounts may overcome these omissions, there remains a risk that certain groups will be excluded from the final 2020 results. Those at risk of being excluded include persons of color, young children, and rural populations[3]. Thirty-eight percent of North Carolina's population are people of color—including rapidly growing Hispanic and Asian populations and the second largest American Indian population east of the Mississippi River[4].

I declare under penalty of perjury that, to the best of my knowledge, the foregoing is true and correct.

Executed on this 5th day of Aug., 2020

/s/ <u>MICHAEL CLINE</u>
MICHAEL E. CLINE
State Demographer of North Carolina
Office of State Budget and Management

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[2] https://www.gc.cuny.edu/Page-Elements/Academics-Research-Centers-Initiatives/Centers-andhistitutes/Center-for-Urban-Research/CUR-research-initiatives/Census-Self-Response-Rates-Mapped-and-Analyzed-2000,-2010,-and-(soon)-2020 (Accessed August 5, 2020).

[3] Mule, Thomas, "Census Coverage Measurement Estimation Report: Summary of Estimates of Coverage for Persons in the United States," U.S. Census Bureau, Decennial Statistical Studies Division, May 22, 2012.

[4] https://files.nc.govincosbm/documents/files/Population-Dyarunic-2020Report.pdf

Exhibit 17

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

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20 Civ. 5770 (JMF)

STATE OF NEW YORK, ET AL., PLAINTIFFS

v.

DONALD J. TRUMP, IN HIS OFFICIAL CAPACITY
AS PRESIDENT OF THE UNITED STATES, ET AL.,
DEFENDANTS

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DECLARATION OF SARA CULLINANE

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Pursuant to 28 U.S.C. § 1746(2), I, Sara Cullinane, hereby declare as follows:

1.   I am over the age of eighteen and have personal knowledge of all the facts stated herein.

2.   I am the co-founder and Director of Make the Road New Jersey ("Make the Road NJ"), a community-based immigrants' rights organization with centers in Elizabeth, Passaic, and Perth Amboy New Jersey— three cities with significant foreign-born populations. I have worked on immigrants' rights issues for the past fifteen years as a community organizer and an attorney. As Director of Make the Road NJ, I oversee the organization's community organizing and education programs, as well as our legal services department, which represents individuals in immigration proceedings.   Prior to founding Make the Road NJ in late 2014, I represented immigrants in labor and employment proceedings.   I am also a member of the Complete Count Committee of Union County, Passaic, and Elizabeth, NJ.   I served as

a commissioner for the New Jersey Complete Count Commission.

3. Make the Road NJ's mission is to build the power of immigrant and working-class communities through community organizing, legal services, policy advocacy, and transformative education. Annually, we serve more than 10,000 immigrant families by providing Know Your Rights trainings, legal services, worker safety trainings, ESL classes, and youth development programs. The majority of immigrants we serve are non-citizens from Latin America. We also convene a statewide network of Deferred Action for Childhood Arrivals ("DACA") recipients.

4. The Trump Administration's immigration policies have made the immigrant communities that Make the Road NJ serves reluctant to engage with federal or state government representatives and have had a profound impact on immigrants and their U.S. citizen families in New Jersey.

5. Over the past year, our organization has held more than 30 events to educate immigrant communities about the census and to inform them of their responsibility to respond to the census. These activities include town halls, community forums, a census march where community members handed out thousands of flyers to inform Passaic's immigrant communities about the census, and online forums. Make the Road NJ has also trained immigrant volunteers to become census outreach ambassadors to inform other community members about the importance of responding to the census. I am a member of three local Complete Count Committees, and our staff serve on another two committees (Middlesex and Passaic County). Our organization

also chairs a subgroup of immigrant community organizations that strategizes about how to conduct outreach and share resources across the state. Through these efforts, we have reached more than 10,000 individuals, the majority of whom are immigrants, many of whom may be undocumented.

6. Since President Trump issued the "Memorandum on Excluding Illegal Aliens From the Apportionment Base Following the 2020 Census" (the Presidential Memorandum) on July 21, Make the Road New Jersey has received numerous comments from community members, including immigrants and U.S. citizen family members of immigrants about the Presidential Memorandum. Our organizers have had conversations with more than 50 community members about the Presidential Memorandum and have shared information on social media that has engaged more than 1,000 individuals.

7. The Presidential Memorandum states that it is U.S. policy to "exclude from the apportionment base aliens who are not in lawful immigration status under the Immigration and Nationality Act." Community members have expressed fear and resignation, observing that the Presidential Memorandum makes clear that they will not be counted in the census. For example, during a call with a number of members, a community member told one of our organizers that she was not going to respond to the census because she would not be counted.

8. In addition to fomenting fears about not being counted among community members, the Presidential Memorandum has reinforced fears about immigration enforcement. The memorandum states that "many" individuals who are being excluded from apportionment

"entered the country illegally in the first place" and that counting them would "create perverse incentives encouraging violations of Federal law." Community members have expressed fear that because of the Presidential Memorandum, information regarding their immigration status will not be kept confidential and will be turned over to ICE. For example, a community member recently reiterated her fear that if she responded to the census her information would not be protected from ICE. I could tell she was frightened because her voice trembled, and she told me she was scared. I worry that other community members have similar fears.

9. Overall, based on my experience and observations, I anticipate that many immigrants and their U.S. citizen family members will choose not to respond to the Census as a whole because they believe that they will not be counted regardless of whether they answer the Census and they are frightened and anxious about what might happen if they complete the Census (i.e., their information may be shared with immigration authorities). This will lead to vast undercounting in communities of color, immigrant communities, and low-income communities across New Jersey.

I declare under penalty of perjury that, to the best of my knowledge, the foregoing is true and correct.

Executed on this 4th day of Aug. 2020

/s/ SARA CULLINANE
SARA CULLINANE
Make the Road New Jersey

Exhibit 18

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

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20-CV-5770 (JMF)

STATE OF NEW YORK, ET AL., PLAINTIFFS

v.

DONALD J. TRUMP, IN HIS OFFICIAL CAPACITY
AS PRESIDENT OF THE UNITED STATES, ET AL.,
DEFENDANTS

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20-CV-5781 (JMF)

NEW YORK IMMIGRATION COALITION, ET AL.,
PLAINTIFFS

v.

DONALD J. TRUMP, IN HIS OFFICIAL CAPACITY
AS PRESIDENT OF THE UNITED STATES, ET AL.,
DEFENDANTS

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DECLARATION OF CESAR ESPINOSA

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Cesar Espinosa, pursuant to the provisions of 28 U.S.C. § 1746, declares under penalty of perjury as follows:

1.   I am the Executive Director of FIEL Houston, Inc. ("FIEL").   I am over 18 years of age.   I have personal knowledge of the facts stated in this declaration.

2.   FIEL is a nonprofit membership organization based in Houston.   FIEL's mission is to advocate for just laws for immigrants and their families, access to higher

education for all people regardless of immigration status, and access to justice for the community. To do that, FIEL engages in four core programs: access to higher education, immigration legal services, civic engagement, and community outreach.

3. FIEL has more than 11,000 members who reside in Harris County and neighboring counties in the greater Houston metropolitan area. FIEL maintains a very active membership comprised of individuals and families who receive FIEL's services and those who volunteer in FIEL's programmatic work, including door-to-door canvassing, community outreach initiatives, direct actions, and public education.

4. In my capacity as Executive Director, I am responsible for managing the day-to-day operations of FIEL, overseeing FIEL's communications and media outreach, and developing FIEL's programmatic work, including public education and outreach efforts around the 2020 Decennial Census. As the founding director, I have been on staff at FIEL since May 2007.

5. FIEL members in Houston rely on a number of facilities and services the funding for which is allocated based on the data generated by Decennial Census. These facilities and services include parents with children enrolled in schools that receive funding under Tide I of the Elementary and Secondary Education Act; families whose children benefit from insurance funded by the State Children's Health Insurance Program; drivers who use interstate highways and mass transit on a daily basis and thus depend on federal highway funds to perform their jobs; and people who rely on housing assistance through various funding provided under Section 8, among other Census-guided funding streams.

6.   Because a complete and accurate census count is critical to ensuring that our members receive the government funding and full political representation to which they are entitled, FIEL has an ongoing commitment to promoting engagement in the Decennial Census among its members and constituents.   In preparation for the 2010 Census, FIEL committed resources to educating immigrant communities on the importance of the Census.   Since then, FIEL has been and remains committed to its Get Out the Count efforts and other Census education initiatives in part because FIEL understands that immigrants and communities of color have been consistently and routinely undercounted by the Census.

7.   In the last couple of years leading to the 2020 Census, FIEL has conducted outreach and engagement work with immigrant communities in the greater Houston area to encourage Census participation.   That work consists of educating constituents about the Decennial Census and its importance to the community—in particular, that the population count under the Census partially determines the level of governmental funding for programs and schools that our members rely on and the amount of political representation our members receive at the federal, state, and local levels.   Specifically, we inform our members and the communities we serve that it is important to participate in the Census to ensure proper school funding and improve public education, topics about which our immigrant communities care deeply.   Our education and outreach efforts also emphasize that the Census counts every resident of the United States, regardless of age, citizenship status, or ability to vote.   This message is important because it affirms the humanity and dignity of all Americans and

the responsibility that all Americans, including undocumented Americans, hear for responding to the Census and ensuring that their home states and communities are allocated their fair share of political power and government funding.

8.   FIEL is also part of a coalition of organizations participating in Harris County's Complete Count Committee, a local, community-driven initiative designed to improve the completeness and accuracy of the 2020 Census count in Harris County.   Prior to the COVID-19 pandemic, FIEL organized in-person forums and meetings for the public, as well as for canvassers and community leaders, aimed at educating Houston residents about the purpose and uses of the Census as well as the importance of responding to the Census.   During the pandemic, FIEL continues to develop programs and outreach strategies that incorporate Census education and outreach efforts.

9.   From our work in the community, we understand that one reason that immigrants and communities of color have been undercounted is a fear of contact with the government and distrust of government officials. This level of fear and distrust of government among immigrants and communities of color we serve has been exacerbated by the Trump Administration and its officials' hostility to these communities, such as their repeated attempts to rescind the Deferred Action for Childhood Arrivals ("DACA") program and their efforts to deny benefits to immigrants based on their perception of immigrants as public charges.   Now, Houston immigrant communities' heightened fear of interacting with government workers has increased further due to the Administration's attempt to exclude undocumented

immigrants from the apportionment base. The Memorandum's exclusion of undocumented immigrants creates an incremental obstacle to Census participation because it ties the fear and distrust of government that immigrant communities of color have directly to the Decennial Census count. By pursuing policies designed to dissuade or confuse individuals about Census participation, the Trump Administration has created significant challenges to the work of FIEL and its members who now have to overcome the community's fear and lack of trust in the Census process by committing more personnel and time to public education and outreach about the Census.

10. Based on my experience as FIEL's Executive Director and through my regular contacts with our members, our organizing staff, our communications staff, and the media, the July 21, 2020 Presidential Memorandum to the Secretary of Commerce on the subject of "Excluding Illegal Aliens from the Apportionment Base Following the 2020 Census" ("Presidential Memorandum") is making our efforts to encourage Census participation more difficult. The Presidential Memorandum is sowing fear and confusion about the Census among the communities we serve.

11. This fear and confusion is not unique to undocumented immigrants. Excluding undocumented immigrants from the apportionment base will deter Census participation among the broader immigrant community, including family and household members of undocumented immigrants who are actually citizens or non-citizens with legal status. By excluding undocumented people from the apportionment count, the Presidential

Memorandum dehumanizes and marginalizes undocumented residents by excluding them from the category of "persons" required by the Constitution to be included in the apportionment count. Furthermore, the exclusion of undocumented immigrants from the apportionment base in the Presidential Memorandum indicates efforts by the Administration to identify where undocumented immigrants live and their numbers in order to exclude them from the Census. By undermining our messaging about the purpose of the Census and further marginalizing and confusing immigrants who are already among the population most often overlooked by the Census, the Presidential Memorandum makes it less likely that the immigrant communities and communities of color we serve will be responsive to our Census education and outreach efforts.

12. Based on conversations with members of FIEL who come from mixed-status households, I know that both citizens and non-citizens with legal status have expressed concern that participating in the Census would invade their privacy and expose their family, friends, and neighborhoods to profiling by the law enforcement agencies of an administration hostile to immigrants of color. Members of the community we serve are concerned that the Presidential Memorandum's exclusion of people "not in lawful immigration status" from the Census base count indicates that the Administration will use information from the Census to attempt to identify undocumented immigrants for deportation or other adverse consequences.

13. For example, different members of the community we serve have expressed to me their confusion about our messaging that the Census should count every person

regardless of immigration status based on the Administration's efforts to not count undocumented immigrants. In some instances, members of the community have questioned our credibility as a result of the negative messaging from the Administration about who should count for the Census. Further, even in my own mixed-status family, family members have questioned me on whether they should participate in the Census as a result of their fears that the Government could probe into the undocumented individuals in my extended family.

14. The Administration's decision to exclude some noncitizens from the apportionment base directly and severely undermines our Census education and outreach efforts by contradicting our core messages and discouraging Census response. FIEL is planning to conduct more education and outreach than we would have otherwise to address those concerns and to assure people that they can respond to the Census without fear of immigration enforcement consequences for themselves or their families. FIEL's increased investment in Census education, research, and outreach, has been driven in part by concerns about the Census expressed by our members and the immigrant communities we serve. Because of the information we have received concerning the heightened fear and suspicion among our members and the communities we serve created by the Administration's Presidential Memorandum, FIEL has recently had to refocus its programming and commit additional resources to its Census work. FIEL will be forced to expend more resources than initially anticipated to try to reduce the negative effect of the Administration's policies on the response rate in the immigrant communities of color it serves. FIEL expects that it will need to interact with its constituents multiple times

to answer questions and try to convince them to participate in the 2020 Census.

15. FIEL expects that for the remainder of the Census outreach period it will need to spend more resources to reach the same number of people and that ultimately it will be less successful in convincing its constituents to participate in the 2020 Census due to the Administration's efforts to exclude undocumented immigrants from the Census apportionment base. Unfortunately, FIEL will have less time than anticipated to address the fear and confusion caused by the Presidential Memorandum among the immigrant communities that we serve. At the time the Presidential Memorandum was published on July 21, there were 102 days remaining in the non-response follow-up period, which was then scheduled to end on October 31. However, on July 31, the Census Bureau abruptly accelerated the end of non-response follow-up to September 30. With only 55 days left in the headcount, every single day remaining is a critical opportunity for FIEL to conduct further Census outreach. FIEL will have to accelerate its remaining Census education and outreach efforts to address the Presidential Memorandum's negative effect on Census responses. FIEL anticipates having to divert approximately $5,000 from other mission critical programs and services to 2020 Census education and outreach as a result of the Presidential Memorandum.

16. To date, FIEL has set up both in-person forums and online forums to educate the community about the Census. We have also made an effort to include language about the Census in all of our online communications and media appearances. FIEL's active membership has also spent over 750 personnel hours in the last year and

a half developing outreach strategies and researching the impact of an undercount towards the purpose of informing our members and the public about the 2020 Decennial Census. We have also spent in-kind resources, including printing material in-house and allocating air time from our virtual studio, to explain the Census further. FIEL will have to increase staff time and spending devoted to its Census education and outreach efforts by approximately 40% percent over current levels to address the Presidential Memorandum.

17. Because of this need to increase the time and money spent on Census outreach, FIEL will need to divert resources from other areas critical to its mission, including education, civic engagement, and community organizing on other issues. FIEL has already diverted resources from other areas in order to address concerns from its constituents stemming from the Presidential Memorandum. For example, staff time and other resources devoted to FIEL's Get Out the Count efforts and DACA advocacy will be diverted to communications to combat fear and disinformation resulting from the Presidential Memorandum. Moreover, FIEL has already, and will continue to, divert resources from its other organizational priorities, including its work on access to education for students, to address these concerns about decreased Census participation within immigrant communities.

18. Beyond the increased fear FIEL members face due to the Trump Administration's attack on undocumented individuals, these members also face significant negative consequences in the event of an undercount. FIEL members reside in Houston, the population of which includes some of the largest immigrant communities of

color in the state. An undercount of those populations will deprive FEEL members and the communities it serves of political influence and Census-guided funding to which they would be entitled by a more accurate count. Our members have communicated concerns to me that the exclusion of undocumented immigrants from the apportionment base will result in a significant underfunding of resources for all immigrant communities in Houston.

19. One of the many FIEL members who will suffer injury due to the exclusion of undocumented immigrants from the apportionment base is Deyanira Palacios. Ms. Palacios is a lawful permanent resident and a resident of Montgomery County, Texas. Because Ms. Palacios resides in Texas, she will lose political power because of Texas' loss of at least one seat in the House of Representatives.

20. Another FIEL member who will suffer injury due to the exclusion of undocumented immigrants from the apportionment base is Karen Ramos. Ms. Ramos is a resident of Harris County, Texas, where she works as a realtor. Because Ms. Ramos resides in Texas, she will lose political power because of Texas' loss of at least one seat in the House of Representatives. Ms. Ramos is entitled to remain and work lawfully in the United States through the DACA program. She is entitled to be counted in the ongoing 2020 Decennial Census along with all other residents of Texas, regardless of their immigration status.

21. While the Presidential Memorandum is deterring Census participation and burdening our outreach efforts, potentially leaving little time to proactively en-

gage on the Census with the communities we serve, getting relief from a court to clarify the fear and confusion sowed by the Administration will allow us to do meaningful outreach to our constituents. Every single day available for us to carry our message to the community that everyone will count in the Census would be helpful to our outreach efforts.

I, Cesar Espinosa, declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and recollection.

Dated: Houston, Texas
       Aug. 6, 2020

/s/   <u>CESAR ESPINOSA</u>
CESAR ESPINOSA

Exhibit 26

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

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Civil Action No. 1:20-cv-05770-JMF

New York Immigration Coalition, Make the Road New York, CASA, American-Arab Anti-Discrimination Committee, ADC Research Institute, FIEL Houston Inc., AHRI for Justice, plaintiffs

v.

Donald J. Trump, in his official capacity as President of the United States, United States Department of Commerce; Wilbur L. Ross., in his official capacity as Secretary of Commerce, Bureau of the Census, an agency within the United States Department of Commerce; and Steven Dillingham, in his official capacity as Director of the U.S. Census Bureau, defendants

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DECLARATION OF SAMER E. KHALAF

———————

I, Samer E. Khalaf, pursuant to the provisions of 28 U.S.C. § 1746, declare under penalty of perjury as follows:

1.   I am the National President of the American-Arab Anti-Discrimination Committee ("ADC") and ADC Research Institute ("ADCRI").   My responsibilities include overseeing all of the work of both organizations, and leading our efforts regarding the 2020 Decennial Census.

2.   I am over 18 years of age and have personal knowledge of the facts stated in this declaration.   I

have acquired this personal knowledge after several years as ADC and ADCRI President. During that time period, I have familiarized myself with ADC's internal records and processes, our membership, including where our members live, and the Arab-American community nationwide and in specific areas in which many Arab Americans and ADC members live.

3. Before the COVID-19 outbreak, I also spent a good deal of time traveling the country and meeting with ADC members and other members of the Arab-American community. Through this process, I have familiarized myself with prevailing views in the community concerning a number of issues, including the Trump Administration's treatment of Arab and Muslim Americans and immigration-related policies, and fears in the community about the policies of this Administration. I also continue to meet with ADC members and other members of the Arab-American community through phone calls and video conferences, and as part of this process, I have gained personal knowledge about some of the likely effects of the recent Presidential Memorandum concerning undocumented immigrants and congressional apportionment on Arab Americans.

4. ADC is a civil rights membership organization that is committed to defending and promoting the rights and liberties of Arab Americans and other persons of Arab heritage. Senator James G. Abourezk founded ADC in 1980. Senator Abourezk was the first Arab American to serve in the United States Senate, and he founded ADC in response to stereotyping, defamation, and discrimination directed against Americans of Arab origin. ADC's mission focuses on combating stereotypes and discrimination against and affecting the Arab-

American community in the United States and serving as its public voice on domestic and foreign policy issues, as well as educating the American public in order to promote greater understanding of Arab history and culture. ADC advocates, educates, and organizes to defend and promote human rights and civil liberties of Arab Americans and other persons of Arab heritage, from recent immigrants to citizens born in the United States. ADC also participates in legal advocacy efforts on issues that have a large impact on the Arab American community.

5. ADC is the largest American-Arab grassroots civil rights organization in the United States. As I detail more below, ADC has several thousand dues-paying members nationwide, with members in all 50 states including California, Texas, Florida, and New Jersey. Its members are also active through ADC's 28 local chapters and organizing committees, located in 20 states and the District of Columbia. Its members include both U.S. citizens and different types of noncitizens.

6. ADCRI was founded by Senator Abourezk in 1981. It is a corporation exempt from taxation under Section 501(c)(3) of the Internal Revenue Code. ADCRI sponsors a wide range of programs on behalf of Arab Americans and of consequence to the wider American community including programs train Arab Americans in the exercise of their constitutional rights as citizens. Its work includes sponsoring and promoting research studies and publications, seminars, and conferences, which document and analyze the discrimination faced by Arab Americans in the workplace, schools, media and government agencies. These programs, publications and events also promote a better understanding

of the rich Arab cultural heritage by the public, policy makers, and the new generations of Arab Americans. ADCRI also publishes and distributes educational materials to Arab Americans, educators, academic institutions, policy makers, and the public at large.

7. ADC and ADCRI have a longstanding and ongoing commitment to promoting engagement in the Decennial Census among its members and constituents. Since the 1980s, ADC has served in numerous capacities on the Census Bureau advisory committees. In 2000, ADC reinvigorated its census campaign and policy initiatives, actively educating Arab Americans and other minority populations about the importance of the census and mobilizing participation and outreach events. In 2008, ADC actively worked with the Census Bureau to identify classification concerns of Arab Americans on the United States census. For the 2010 Decennial Census, ADC and ADCRI created messaging about participating in the Decennial Census that was focused on the Arab-American community including launching a national campaign advocating for the completion of census forms and holding outreach events to counter concerns of sharing of information with government and law enforcement agencies. ADC and ADCRI also engaged in efforts to "get out the count" in that community as well, hosted town halls and symposiums in select cities across the country, and produced and published material for distribution which encouraged participation in the 2010 Census. ADC also served on the U.S. Census Bureau's 2010 Census Advisory Committee.

8. In line with this history, ADC and ADCRI have been active in promoting and encouraging Arab Americans to respond to the 2020 Decennial Census, efforts

that I have personally led. I have led Census townhalls across the country, including in Georgia, Michigan, New Jersey, Florida, Texas, California, Washington, D.C., Virginia, and Maryland, to name a few. Since the onset of the COVID-19 Pandemic, I appeared on and led dozens of online conversations with community members about the Census. I have worked with our organizing and media outreach staff to publish and promote informational material for our community encouraging them to complete the Census. In the lead up to the end of the Census period our office was planning multiple outreach events online, as well as phone banking, and email follow up, encouraging completion of the Census. We have and anticipate additional expenses related to the online services needed to hold digital outreach events.

9. Despite these efforts, I know from my experiences as ADC's President that ADC is already facing a much more challenging environment for conducting outreach and encouraging Arab Americans, both citizens and noncitizens, to respond to the 2020 Census than the 2010 Census. This is due in part to many of the policies and statements of President Trump and his administration targeting immigrants of color, Muslim and Arab Americans, and immigrants generally. Additionally, the failed effort to add a citizenship question to the 2020 Census also helped created an environment of heightened fear and suspicion that has made encouraging census responses among Arab Americans more challenging.

10. I also understand from my role and experience that there is also a particular fear among many Arab Americans about how the data collected in the Census will be used, including fears in areas with high concen-

trations of Arab Americans like Orange County, California. These concerns include use of the data for purposes of deportation, censorship, and surveillance, including the Department of Homeland Security targeting particular communities, as occurred after September 11, 2001.

11. Based on my experience as ADC's President and the knowledge I have gained from working with ADC staff members, ADC members, and others in the Arab-American community, the July 21, 2020 Presidential Memorandum to the Secretary of Commerce on the subject of "Excluding Illegal Aliens from the Apportionment Base Following the 2020 Census" (the "Memorandum") is already making and will continue to make our efforts to encourage Census participation much more difficult.

12. The Memorandum has already generated significant fear and increased distrust about the Census in Arab American communities. These reactions are not limited to undocumented immigrants or other non-citizens, but also to family, household members, friends, and community members of non-citizens, people for whom the new policy articulated in the Memorandum has generated fear about responding at all and having those responses weaponized against their communities. The new policy announced in the Memorandum to exclude undocumented residents from the apportionment base directly and severely undermines our Census education and outreach also contradicts the messaging we have tried to promote in those efforts, making it necessary to expend more resources at the expense of other organizational priorities in the remaining months of the 2020 Census, including legal work, organizing, issue advocacy efforts, and educational initiatives.

13. The Memorandum will likely make ADC/ADCRI's census work harder and more time consuming and costly in several ways, including contradicting current messaging, the fact that targeting undocumented immigrants creates fear, distrust, apprehension, and raises greater concerns about privacy, and that it demoralizes community members. The impact of the Memorandum will be immediately felt. In addition to making work related to the Census more difficult, it will lead to ultimately lead to a lower count in areas with minority populations, including centers with high Arab populations. By changing the terms of the Census, it will give credence to the notion that the Trump Administration is not being honest about their intention of the Census which will result in decreased participation.

14. ADC has already been forced to expend more resources and will continue needing to do so to respond to the Memorandum and expects that it will need to interact with community members many more times than previously planned to try to convince them to participate in the 2020 census. Even though the Memorandum will cause ADC to expend more resources to reach the same number of people, it unfortunately is likely that it will have less success in convincing many community members in the 2020 Census due in large part to the Memorandum. ADC and ADRCI will have to increase staff time and spending devoted its Census education and outreach efforts by approximately 25% percent over current levels to address the Memorandum. In addition to my work, I had to direct my National Organizer and our Media Coordinator to divert some of their time away from other priorities to do additional Census work

15. Because the Memorandum has caused and will continue to cause ADC and ADRCI to spend more time and money spent on Census outreach, ADC and ADCRI will need to divert resources from other important programmatic areas, including pro bono legal services, voter protection work, working with victims of hate crimes, policy work related to upcoming elections, policy work related to COVID-19, community organizing and outreach efforts, as well as educational programs typically implemented at the start of each school year. These are critical programmatic areas right now given the ongoing COVID-19 Pandemic, upcoming elections, and the economic crisis. I have personally spent at least 35 hours on Census-related work since the release of the most recent Memorandum, that I otherwise would have spent on other areas of work, including on development, implementation, overseeing daily operations, coordinating with partner organizations, and overall day to day operations.

16. ADC puts significant resources in Census education and outreach work because our members and the communities we serve face significant negative consequences in the event of an undercount. As noted above, ADC has members in all 50 states plus Washington, DC, as well as a national network of chapters. These include chapters in; Los Angeles and Orange County, California; Miami and Orlando, Florida; Austin and Dallas, Texas; Northern New Jersey; New York, New York; and Tucson and Phoenix, Arizona. ADC has Board of Directors, most of whom membership elects, and all of whom are also ADC members and represent a cross-section of the United States.

17. For example, ADC has members in California, including Dr. Souhail Toubia, who is based in Orange County, California, and George Majeed Khoury, a San Diego, California member. I understand that California is likely to lose at least one seat in Congress if the Memorandum is implemented. Therefore, these members will be directly harmed by the policy to exclude undocumented residents from the apportionment base, as they will lose political representation. These members' communities are likely to also lose federal funding as a result of this policy, as they live in areas with significant populations of undocumented individuals and noncitizens generally, who will also be less likely to fill out the 2020 Census because of this policy as well.

18. ADC has members in Florida as well, including Shata Atiya, who is based in Miami. I understand that Florida is likely to lose at least one seat in Congress if the Memorandum is implemented. Therefore, Ms. Atiya will be directly harmed by the policy to exclude undocumented residents from the apportionment base, as she will lose political representation. Ms. Atiya's community is also likely to lose federal funding as a result of this policy, as she lives in an area with a significant population of undocumented individuals and non-citizens generally, who will also be less likely to fill out the 2020 Census because of this policy as well.

19. ADC also has members in New Jersey, including Tawfiq Barqawi, who lives in Gloucester County, New Jersey. I understand that New Jersey is likely to lose at least one seat in Congress if the Memorandum is implemented. Therefore, these members will be directly harmed by the policy to exclude undocumented resi-

dents from the apportionment base, as they will lose political representation. Mr. Barqawi's community is likely to also lose federal funding as a result of this policy, as he lives in an area with significant populations of undocumented individuals and non-citizens generally, who will also be less likely to fill out the 2020 Census because of this policy as well.

I declare under penalty of perjury that the foregoing is true and correct. Executed on Aug. 6, 2020, in Washington, D.C.

/s/ <u>SAMER E. KHALAF</u>
SAMER E. KHALAF

Exhibit 28

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

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20 Civ. 5770 (JMF)

STATE OF NEW YORK, ET AL., PLAINTIFFS

v.

DONALD J. TRUMP, IN HIS OFFICIAL CAPACITY
AS PRESIDENT OF THE UNITED STATES, ET AL.,
DEFENDANTS

———————

DECLARATION OF MONTEREY COUNTY SUPERVISOR CHRIS LOPEZ

———————

Pursuant to 28 U.S.C. § 1746(2), I, CHRIS LOPEZ, hereby declare as follows:

1.   I am over the age of eighteen and have personal knowledge of all the facts stated herein.

2.   I am a member of the Board of Supervisors of the County of Monterey, California, the elected decision-making body of the County.   I represent District 3, located in Southern and Central Monterey County.   District 3 is predominantly rural, agricultural, and is the largest Supervisorial District in terms of geographic area.

3.   I grew up in the same District that I now serve. Currently, I serve as the Chair for the Monterey County Board of Supervisors and sit on several California Brown Act legislative bodies, including the 2020 Census Steering Committee and Behavioral Health Commission, among others.

4.   Our Central Coast California region encompasses a diverse mix of coastal and inland areas best known for agricultural production and tourist destinations.   Accordingly, our largest employment industries are in agriculture and hospitality.   District 3 of Monterey County is home to a diverse population made up of over 80% of Hispanic and Latino residents.   Across Monterey County, nearly 21% of the total residents are noncitizens, including lawful permanent residents, refugees granted asylum, immigrants granted temporary relief under the Deferred Action for Childhood Arrivals ("DACA") program, and other groups.   According to the Census estimate of 2018, Monterey County is home to 437,907 people, with 30.4% of the residents being foreign born.   Indeed, according to the Public Policy Institute of California, Monterey County has the highest percentage of non-citizens of any California County. Based on my experience in residing and working in District 3 my entire life, I estimate that nearly half the residents are undocumented or members of mixed status household families.

5.   The County's dynamic immigrant population is deeply integrated, both socially and economically; one in four children in the County is an immigrant.   Overall, approximately 247,792 County residents live in a noncitizen or mixed citizen household per 2017 U.S. Census Bureau figures.

6.   Monterey County is one of the nation's top agricultural producers.   Agriculture is the County's largest economic and employment sector, generating $8.1 billion annually and providing 76,054 jobs.   In District 3, the Agricultural Sector is the leading employer.   While

most crops across the United States are machine-harvested, many of the crops grown in Monterey County must be picked, sorted, and/or packed by hand, so the County is dependent on a large and skilled labor force.

7. The County's "Hard to Count" communities are well documented by the U.S. Census Bureau, with an estimated 35% of the population living in Hard to Count neighborhoods compromised of populations historically missed in the census at disproportionately high rates. These populations include the majority of the residents of my District: people of color, young children, and immigrants.

8. According to the Public Policy Institute of California, Monterey County's overall poverty rate is approximately 17.4%. In District 3, a predominantly Hispanic community, 22% of the 67,399 people live in poverty. According to the U.S. Census Bureau, nearly one in four households in our District lives in overcrowded conditions. Our immigrant population includes a high percentage of farm workers, both migrant and permanent. Farmworkers commonly face a variety of challenges, including difficulty accessing affordable housing, inconsistent seasonal income, and low wages relative to the cost of living. The farmworker population in Monterey County, and in particular District 3, is plagued by overcrowded living conditions. A 2018 Farmworker Housing Study revealed that 54% of farmworker dwellings had joint or "extra" tenants and that less than half lived only with family. This longstanding problem has come into focus recently because such living conditions greatly increase the risk of contracting COVID-19.

9. Monterey County depends on critical funding from the Federal and State government to implement

and administer health, welfare, public safety, infrastructure improvement, and transportation programs. The total Federal and State aid for fiscal years 2017-2018 is estimated at 33% of total financing. Social Services and Health programs administered by the County Health Department rely heavily upon this aid.

10. With my personal experience of growing up in South Monterey County and ultimately serving the County as an elected official, a role in which I oversee critical government functions as a member of the Board of Supervisors, I strongly believe that the recent executive decision to exclude undocumented immigrants from the 2020 Census apportionment will have serious negative effects on the representation, health, safety, and well-being of Monterey County residents.

11. Based on my experience overseeing the near $4 billion dollar annual County budget, critical federally funded programs with funding allocations based on Census data would suffer substantial cuts affecting a variety of social safety programs, including, school behavioral health counseling programs, lunch programs, Limited English Proficiency education, Children's Health Insurance Program, Women, Infants and Children program, public health research and interventions, transportation, roads and other critical infrastructure, as well as affordable housing programs.

12. For example, California state law recognizes that local governments play a vital role in developing affordable housing. The state of California mandates that all cities, towns and counties plan for the housing needs of its residents regardless of income. This mandate is called Housing Element and Regional Housing Needs

Allocation, which is driven by Census data. The California Department of Housing and Community Development utilizes Census data to determine the total number of new affordable homes that need to be built in each local jurisdiction. Without accurate Census data, I believe that the availability of affordable housing may be significantly and negatively impacted in Monterey County.

13. District 3 is home to over two-thirds of the total geographical area of the County of Monterey. Its size and rural inland location makes public transportation, and public infrastructure projects a critical part of our residents' ability to go to work, access healthcare services, and access education for their children. Our local government depends on high quality census data to obtain funding to develop and build new schools, improve roads, highway safety, and adequately plan public transportation routes and accessibility

14. Without accurate Census data, calculating appropriate class sizes in schools would be difficult, inhibiting children's access to a quality education. For example, age information from the Census is vital to allowing Monterey to make appropriate decisions regarding school funding and services. In the recent shutdown of local schools in response to the COVID-19 pandemic, Wi-Fi services were allocated based on Census data, in order to make online learning possible for children without internet access.

15. Inaccurate Census reporting would also interfere with Monterey County's children accessing critical behavioral health services at local schools, a service provided by our County Health Department. In our Dis-

trict, King City Elementary School is the leading location for children to access Behavioral Health counseling services for children suffering from psychological trauma. This program is dependent on funding made available by federal allocations, which are based on accurate Census counts. Given that our District has a high population of undocumented immigrants, deterring residents from responding to the census could result in an undercount that would put programs like this at risk. For some of the children accessing these services, school is the only safe location for them to obtain this care. Without it, children would be deprived of critical mental health services, worsening their mental health outcomes and potentially adversely impacting them for the rest of their lives.

16. As District 3 Supervisor, I have first-hand knowledge of the fear that exists in my community in responding to the 2020 Census. I am gravely concerned that the recent action by the Trump Administration will "chill," or deter, participation in the 2020 Census by my constituents, impacting the quality of the data that is ultimately reported. I have personally discussed with my constituents the fear they face in participating in the Census. In addition, my office and staff have received calls regarding this issue.

17. District 3, like other parts of Monterey County, is home to a hardworking and exceptionally skilled farmworker workforce, who hand-pick fresh strawberries, lettuce, tomatoes, artichokes, kale, and brussels sprouts, and broccoli for national consumption. Many of these workers are recruited to come in from Mexico, while others have resided in the region over many generations.

The decision to exclude some of these hardworking residents from the 2020 apportionment count would send the message that their representation deserves to be diluted and that their lives are somehow worth less. And the pernicious effects of this redistricting would affect everyone in the region, citizen or noncitizen, documented or undocumented.

18. Given the nature of the Monterey County population, including the significant presence of farmworker, undocumented, and immigrant families and individuals, I expect that substantial efforts and resources will be required to ameliorate the chilling effects on participation in the 2020 Census caused by the Administration's recently announced plans. The County will have to dedicate significant resources to ensure participation without fear, and to help the County obtain the funding necessary to prevent its residents from going hungry, homeless, or without access to healthcare.

I declare under penalty of perjury that, to the best of my knowledge, the foregoing is true and correct.

Executed on this 3rd day of Aug., 2020

/s/ CHRIS LOPEZ
CHRIS LOPEZ
Monterey County Supervisor

Exhibit 31

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

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20 Civ. 5770 (JMF)

STATE OF NEW YORK, ET AL., PLAINTIFFS

v.

DONALD J. TRUMP, IN HIS OFFICIAL CAPACITY
AS PRESIDENT OF THE UNITED STATES, ET AL.,
DEFENDANTS

———————

DECLARATION OF MELISSA McCAW

———————

Pursuant to 28 U.S.C. § 1746(2), I, Melissa McCaw, hereby declare as follows:

1. I am over the age of eighteen and have personal knowledge of all the facts stated herein.

2. I am the Secretary of the Connecticut Office of Policy and Management (OPM). Consistent with the powers bestowed on me and my agency through Connecticut General Statutes 4-65a, *et seq.*, I oversee budget and policy matters on behalf of the Governor of the State of Connecticut. I have been employed in this capacity since January 2019.

3. Connecticut's Office of Policy and Management functions as the Governor's staff agency and plays a central role in state government, providing the information and analysis used to formulate public policy for the State and assisting state agencies and municipalities in implementing policy decisions on the Governor's behalf. OPM prepares the Governor's budget proposal and implements and monitors the execution of the budget as

adopted by the General Assembly. OPM provides the Governor with a global overview of proposed policy initiatives, identifying the full range of financial and policy implications of proposed actions. On the Governor's behalf, OPM analyzes and assesses financial, programmatic, and legislative proposals of state agencies, the General Assembly, and the federal government. Under Connecticut law, OPM is also responsible for "all aspects of state staff planning and analysis in the areas of budgeting, management, planning, energy policy determination and evaluation, intergovernmental policy, criminal and juvenile justice planning and program evaluation." Conn. Gen. Stat. 4-65a.

4.   In everything we do, OPM—like all of Connecticut's state agencies—strives to be informed by the best available data. U.S. Census Bureau data is indispensable to our work, and to that of the state agencies whom we support and assist in budgeting and policy formulation and implementation. It is the sole available source for a wide range of characteristic data—data on subgroups within the overall population—that are essential to effective and accurate planning. In essence: In many critically important areas, unless a Connecticut resident participates in a state program or accesses a service, the State has no way—other than the census—of knowing critical characteristic data about the population.

5.   Accurate characteristic data is particularly important in Connecticut, which has no county-level government and is subdivided into 169 municipalities. Even small inaccuracies in characteristic data relative to our overall population can have significant implications for planning on the municipal and regional level, especially

where data must be disaggregated by multiple characteristics.

6.   Because of OPM's planning and budgeting role for all Connecticut state agencies, I am familiar with several instances in which either OPM or Connecticut state agencies have relied and continue to rely on accurate characteristic data from the census to plan efficiently and effectively.   Some of those include:

   a.   <u>Fighting COVID-19</u>:   Connecticut has developed and deployed a statewide program of testing and population-based control measures that have helped us become a national leader in flattening the curve and reducing sickness and mortality due to the coronavirus and its associated sickness, COVID-19.   Our Department of Public Health makes targeted decisions about locating testing sites based on characteristic data that speak to COVID-19 risk factors including population density, poverty, and the race and ethnicity of residents.   The accuracy of that data is a matter of life and death, and impacts both Connecticut's immediate-term public health and its ability to reopen its economy and thrive in the medium- and long-terms.

   b.   <u>School Construction</u>:   OPM works closely with Connecticut's Office of School Construction Grants & Review (OSCG&R), which is responsible for the grant administration of all Connecticut public school construction projects seeking authorization for a State grant commitment.   Municipalities that seek State bonding for school construction must work with, and seek authorization from, OSCG&R.   To ensure that state

bonding resources are used wisely, OSCG&R requires municipalities to document the need for their requested facilities using enrollment projections—including, most importantly, projected school-aged populations—that draw on characteristic data including population age, child-bearing rates, and mobility. I am particularly familiar with this process because Section 10-282 of the Connecticut General Statutes requires me, as OPM's Secretary, to review OSCG&R's list of eligible projects and provide comments and recommendations. In the absence of accurate data, Connecticut will be unable to make the best possible decisions around where, and how, to build its next generation of school facilities.

c. <u>Equal Employment Opportunities in State Government</u>: Connecticut's Department of Labor (DoL) relies on accurate and detailed characteristic data to generate projections for policy and planning purposes. To cite just one instance: To promote equal opportunity in employment, Connecticut law requires that state agencies, municipalities, and some companies develop and implement affirmative action plans. In relevant part, those plans articulate hiring and promotion goals in light of the overall workforce by occupational category. Our DoL relies on occupational data from the census—among other sources—to promulgate accurate information and set goals and benchmarks for state agencies to use in developing those Affirmative Action Plans. In other words: Connecticut's objective of increas-

ing equity and reducing barriers to equal employment opportunity depends, in part, on accurate characteristic data from the census. OPM prepares a biennial Affirmative Action Plan that is filed with the Commission on Human Rights and Opportunities, relying on the census data provided by DoL to formulate our hiring and promotion goals.

d. <u>Labor, Employment and Economic Development Trends</u>: Other DoL uses of characteristic data from the census include targeting job training to particular populations and neighborhoods and projecting both labor supply and consumer demand to assist in economic development activities. For example: Knowing the number of people over a certain age helps DoL to project demand for health care and assisted living facilities, while knowing the number of people under a certain age in particular geographies helps DoL to project the demand for employment in education, daycare, and related industries. This is all relevant to programmatic and funding decisions vetted and approved by OPM.

e. <u>Public Transportation</u>: Connecticut's Department of Transportation (DoT) relies on accurate characteristic data to forecast travel demand, identify commuting patterns, and forecast the impact of new transportation projects across the state. Characteristic data are also used to ensure transportation options are accessible and do not discriminate based on demographic and socio-economic factors such as race, color, income levels, vehicles available, or national origin.

For instance, census data on languages spoken at home informs the development of signage and materials in other languages for public involvement at various levels of the state's transportation planning processes. As the Secretary of OPM, I am the Secretary of the State Bond Commission, which approves funding through bonding for eligible DoT projects. The State Bond Commission approves funding requests by DoT based on demonstrated need, and the underlying travel demand forecasts utilizing characteristic data are often a component of that assessment.

f. <u>Revenue Projections and Budgeting</u>: OPM is responsible for analyzing big-picture trends that may impact Connecticut's long-term economic and budget health. That analysis informs state policy on issues ranging from revenue generation to economic development incentives. For example, pursuant to Section 4-74a of the Connecticut General Statutes, OPM prepares an annual "Economic Report to the Governor" that relies on information on Connecticut's population and migration trends, drawing heavily on census data on characteristics including income, age, and migration, in order to make recommendations concerning the economy and appropriately analyze the impact of both proposed spending and proposed revenue programs on the employment, production and purchasing power of the people and industries within the state.

7.   In each of these instances, and in myriad others, our planning will be less effective if it is informed by inaccurate data.   In conclusion: census accuracy matters, and it matters not just for total population counts but also for characteristic data.   The effectiveness and efficiency of our government—and the health and wellbeing of our residents—relies on accurate characteristic data from the census.

I declare under penalty of perjury that, to the best of my knowledge, the foregoing is true and correct.

Executed on this 5 day of Aug., 2020

SECRETARY OF THE OFFICE OF POLICY AND MANAGEMENT

By:

/s/   <u>MELISSA McCAW</u>
        MELISSA McCAW

Exhibit 34

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

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20 Civ. 5770 (JMF)

STATE OF NEW YORK, ET AL., PLAINTIFFS

v.

TRUMP, ET AL., DEFENDANTS

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DECLARATION OF BITTA MOSTOFI

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Pursuant to 28 U.S.C. § 1746(2), I, Bitta Mostofi, hereby declare as follows:

1.   I am over the age of eighteen and have personal knowledge of all the facts stated herein.

2.   I am the Commissioner of the City of New York (the "City")'s Mayor's Office of Immigrant Affairs ("MOIA").   I have worked at MOIA since 2014, becoming Acting Commissioner in 2017 and appointed Commissioner in 2018.   As Commissioner, I provide advice and guidance to the Mayor, his staff in other divisions of the Mayor's Office, and other City agencies, on a range of issues related to immigration.   I also guide and oversee the work of approximately 70 City employees assigned to work on fulfilling MOIA's mission.

3.   MOIA, established in the Charter of the City of New York in 2001 by referendum, develops and implements policies designed to assist immigrants across the City by enhancing their economic, civic, and social integration into the community, including, encouraging participation in the Census.   In order to achieve that mission, MOIA conducts research and analysis, provides

guidance to and partners with other City agencies, develops partnerships with community-based organizations, and advocates at all levels of government.

4. My office and I have been engaged in a variety of efforts to increase the participation of the City's immigrant community in the Census. I was Commissioner on the New York State's Complete Count Commission after being appointed by Governor Cuomo in January of 2019. The commission issued its final report in October of 2019. During my tenure at the Commission, I spent hours listening to testimony and concerns raised by local elected officials, community based organizations, community members and others about their concerns and needs for achieving a complete count. These concerns consistently included specifically immigrant community fears and concerns about privacy, the inclusion of a citizenship question, and distrust of the federal government. It was difficult to overcome these barriers and to focus on the benefits and importance of getting counted. Even after the Commission concluded, I have continued to work with the New York City Census Team to advise on the issue of encouraging participation in our immigrant communities. I also continue to be involved in many community and press events to ensure a complete count of the City's immigrant communities.

5. My office has expended significant staff time across teams in an effort to increase the participation of the City's immigrant community in the Census. MOIA's Outreach and Organizing team ("Outreach Team") has engaged in extensive community outreach related to increasing the participation of the City's immigrant com-

munity in the Census. The Outreach Team has incorporated the Census into almost all of its activities. When our organizers canvass neighborhoods and hold in-person and virtual events, they distribute Census materials and include information about the importance of participation in the Census by all NYC residents, regardless of their immigration status, in their remarks. Our organizers also participate in Census Days of Action coordinated by the New York City Census team. During these Days of Action, held in neighborhoods with historically low response rates, our organizers often distribute literature and speak to community members to encourage participation and dispel misinformation about the Census, including reminding community members that there will be no citizenship question and that the information contained in their Census responses will not be shared with other parts of the federal government. Many of our organizers have created informational videos on social media in several languages describing the Census and providing information about where to get assistance with completing the Census. They also use various messaging applications favored by different immigrant communities to send out information on the Census to constituents about the importance of participation and to answer any questions to dispel misinformation. Recently, the Outreach Team held a five-hour virtual telethon event, entitled "Que Cuente Mi Gente! (Make My People Count!)," that included appearances by elected officials encouraging undocumented community members to respond to the census and educating them on its importance.

6. In support of this work, MOIA's Policy Team provides federal policy updates to teams across MOIA,

including updates on Census and the Census enumeration period. These policy updates keep MOIA staff informed, including the Outreach and Organizing team, so that they have accurate information to convey when engaging with members of the community. Three members of MOIA's policy team have already devoted several hours to analyzing and explaining the Presidential Memorandum to MOIA's staff.

7. In addition, MOIA's communications team has worked for over a year with the New York City Census team on an outreach campaign focused on hard to count communities, like immigrant communities, emphasizing the importance of responding to the 2020 Census. The joint efforts are focused on posting and elevating Census related content on social media, advising on the production of multimedia messaging campaigns specifically targeted towards immigrant communities, fielding media inquiries, developing talking points and fact sheets, and conducting a series of roundtables with community and ethnic media outlets across New York City discussing the Census.

8. Throughout its Census outreach efforts, MOIA has faced a number of challenges, many of which stem from the City's immigrant communities' distrust of the federal government, and by association, any other government entity. With the anti-immigrant rhetoric contained in the July 21, 2020 Presidential Memorandum excluding undocumented immigrants from the apportionment count, President Trump sowed fear, mistrust, and confusion amongst the immigrant communities in New York City. Official Presidential statements that *undocumented persons don't count* cultivate distrust and resentment of the federal government throughout

immigrant communities, which has a chilling effect on immigrant response to the Census. As a result, the July 21, 2020 Memorandum is a significant setback to our efforts to ensure that immigrant communities respond to the Census.

9. Despite the recency of its promulgation, the Trump Administration's Census Apportionment Memorandum has already proven to be a barrier to the City's efforts to increase participation in the Census among immigrant communities. News of the Trump Administration's most recent memo has spread through immigrant communities in New York City incredibly quickly, and MOIA is concerned that the current news cycle will continue to make immigrants, specifically those who are undocumented, afraid or reluctant to complete the Census. Though the memorandum has only been published for roughly two weeks, members of our Outreach team have already encountered individuals in the community expressing concerns, fears, and confusion about completing the Census. In one instance, a member of our Outreach team shared information about the Census with a constituent during the NYC Census Week of Action, held from July 27, 2020 to August 2, 2020. The constituent asked whether individuals who are undocumented had to complete the Census because she had heard that the President had stated that undocumented immigrants did not have to be counted. Another constituent who works as a street vendor expressed to another Outreach team member that she did not think she had to fill out the census because she was not born in the United States and that she had heard in the news that people who are undocumented do not count. In another example, a community member from Jackson Heights expressed specific concerns about the federal government's

plan to exclude undocumented persons from the Census. She also expressed that the Trump administration would punish undocumented persons who filled out the Census by tracking and deporting them. She further explained that many within her community have the same concerns. Since the promulgation of the new memo, a member of the Outreach team has encountered individuals who are undocumented as well as those living in mixed status households who have expressed concerns about the security of their identifying information being shared with the federal government, specifically expressing concerns that the Trump Administration would seek to use Census information against them.

10. Regardless of whether the Trump Administration's memo is successful in excluding immigrants from the apportionment count, it is impossible to ignore the chilling effect that this memo is already having on the completion of the Census among immigrant communities in New York City.

11. In response to the Presidential Memorandum, our teams have had to devote more time and energy to combatting misinformation, fear, and confusion, and we expect to continue expending more energy than previously anticipated on these efforts. In engagements with community members since the Presidential Memorandum, our Outreach team has increasingly had to engage in very personalized and community specific outreach to build a level of trust that is much higher than necessary in their outreach on other services or topics. Likewise, our communications strategy moving forward will continue to prioritize messaging that explains why it is important for everyone to fill out the Census, that

in fact everyone can get counted regardless of their immigration status and there is no citizenship question on the census, and that the information provided to the Census Bureau is confidential and protected. For example, I will be authoring an Op-Ed in the Queens Chronicle's Immigration Corner column on the right of every New Yorker, regardless of immigration status, to be counted in this decennial Census. The Presidential Memorandum undercuts this messaging and makes it harder for our office to encourage immigrants to respond to the census.

I declare under penalty of perjury that, to the best of my knowledge, the foregoing is true and correct.

Executed on this 5th day of Aug., 2020

> /s/ BITTA MOSTOFI
> BITTA MOSTOFI
> Commissioner,
> Mayor's Office of Immigration Affairs

Exhibit 35

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

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20 Civ. 5770 (JMF)

STATE OF NEW YORK, ET AL., PLAINTIFFS

v.

DONALD J. TRUMP, IN HIS OFFICIAL CAPACITY
AS PRESIDENT OF THE UNITED STATES, ET AL.,
DEFENDANTS

DECLARATION OF DOUG MURRAY

Pursuant to 28 U.S.C. § 1746(2), I, Doug Murray, hereby declare as follows:

1.   I am over the age of eighteen and have personal knowledge of all the facts stated herein.

2.   Under July 31, 2020, I served as the Director of Community Affairs for Mayor Andrew Ginther in the City of Columbus.   I oversaw numerous city initiatives including acting as the City's census coordinator, community outreach to various neighborhoods in the city, and have been involved in the City's national search for new Police and Fire chiefs.   I have been employed by Mayor Ginther in the City of Columbus since 2018.

3.   In order to obtain a full count of all people residing inside the City of Columbus, I have worked with various public and private partners to ensure all people who reside inside the City respond to the census.   This includes leading the Columbus/Franklin County 2020 Census Complete Count Committee chaired by Mayor Ginther

and the President of the Franklin County Board of Commissioners. This committee included various social services agencies, non-profit groups, the Columbus City Schools, the Ohio State University, One Columbus, and various civil rights and community groups such as the Columbus Chapter of the NAACP, and community groups representing immigrant and New Americans.

4. The City supported the committee's work to ensure a complete count of Franklin County's population of approximately 1.3 million residents by providing communications and community outreach support, funding a census micro-grant program, hosting numerous promotional events, and providing City office space to the Census Bureau for employee training purposes. In total, the City allocated $300,000 for the census, including $150,000 for micro-grants, $100,000 for a marketing and community outreach contract, and $50,000 for supplies and services. The City developed its own 2020 Census "Columbus Counts" branding and printed hundreds of thousands of promotional handouts and items for volunteer committee members to distribute. Promotional materials and digital communications were translated into five different languages including Spanish, Somali, Bhutanese, and Nepali. The City hired a marketing firm to develop and implement a comprehensive digital, in-person, radio, and TV marketing and communications strategy to encourage census participation among Franklin County's hard to count (HTC) populations. Further, the City allocated $150,000 through the United Way to provide over 40 community-based non-profits with micro-grants to conduct census outreach and communications to HTC communities. Mayor Ginther, Franklin County Commissioner Kevin Boyce, and other local elected officials hosted various social media events

and in-person events with national organizations like the National Association of Latino Elected Officials.

5. Columbus and Franklin County residents have expressed concerns and fears regarding completing the 2020 Census. Our message has been "Columbus Counts" which has been used for years to build trust and encourage all people to complete the census. We have noticed that, as a result of the Trump Administration decision to try and add a citizenship question to the 2020 Census and a Presidential Memorandum prohibiting the counting of undocumented individuals for purposes of redistricting, that there has been an increase in confusion and fear among our residents. For example, immigrant and New American residents have expressed concerns to City employees and committee members about not being counted in the 2020 Census because of the Presidential Memorandum. In order to try and counter this, we have had to increase our social media presence and emphasize that the census counts all people in the country—not just citizens or permanent residents. Our response rates compared to 2010 are down and we have been working to increase it.

6. As a result of public health restrictions in place due to COVID-19, the Census Bureau has significantly delayed non-response follow-up operations. The committee has communicated to residents for years that in-person counting would begin in the spring of 2020 and many communities are confused about the continued delays. In particular, committee members representing immigrant communities and organizations note that their constituents, including many Latino, Somali, and West African communities, are confused about census operations. Moreover, response rates are down in Columbus

census tracts with significant immigrant, Latino, and African American populations.

7.   As noted above, we have noticed that there is concern in our immigrant and New American communities specifically as a result of the Presidential Memorandum excluding noncitizens from the reapportionment numbers.   Several committee members have heard directly from residents that they are confused about the census as a result of the Presidential Memorandum and have concerns about completing it.   Response rates to the census have traditionally been lower among our immigrant and New American communities due to distrust of government.   This distrust of government and general lack of awareness of the census have been exacerbated by the Presidential Memorandum excluding noncitizens from the reapportionment numbers.   Moreover, many residents believe that completing the census will negatively impact their government benefits.

8.   The City and its community partners will continue to adjust messaging to reflect that all residents, regardless of immigration status, count in the census. The City notes that the U.S. Constitution clearly states that all people count, not just citizens.

I declare under penalty of perjury that, to the best of my knowledge, the foregoing is true and correct.

Executed on this 5th day of Aug., 2020

/s/   DOUG MURRAY
Doug Murray

Exhibit 36

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

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20-CV-5770 (JMF)

STATE OF NEW YORK, ET AL., PLAINTIFFS

v.

DONALD J. TRUMP, IN HIS OFFICIAL CAPACITY
AS PRESIDENT OF THE UNITED STATES, ET AL.,
DEFENDANTS

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20-CV-5781 (JMF)

NEW YORK IMMIGRATION COALITION, ET AL.,
PLAINTIFFS

v.

DONALD J. TRUMP, IN HIS OFFICIAL CAPACITY
AS PRESIDENT OF THE UNITED STATES, ET AL.,
DEFENDANTS

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DECLARATION OF THEO OSHIRO

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THEO OSHIRO, pursuant to the provisions of 28 U.S.C. § 1746, declares under penalty of perjury as follows:

1. I am the Deputy Director at Make the Road New York ("MRNY"). I have been on staff at MRNY since 2005. I am over 18 years of age. I have personal knowledge of the facts stated in this declaration.

2. MRNY is a nonprofit membership organization with offices and service centers in Brooklyn, Queens, Staten Island, Suffolk County, and White Plains. MRNY's

mission is to build the power of immigrant and working-class communities. To do that, MRNY engages in four core strategies: Legal and Survival Services, Transformative Education, Community Organizing, and Policy Innovation. MRNY has more than 24,000 members who reside in New York City, Nassau County, Suffolk County, and Westchester County. These members lead multiple organizing committees across numerous issues and program areas of concern to the organization. Members take on leadership roles in the campaigns, determine priorities, and elect the representatives who comprise most of the Board of Directors. MRNY members include individuals who do not have lawful immigration status.

3. In my capacity as Deputy Director, I am responsible for overseeing our census work and our services teams, which include our legal, health, and adult education departments. I am also part of the Executive Leadership Team of MRNY and am responsible for fundraising and shaping many of MRNY's organizational priorities. Throughout my tenure with MRNY, I have been in regular contact with MRNY members and I frequently meet with members in the communities in which they reside where I learn about their neighborhoods, their needs, and their concerns to inform communications, organizing, and civic engagement programs for MRNY. During my 15 years at MRNY, I have also familiarized myself with MRNY's internal records and processes; our staff and their responsibilities; our programs and program areas; and our members, and their needs.

4. The Decennial Census is a critical and constitutionally-mandated data-gathering instrument,

used to distribute hundreds of billions of dollars in federal resources and to apportion political power at the federal, state, and local levels. MRNY has an ongoing commitment to promoting engagement in the 2020 Decennial Census among its members and constituents because a complete and accurate Census count is critical to ensuring that our members receive the government funding and full political representation to which they are entitled. Our members in New York benefit when our state has its full complement of Congressional representatives and electoral votes, as well as adequate funding for the facilities, programs, and services they use, which receive Census-guided federal funding. These facilities and services include parents with children enrolled in schools that receive funding under Title I of the Elementary and Secondary Education Act; families whose children benefit from insurance funded by the State Children's Health Insurance Program; drivers who use interstate highways and mass transit on a daily basis, and thus, depend on federal highway funds to perform their jobs; and people who rely on housing assistance through various funding provided under Section 8, among other Census-guided funding streams. Promoting Census response can help ensure that the programs, services, and facilities that our members rely upon are adequately funded.

5. I have co-led MRNY's strategy and work around the 2020 Census including our education and outreach programs. To develop programs that achieve MRNY's goals of encouraging greater Census participation in the communities we serve, I have gained familiarity with the importance of data gathered from the Census in apportioning political representation and the allocation of some government funding sources. I am familiar with

the concerns of our members and the communities we serve around the Census for the purpose of developing effective Census communications directed at immigrant communities. I am also familiar with how the communities we serve would be impacted by an undercount toward the end of designing communications and organizing strategies that address those concerns and increase their civic engagement, and Census participation in particular.

6.   Because the Decennial Census requires a direct inquiry of every person in the United States, MRNY has invested significant organizational resources in encouraging our members and the immigrant communities we serve to respond to the Census. This work includes, among other things, general education programs, workshops for members, presentations in schools, and person-to-person outreach. We have also engaged in digital organizing around the Census, including through webinars and presentations streamed over Facebook Live. To date, we have called over 100,000 people and have assisted with or confirmed participation by over 7,500 people. MRNY has continued Census education and outreach during the pandemic and plans to continue encouraging and assisting people in filling out the questionnaire until the response period closes.

7.   Our education and outreach efforts to encourage our members and people in the communities we serve to respond to the Census emphasizes two essential purposes of the headcount: (1) Determining political apportionment, including the number of representatives each state will have in Congress, the number of electors per state in the electoral college, and the boundaries and

composition of Congressional districts; and (2) Determining how much government funding communities will receive for matters such as education, public housing, transportation, and health care. Our education and outreach efforts also emphasize that the Census counts every resident of the United States, regardless of age, citizenship status, or ability to vote. This message is important because it affirms the humanity and dignity of all Americans and the responsibility that all Americans, including undocumented Americans, bear for responding to the Census and ensuring that their home states and communities are allocated their fair share of political power and government funding. An example of one of our Census education and outreach documents is attached as Exhibit 1, and is also available in both English and Spanish, at the following link: https://maketheroadny. org/census2020/.

8. MRNY has been and remains committed to Census education and outreach work among immigrants and communities of color because those groups have been undercounted. Based on my knowledge as a staff member at MRNY and a leader in these communities, including on Census issues, I understand that one reason that immigrants and communities of color have been undercounted is a fear of contact with the government and distrust of government officials, particularly how they will use the data they collect.

9. MRNY has already faced a challenging environment for conducting outreach and encouraging immigrants of color to respond to the 2020 Census because of our members and constituents' heightened fear of interacting with government workers as a result of the Trump Administration's persistently hostile and discriminatory

actions and attitudes towards immigrants of color. Among the racist and xenophobic acts that the Trump Administration has undertaken include separating children from their families at the border and keeping immigrant children in cages; banning individuals from six majority Arab and/or Muslim countries from entering the United States; repeatedly attempting to rescind the Deferred Action for Childhood Arrivals program, which allowed 800,000 individuals—90% of whom are Latino—brought to this country as children to legally reside and work in the United States; rescinding Temporary Protected Status programs for individuals from El Salvador, Honduras, Nicaragua, Haiti, and Nepal; calling for an end to the diversity visa lottery; dramatically increasing interior enforcement raids in communities across the United States; proposing to end family-based immigration, which would disproportionately harm immigrants from Latin America and Asia; instituting a draconian "public charge" rule to obstruct lawful immigration both domestically and through U.S. embassies and consulates abroad, which disproportionately affects immigrants of color and has dramatically increased fear among immigrant and mixed-status families; referring to some undocumented immigrants as "animals"; and attempting to include a citizenship question on the Census. MRNY has consistently fought these efforts to intimidate and marginalize immigrants of color in the courts, in the streets, and at the ballot box.

10. Based on my experience as an MRNY staff member regularly in contact with our members, our organizing staff, our communications staff, and the media, the July 21, 2020 Presidential Memorandum to the Secretary of Commerce on the subject of "Excluding Illegal Aliens from the Apportionment Base Following the 2020

Census" ("Presidential Memorandum") is making our efforts to encourage Census participation more difficult. The Presidential Memorandum is sowing fear and confusion about the Census among the communities we serve. Individuals contacted by our census team since the Presidential Memorandum have stated that they no longer believed they needed to complete the census and even in some cases fear and concern that their completion of the census already may now expose them to penalties. The fear and confusion are not unique to undocumented immigrants or non-citizens with documented legal status, but also to mixed-status households in which individuals are fearful that the census invades their privacy and exposes their family, friends, and neighborhoods to profiling by the law enforcement agencies of an administration hostile to immigrants of color. When MRNY's census team encourages these individuals to complete the Census despite these fears, we now confront questions about what the point is to taking this risk—given that immigrants without lawful status will now not be counted regardless.

11. The Administration's decision to exclude some non-citizens from the apportionment base directly and severely undermines our Census education and outreach materials and programming by contradicting its core messages and discouraging Census response.

12. First, by excluding undocumented people from the apportionment count, the Presidential Memorandum creates confusion by contradicting one of the two core purposes of the Census that MRNY highlights in its education and outreach programming. Because the President has said that the Census responses of some

non-citizens will not be used for Congressional apportionment, some people may now neglect or decline to fill out the Census either because they no longer believe they are supposed to fill out the census or because of what they perceive as the diminished importance of their participation. The Presidential Memorandum dilutes the efficacy of our existing materials and programming, which requires MRNY to divert resources from other programmatic areas to strategize around how to make our education and outreach effective and to get the same number of people to respond to the Census questionnaire. By contradicting the message that filling out the Census is important to Congressional apportionment, people in the communities will discount the value of our current education and outreach materials or programs, requiring us to modify or make new materials or conduct new outreach that addresses the Presidential Memorandum. For instance, MRNY had to prepare and share internal guidance on what the Presidential Memorandum means and how to respond to questions; we also now have to revisit previous plans for outreach materials to address the concerns raised by this Memorandum. MRNY staff members have also had to divert time from other activities to respond to inquiries from Spanish-language media about this issue to assure people that everyone, regardless of their immigration status, should fill out the Census questionnaire and that every person will be counted for apportionment purposes. For instance, a single one of MRNY's Civic Engagement Coordinators has done over half a dozen Spanish-language media interviews to address the confusion and deterrent effect created by the Memorandum.

13. Second, by excluding undocumented people from the apportionment count, the Presidential Memorandum dehumanizes and marginalizes undocumented residents by excluding them from the category of "persons" required by the Constitution to be included in the apportionment count. This has been reflected in constituents whom MRNY's census team contacts asking "what is the point" of completing the census, with the concomitant risks, when the President has made clear his intention to ensure that undocumented immigrants do not count. By undermining our messaging about the purpose of the Census and further marginalizing and confusing immigrants who are already among the population most often overlooked by the Census, the Presidential Memorandum makes it less likely that the immigrant communities and communities of color we serve will be responsive to our Census education and outreach efforts.

14. Third, MRNY's staff have also observed an increase in fear among immigrant community members about completing the Census questionnaire since the Presidential Memorandum. Members of the community we serve are concerned that the Administration will use information from the Census to attempt to identify undocumented immigrants for deportation or other adverse consequences. For instance, one member of MRNY's census team who regularly walks constituents through completing the census while on the phone has observed many more concerns since the Presidential Memorandum about providing an address or phone number. To address those concerns and to assure people that they can respond to the Census without fear of immigration enforcement consequences for themselves or their families, MRNY is being forced to revisit and

strategize about how to make its education and outreach efforts effective, diverting staff time.

15. MRNY will be forced to expend more time than initially anticipated to try to reduce the negative effect of the President's announcement of the decision to exclude undocumented immigrants from the apportionment base on Census response rates in the immigrant communities of color it serves.   MRNY expects that it will now need to spend more resources to convince the same number of people to complete the Census, and that ultimately, it will be less successful in convincing its constituents to participate in the 2020 Census due in large part to the Administration's decision to exclude undocumented immigrants from the apportionment base.

16. Because of the need to increase the time and money spent on Census outreach and media work due to the fear and/or confusion generated by the Presidential Memorandum, MRNY will need to divert resources from other areas critical to its mission, including civic engagement and community organizing on other issues, such as obtaining crucial funding for excluded workers and housing advocacy for people struggling with rent during the pandemic, which are critical programmatic areas right now due to the health pandemic and economic crisis.

17. MRNY puts significant resources in Census education and outreach work because our members and the immigrant communities we serve face significant negative consequences in the event of an undercount. MRNY members reside in New York City, Westchester, Nassau, and Suffolk Counties, the populations of which include immigrant communities of color that far exceed state and national averages.   An undercount of those

populations will deprive MRNY members of political influence and Census-guided funding to which they would be entitled by a more accurate count.

18. The shortening of the census self-response deadline from October 31 to September 30, 2020 also negatively impacts MRNY because we anticipate it will cause a further undercount of the immigrant communities that we serve and from which our membership is drawn. This change will also force MRNY to attempt to conduct more outreach and media work in a shorter period of time, straining our staff capacity and diverting staff time from other priorities at a crucial time in the electoral calendar.

19. One MRNY member who will suffer injury due to the Presidential Memorandum is Julissa Bisono. In addition to being a MRNY member, Ms. Bisono is MRNY's Associate Organizing Director and has been an organizer at MRNY for nearly 20 years. I have known Ms. Bisono personally for several years. I know that Ms. Bisono is a resident of Queens County and the parent of two children attending public school, in Community School Districts 24 and 27, that receives Title I funding. Because the number of Latino and immigrant residents of Queens County far exceeds the New York state average, an undercount of Latino and immigrant residents of Queens County will cause Ms. Bisono and other MRNY members in Queens to be deprived of political power and funding that will instead go to other states or other areas of New York State.

20. Another MRNY member who will suffer injury due to the Administration's decision to exclude undocumented immigrants from the apportionment base is Perla Lopez-Liberato. In addition to being a member

of MRNY, Ms. Liberato is a Youth Organizer at MRNY. I also have known and worked regularly with Ms. Liberato for several years. I know that Ms. Liberato is a resident of Queens County, New York. Because the number of Latino and immigrant residents of Queens County far exceeds the New York state average, an undercount of Latino and immigrant residents of Queens County will cause Ms. Liberato and other MRNY members in Queens to be deprived of political power and funding that will instead go to other states or other areas of New York State.

21. Another MRNY member who will suffer injury due to the Administration's decision to exclude undocumented immigrants from the apportionment base is Yatziri Tovar. In addition to being a member of MRNY, Ms. Tovar is a media specialist at MRNY. I also have known and worked regularly with Ms. Tovar for several years. I know that Ms. Tovar is a resident of Bronx County, New York. Because the number of Latino and immigrant residents of Bronx County far exceeds the New York state average, an undercount of Latino and immigrant residents of Bronx County will cause Ms. Tovar and other MRNY members in the Bronx to be deprived of political power and funding that will instead go to other states or other areas of New York State.

I, Theo Oshiro, declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and recollection.

Dated: Aug. 6, 2020
   Croton-on-Hudson, N.Y.

     /s/ <u>THEO OSHIRO</u>
       THEO OSHIRO

Exhibit 37

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

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20 Civ. 5770 (JMF)

STATE OF NEW YORK, ET AL., PLAINTIFFS

v.

TRUMP, ET AL., DEFENDANTS

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DECLARATION OF ROBERT RAPOZA

———

Pursuant to 28 U.S.C. § 1746(2), I, Robert Rapoza, hereby declare as follows:

1.   I am over the age of eighteen and have personal knowledge of all the facts stated herein.

2.   I am the Executive Director for the Rhode Island Board of Elections.   I oversee the regulation of various aspects of the elections process within Rhode Island.   I have been employed by the Rhode Island Board of Elections since 1998 and was appointed Executive Director in 2017.

3.   The mission of Rhode Island Board of Elections is to protect the integrity of the electoral process and to effectively and efficiently administer the provisions of the election laws of the United States and the State of Rhode Island.

4.   The Rhode Island Board of Elections has an important interest in providing and ensuring for an accurate election and that persons who lawfully vote in an election have their ballot counted.   The manner in which the State draws its redistricting lines also affects the

electoral process since it determines what candidates may run in a given district and who may vote (and be represented) in a given district.

5. Other sources of data for the purposes of redistricting is not possible, as use of Census data is mandated by the Rhode Island Constitution and by statute. See R.I. Const. art. VIII § 1; R.I. Gen. Laws §§ 22-1-2 and 22-2-2. Census data is used to establish Rhode Island House and Senate districts. For example, the Rhode Island Constitution states that "the general assembly shall, after any new census taken by authority of the United States, reapportion the representation to conform to the Constitution of the state". R.I. Const. art. VII § 1. Identical language is used with respect to the Senate. See R.I. Const. art. VIII § 1.

6. As Executive Director, I have regular contact with dedicated professionals throughout the state who work to carry out the mission of the Board. Through these contacts and through my duties as Executive Director, I have firsthand knowledge of the negative impact that an undercount will have on Rhode Island's representational interest.

7. Furthermore, as someone who works to ensure a fair and accurate electoral process in a state with a large immigrant community, I can attest to the fact that a Census undercount will negatively impact Rhode Island's representational interest due to its diverse population. For example, due to higher numbers of noncitizens in the City of Providence, an undercount means that Providence will likely lose representation in the Rhode Island General Assembly, and other parts of the

state will have greater representation. Other communities with high numbers of noncitizens will similarly suffer from undercounts and its representational effect.

8. Lastly, in executing my duties and responsibilities as Executive Director of the Rhode Island Board of Elections, I have personal knowledge of the harmful impact that a Census undercount will have on providing for and ensuring an accurate and fair electoral process in Rhode Island. Residents of likely undercounted areas such as Providence will have less of a voice in their state and local governments and they will be denied equal protection of the laws.

I declare under penalty of perjury that, to the best of my knowledge, the foregoing is true and correct.

I declare under penalty of perjury that, to the best of my knowledge, the foregoing is true and correct.

Executed on this [5th] day of [8], 2020

/s/ ROBERT RAPOZA
ROBERT RAPOZA

Exhibit 41

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

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20 Civ. 5770 (JMF)

STATE OF NEW YORK, ET AL., PLAINTIFFS

v.

TRUMP, ET AL., DEFENDANTS

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DECLARATION OF JOSEPH J. SALVO

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Pursuant to 28 U.S.C. § 1746(2), I, Joseph J. Salvo, hereby declare as follows:

1.   I am over the age of eighteen and have personal knowledge of all the facts stated herein.

2.   I am the Chief Demographer for New York City (the "City"), a post I have held since 1994. I was employed by the New York City Department of City Planning (DCP) from 1982 until February of 2020. I am now employed (part-time) by the New York City Economic Development Corporation and detailed to the Population Division of DCP as Chief Demographer.   The Population Division serves as the City's in-house demographic consultant, providing expertise to agencies for a whole host of applications involving assessments of need, program planning and targeting, and policy formulation.

3.   As Chief Demographer for the City, I head a team at the Department of City Planning that has been and continues to be the technical lead on the City of New York's census efforts.   We were responsible for reviewing the address list used in the 2020 decennial census,

through participation in the Local Update of Census Addresses (LUCA) program, a function we have performed since 1998, when the LUCA program was instituted. We also provide demographic expertise in support of census outreach efforts through a regular series of analytical reports on patterns of self-response to the census by neighborhood. We produce and share these reports so that outreach efforts throughout the City, such as those coordinated by NYC Census 2020 (New York City's census outreach initiative), the Regional Office of the United States Census Bureau, and other community-based groups, can more efficiently target populations with low self-response rates. I am also actively engaged at a national level, promoting the use of methods that will provide a more accurate count for the nation's cities during the 2020 census.

4.   As I have testified in previous litigation related to the 2020 census, self-response is the most accurate and efficient way to collect data in the census.[1]   As of July 23, more than four months into the 2020 census, self-response rates in New York City have been lagging, at just 53.7 percent, compared to 62.3 percent for the nation.   While any comparison with 2010 is limited by the unique timetable the pandemic has imposed on the 2020 Census enumeration, it is safe to say that self-response rates for the City and the nation are below their

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[1] *See, e.g., State of New York v. U.S. Department of Commerce*, 18-cv-2921 (JMF), Nov. 6, 2018 trial transcript, at 292, 302, 325-26. In addition to these excerpts, my entire testimony during the citizenship question trial supports this point as well as most of the other assertions in this declaration. *See id.* at 288-453.

2010 levels for comparable periods.[2]   Moreover, there are substantial differences in self-response rates by neighborhood within New York City.   For example, there is a pattern of lower self-response in black and selected Hispanic neighborhoods.

5.   If households do not self-respond (which can be done at any point in the enumeration) the next best thing is for them to cooperate with census enumerators when they knock on the door during a process called Non-Response Follow-Up (NRFU).   Like self-responses, responses provided in-person to census enumerators come directly from the household being enumerated and thus include self-reported data about both the number of household members and their demographic characteristics (such as age, gender, and race), similar to households that self-respond by mail or online.   But when households neither self-respond nor answer the door for census enumerators, the quality of the data regarding such households significantly declines.

6.   If no one responds to the knock on the door, the Census Bureau will leave a "notice of visit," and then check administrative records from the postal service to see if there is evidence that the unit is occupied.   Field workers will talk with neighbors, landlords, or others who may serve as "proxy respondents," by providing information on the number of persons and other characteristics of the non-responding household.   Another check of administrative records from social security, the IRS, and from other sources, may help complete the

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[2] Based on a response rate comparison for 2010 and 2020, approximately thirty-seven days from the initial mailout (April 23), as cited in *Weekly Report on Self-Response (Rates Issued on April 23)*, NYC Department of City Planning, Population Division, April 24, 2020.

enumeration for the household. But such records may not exist, especially for historically marginalized groups

7.   In cases where enumerators cannot obtain a response from a household after multiple visits, there are no proxy respondents, and administrative records are not available, the Census Bureau relies on its operation of last resort: statistical imputation.   Households in the neighborhood that responded in the census (also known as "donors") are used in a statistical model as a substitute for the missing household.   Since this form of imputation extrapolates data based on neighboring households, error is introduced because the demographic characteristics of households that do not respond are unknown and may differ substantially from the characteristics reported by households that do.   In fact, it is a maxim in statistical science that those who fail to respond in surveys are inherently different from those who do respond.   And since information on the actual number of persons in the household that failed to respond is frequently speculative or unknown, the count itself (in addition to the data on the characteristics of household members) is likely to be increasingly compromised as imputation levels rise.

8.   For these reasons, it is extremely important to maximize census self-response rates and, failing that, the rates at which households respond in-person to census enumerators during NRFU.   Any action that lowers these rates, or that undermines efforts to increase them, impairs the quality of the data collected during the census.   But President Trump's July 21, 2020 "Memorandum on Excluding Illegal Aliens from the Apportionment Base Following the 2020 Census" does just that.

9. Immigrant communities already confronted serious challenges for the accuracy and completeness of the 2020 census stemming from concerns about privacy, a hostile environment facing immigrants on the heels of efforts to add a citizenship question to the census, fear of government authorities, and unprecedented language diversity. On top of that, in March 2020 COVID-19 halted all manner of on-the-ground census outreach, just as the census was about to begin. While "virtual" efforts continued, on-the-ground outreach has always been a vital part of promoting awareness of the census and increasing self-response rates. The limitation on physical outreach posed by COVID-19 makes it all the more important—particularly with respect to traditionally hard-to-count groups such as immigrants—to avoid any further disincentive to self-respond or cooperate with enumerators and to maintain a clear message that everyone counts in the census.

10. But instead, President Trump's July 21, 2020 "Memorandum on Excluding Illegal Aliens from the Apportionment Base Following the 2020 Census" will further depress response rates in immigrant communities because it discredits the essential message that everyone's response matters and makes an already fearful group more apprehensive about the perceived risks associated with responding. Time and time again, Census Bureau research and my own local experience have confirmed that messages about the importance of the census from "trusted voices" in the community are a major factor affecting response. It is a major impetus behind the emphasis on local area partnerships, which has been codified in census implementation plans, starting in earnest with the 2000 Census and continuing through today. Also, it is one big reason why some immigrant

communities have higher response rates than others, with Washington Heights in Manhattan being the best example of a high response neighborhood, despite its large non-English-speaking immigrant population but with strong "trusted voices" and good community organization. Given that approximately one million individuals live in mixed-immigration-status households in New York City,[3] the President's memorandum—by discrediting the "everyone counts" messaging, including from "trusted voices" in the community, and by increasing fears about the perceived risks of responding—will have a chilling effect on census participation not only for the undocumented, but for a wider net of the city's more than 3.1 million immigrants.

11. Moreover, the timing of the President's memorandum compounds its negative impact. This disincentive to participation is occurring just as the Census Bureau begins its NRFU operations, where thousands of census enumerators will begin knocking on doors of those who have not responded. Making matters worse, on July 30, 2020, it was reported that the Trump administration would be shortening the time during which the Census Bureau will be allowed to conduct NRFU operations. As a result, those operations are reportedly scheduled to end by September 30, 2020—one month earlier than the planned October 31 end date, which the Census Bureau had proposed earlier this year (at the urging of local officials), in order to properly complete the census enumeration during the pandemic. The compressed timeframe imposed on the NRFU operation, in unprecedented circumstances that call for a much longer

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[3] *See* Mayor's Office of Immigrant Affairs, *State of Our Immigrant City* (March 2018), at 6, 12, available at https://on.nyc.gov/39QD8fT.

operation, further exacerbates the negative impact of the President's memorandum on census data quality and count accuracy. The President's memorandum disincentivizes self-response and cooperation with in-person enumerators, and the compressed timeframe will magnify the impact of that disincentive as there will be less opportunity for repeated enumerator visits.

12. For all these reasons, the July 21, 2020 Presidential memorandum is likely to make the Census Bureau resort to less-reliable methods, including statistical imputation, more frequently in immigrant communities than it otherwise would. As described above, this results in poorer quality (less accurate) data both in terms of demographic characteristics as well as the actual count of persons.

13. The decennial census is the statistical backbone of our country, and from the standpoint of a local city planning agency, if a decennial census fails to produce accurate data, informed decision-making cannot occur. This is because the census is more than just a count of people. It also contains other information that helps with school planning, guides policy decisions, assists in the direction of city resources generally, and informs responses to public health emergencies and disasters. And census data drive other surveys that are vital to these areas as well. When the census characteristics data are inaccurate—even if the total population count is correct—cities cannot accurately target resources to address needs, by creating, managing, and effectively implementing programs.

14. For example, the Population Division at DCP disseminates census data to the New York City Department of Health and Mental Hygiene (DOHMH). The

characteristics data on population subgroups form a base for DOHMH's calculation of disease and other health-related event rates by population subgroups. In addition, DOHMH conducts surveys to track progress toward the reduction of chronic diseases. Many of these surveys rely on sampling and weighting designs that are linked to the American Community Survey (ACS), which is based on the decennial census. A prime example is tracking the prevalence of uninsured New Yorkers as a means of targeting programs for health insurance enrollment. And, most recently, census data were used to create COVID-19 rates, for the purposes of identifying relative incidence of the disease in the City's neighborhoods.

15. In addition, we regularly provide data and consultation to the New York City Department of Education (DOE) and the School Construction Authority (SCA). DOE relies on our analysis of recent changes in the composition of the population in neighborhoods to inform decisions on how to change the zones around schools as conditions demand, particularly new entrants to the neighborhood and their characteristics, such as the number of children. To perform that analysis, we use data from the decennial census, the ACS, and vital statistics. For the SCA, we use decennial census data, along with counts of recently-constructed housing, to project the number of school children who are likely to be associated with new housing. SCA uses this information to plan for new schools and/or the expansion of existing facilities.

16. Another example of the City's use of demographic characteristics data from the census involves planning for the elderly. The population that is 65 years and

over is projected to increase nationally and in New York City over the next 20 years. As part of the Age-friendly NYC initiative, a partnership between the City of New York and the New York Academy of Medicine, the Population Division uses age data from the decennial census as a basis for projections of older population groups by neighborhood. These data are used to target neighborhood services for the aged, and to help government agencies, elected officials, health care and social service providers, planners, funders, and researchers understand and analyze spatial and socio-demographic patterns and trends involving the burgeoning older populations of the City. This neighborhood-level approach is based—first and foremost—on data from the decennial census. Inaccuracies in population counts and characteristics data from the census and from the ACS compromise the City's ability to target current services, to determine priorities, and to ensure a more accurate projection of older population for future years.

17. New York City also relies on demographic data from the census and from the ACS for emergency preparedness. Whether it is COVID-19, coastal flood events, or blackouts, City agencies need to be able to quantify the size of affected populations for everything from evacuations to pandemic response. Census and ACS data at the neighborhood level for persons with mobility limitations and other disabilities, especially older populations who require special assistance during pandemics or other natural disasters, are cases in point. Teams evaluate these numbers on a continuous basis as part of plans for mitigation in times of natural disasters and in other emergencies, such as the activation of cooling centers for vulnerable populations when an extreme heat wave strikes.

18.   These examples of how New York City uses not just total population counts but also demographic characteristics data from the census put into clear perspective why we cannot afford any federal actions that will further depress self-response rates, make NRFU efforts less effective, and result in poorer quality census data. But the President's order excluding undocumented immigrants from the apportionment does just that.   The President's order will confirm immigrant's fears about the census, undermine efforts to alleviate those fears, and provide immigrants with an additional disincentive to answer the door when the Census Bureau comes knocking.

19.   This is the 4th decennial census I have worked on in a professional capacity and I am very familiar with the challenges we've faced in the past, some quite formidable; but, I can say without hesitation that the current climate is unprecedented in its potential to affect the enumeration.   And, on top of a global pandemic, the last thing we needed was an order from the President of the United States stating that undocumented immigrants will not be counted.   The July 21, 2020 Presidential memorandum will likely undermine outreach efforts and depress response rates in immigrant communities (both self-response and in-person response to enumerators), and thus lower the quality of data that the City relies upon to make crucial policy decision impacting education, health, and emergency planning, among other things.

I declare under penalty of perjury that, to the best of my knowledge, the foregoing is true and correct.

Executed on this [4] day of [Aug.], 2020

/s/ JOSEPH J. SALVO
      JOSEPH J. SALVO, PH.D.
      Chief Demographer, Population Division
      New York City Department of City Planning

Exhibit 42

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

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20 Civ. 5770 (JMF)

STATE OF NEW YORK, ET AL., PLAINTIFFS

v.

DONALD J. TRUMP, IN HIS OFFICIAL CAPACITY
AS PRESIDENT OF THE UNITED STATES, ET AL.,
DEFENDANTS

———————

DECLARATION OF MONICA SARMIENTO

———————

Pursuant to 28 U.S.C. § 1746(2). I, Monica Sarmiento, hereby declare as follows:

1. I am over the age of eighteen and have personal knowledge of all the facts stated herein.

2. I am the Executive Director for the Virginia Coalition for Immigrant Rights (VACIR). I oversee a coalition of thirty-six member organizations and partnerships with nearly one hundred organizations in the immigrant rights movement. I have been employed by VACIR since 2015. I also serve as a commissioner on Governor Northman's 2020 Complete Count Census Commission.

3. VACIR has been preparing for the 2020 census since 2016. In 2016, we organized community members to comment on the correct terminology for language use on the 2020 census, and successfully got Governor McAuliffe to sign Virginia up to the Local Update of Census Addresses Operation (LUCA) program. From

2017-2019 we participated in local, stale, and federal organizational meetings on how to create successful census outreach efforts in the immigrant community. We also fundraised and gave out grants to local community organizations to provide guidance and assistance to those who needed help filling out the census. Finally we worked with media outlets and government offices in creating in language information for non-English speakers.

4. As a Commissioner on the Virginia 2020 Census Commission I serve as the in house expert on providing outreach to the Virginia immigrant community. Governor Northam has made it an initiative of his Administration to have all individuals counted, regardless of immigration status, as has always been the practice by the United States Census Bureau.

5. Members of the coalition and partners of the coalition have shared with me that the new memorandum signed and promoted by President Trump has hindered their efforts in getting members of the undocumented community to fill out the 2020 census form. Organizational leaders have informed me that community members see this newest memorandum as a continued attack on their ability to trust the Trump Administration to make good decisions for an accurate and scare count. Community leaden informed me that undocumented Virginians feel that this memorandum dehumanizes them, and does not acknowledge that they are worthy of being counted. Personally, for me it echoed the shameful clause that enslaved African Americas would only be counted as three-fifths of a person and would not be counted as whole person. As I listed to community leaders share their stories I could hear the frustration and

hurt that so many undocumented Virginians, including those who have U.S. citizen children that were born in Virginia, have been left feeling scared and dehumanized by the Trump Administrations stance to change the long held practice of counting all who reside in the United States for reapportionment (with the exclusion of tourists and temporary business travelers, as well as residents of the District of Columbia) and not just those they categorized as worthy.

6.   Coronavirus has forced all of us to change work habits, and dramatically shifted on how business is carried out in our country.   In Virginia organizations have been forced to changed plans and grassroots outreach efforts to ensure a complete count.   Coronavirus has made the census exponentially more difficult.   Organizers are now doing outreach efforts at food banks, phone banking, and mailing census literature instead of canvassers knocking on people's door.   Unfortunately, President Trump's memorandum has exacerbated a highly difficult situation to encourage every Virginian, including undocumented Virginians, to fill out the census form Community leaders informed me that undocumented Virginians have told them explicitly that they don't see a benefit in filling out the form if they will not be counted.

7.   Organizational leaders have informed me that community members have refused to fill out the census form.   They told me that they have had to spend more time speaking with community members, and even with the extra effort made many community members still refuse to fill out the census form.   Organizational leaders and community members repeatedly told me that undocumented Virginians have been scared out or filling

out the 2020 census form. Longer conversations means more staff time is spent on easing the fears and explaining to community members why filling out the census is still important. With limited time and budgets organizations are reaching fewer people, and spending more money on staff time to do so.

8. At VACR we have put out statement, informed member organizations of the memorandum, and worked with organizations on outreach efforts. The new memorandum has required that we use staff time in the midst of a pandemic to address the concerns, issues, and distress this memorandum has caused.

I declare under penalty of perjury that, to the best of my knowledge, the foregoing is true and correct.

Executed on this 3rd day of Aug., 2020

Exhibit 43

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

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20-CV-5770 (JMF)

STATE OF NEW YORK, ET AL., PLAINTIFFS

v.

DONALD J. TRUMP, IN HIS OFFICIAL CAPACITY
AS PRESIDENT OF THE UNITED STATES, ET AL.,
DEFENDANTS

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20-CV-5781 (JMF)

NEW YORK IMMIGRATION COALITION, MAKE THE
ROAD NEW YORK, CASA, AMERICAN-ARAB
ANTI-DISCRIMINATION COMMITTEE, ADC RESEARCH
INSTITUTE, FIEL HOUSTON, INC., AND AHRI
FOR JUSTICE, PLAINTIFFS

v.

DONALD J. TRUMP, IN HIS OFFICIAL CAPACITY
AS PRESIDENT OF THE UNITED STATES, ET AL.,
DEFENDANTS

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DECLARATION OF JENNY SEON

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Jenny Seon, pursuant to the provisions of 28 U.S.C. § 1746, declares under penalty of perjury as follows:

1. I am the Legal Service Director for Plaintiff Ahri for Justice ("Ahri"). I am a founding member of Ahri and have been on staff since December 2019. I am over 18 years of age. I have personal knowledge of the facts stated in this declaration.

2.   Ahri is a nonprofit membership organization with offices in Los Angeles, California.   Ahri is a fiscally sponsored project of Tides Advocacy, a 501(c)(4) nonprofit organization.   Ahri's mission is to pave new pathways to justice through the power of community organizing, empowering youth, and creating radical change. Through community education, direct legal services, and civic engagement, Ahri seeks to provide individuals with the tools and skills necessary to be progressive agents of change in their communities and to improve the lives of individuals and communities in Southern California.

3.   Ahri focuses on empowering low-income communities, immigrant communities, and communities of color. It currently has a staff of seven and spends a large majority of its time on civic engagement work, including substantial census-related outreach.   As part of its work, it also provides legal services to these communities, with a focus on immigration and employment.   It also has a hotline to address questions and community concerns, including regarding census participation, and receives approximately 320-350 calls per month.   There was a surge in the number of calls that Ahri's hotline received following news of the July 21, 2020 Presidential Memorandum to the Secretary of Commerce on the subject of "Excluding Illegal Aliens from the Apportionment Base Following the 2020 Census" ("Presidential Memorandum").   Community members called with concerns and confusion about the Presidential Memorandum and what it means for their households and the privacy and confidentiality of their Census responses.

4.   Ahri has roughly 220 individual members, with most residing in Orange and Los Angeles Counties.

Ahri's members include U.S. citizens, legal permanent residents, and individuals who do not have lawful immigration status. Members pay monthly dues to support Ahri's mission and volunteer for phone-banking and other campaigns.

5. In my capacity as a founding member and Legal Service Director of Ahri, I am responsible in part for community organizing and communications, including Ahri's education, outreach, and research efforts around the 2020 Decennial Census in the communities Ahri serves. Throughout my tenure with Ahri, I have been in regular contact with Ahri members to learn about their neighborhoods, their needs, and their concerns to inform communications, organizing, and civic engagement programs for Ahri. As a founding member, I have also familiarized myself with Ahri's internal records and processes; our staff and their responsibilities; and our programs and program areas.

6. Ahri has an ongoing commitment to promoting engagement in the 2020 Decennial Census among its members and constituents because a complete and accurate Census count is critical to ensuring that our members receive the government funding and full political representation to which they are entitled. Our members include parents with children enrolled in schools that receive funding under Title I of the Elementary and Secondary Education Act; drivers who use interstate highways and mass transit on a daily basis and thus depend on federal highway funds to perform their jobs; families that rely on food assistance programs; and people who rely on housing assistance through various funding provided under Section 8, among other Census-guided funding streams. Promoting Census response

can help ensure that the programs, services, and facilities that our members rely upon are adequately funded.

7. I have been extensively and personally involved in the research, development, and implementation of Ahri's 2020 Census education and outreach programs. To develop programs that achieve Ahri's goals of encouraging greater Census participation in the communities we serve, I have researched and gained familiarity with the importance of data gathered from the Census in apportioning political representation and the allocation of some government funding sources. I have researched the concerns of our members and the communities we serve around the Census for the purpose of developing effective Census communications directed at immigrant communities. I have also researched how the communities we serve would be impacted by an undercount toward the end of designing communications and organizing strategies that address those concerns and increase their civic engagement, and Census participation in particular.

8. Because the Decennial Census requires a direct inquiry of every household in the United States, Ahri has invested significant organizational resources in encouraging our members and the immigrant communities we serve to respond to the Census. This work includes, among other things, phone banking and digital organizing such as webinars and presentations over Zoom. To date, we have contacted over 4,000 people and have assisted many of them with filling out the Census questionnaire. Ahri has continued Census education and outreach during the pandemic and plans to continue encouraging and assisting people in filling out the questionnaire until the response period closes.

9.   Our Census education and outreach efforts inform community members on how billions of Census-guided dollars are allocated for public services and how these funds go back into the community.   We emphasize that all members of our communities, regardless of age, citizenship status, or ability to vote, count and must participate in the Census to receive the full funding and resources they need to thrive.   We also emphasize the importance of a full Census count for determining political representation, including the number of representatives each state will have in Congress, the number of electors per state in the electoral college, and the boundaries and composition of districts at all levels of government, from local school boards and city councils to state legislatures and the House of Representatives.   These messages are important because they affirm the humanity and dignity of all Americans and the responsibility that all Americans, including undocumented Americans, bear for responding to the Census and ensuring that their home states and communities are allocated their fair share of political power and government funding. An example of one of our Census education and outreach documents is attached as Exhibit 1, and is also available at the following link: https://www.instagram.com/p/B-c2watlog1/.   We have relied upon information provided by the United States Census Bureau and other government agencies in drafting this document and other materials.

10.   Ahri has been and remains committed to Census education and outreach work among immigrants and communities of color because those groups have been undercounted.   Based on my knowledge as a staff member at Ahri and an organizer in these communities, including on Census issues, I understand that one reason

that immigrants and communities of color have been undercounted is a fear of contact with the government and distrust of government officials, particularly how they will use the data they collect. Households with immigrants are concerned that their information will be shared with immigration and law enforcement agencies.

11. Ahri has already faced a challenging environment for conducting outreach and encouraging immigrants of color to respond to the 2020 Census because of our members and constituents' heightened fear of interacting with government workers as a result of the Trump Administration's persistently hostile and discriminatory actions and attitudes towards immigrants of color and Asian-Americans. The racist and xenophobic acts that the Trump Administration has undertaken include the Administration improperly referring to the COVID-19 pandemic as the "kung flu" or the "Chinese virus" amid a surge in anti-Asian incidents and hate crimes; attempting to include a citizenship question on the Census; dramatically increasing interior enforcement raids in communities across the United States; proposing to end family-based immigration, which would disproportionately harm immigrants from Latin America and Asia; separating children from their families at the border and keeping immigrant children in cages; threatening jurisdictions that enact undocumented immigrant sanctuary policies, such as Los Angeles, with the loss of federal funds; banning individuals from six majority Arab and/or Muslim countries from entering the United States; attempting to rescind the Deferred Action for Childhood Arrivals ("DACA") program, which allowed 800,000 individuals brought to this country as children to legally reside and work in the United States; rescind-

ing Temporary Protected Status programs for individuals from El Salvador, Honduras, Nicaragua, Haiti, and Nepal; calling for an end to the diversity visa lottery; and referring to some undocumented immigrants as "animals."

12.   Based on my experience as an Ahri staff member regularly in contact with our members, our organizing staff, our communications staff, and the media, the Presidential Memorandum is making our efforts to encourage Census participation more difficult.   The Presidential Memorandum is sowing fear and confusion about the Census among the communities we serve.   The fear and confusion are not unique to undocumented immigrants or non-citizens with documented legal status, but also to family and household members of non-citizens, who have expressed concern that participating in the Census will invade their privacy and expose their family, friends, and neighborhoods to profiling by the law enforcement agencies of an administration hostile to immigrants of color.   Our members and constituents that have already responded to the Census have likewise expressed concern that they may have improperly responded to the Census because they included undocumented individuals in their response, and are confused about what to do and about whether there will be repercussions for responding to the Census.

13.   The Administration's decision to exclude some non-citizens from the apportionment base directly and severely undermines our Census education and outreach materials and programming by contradicting its core messages and discouraging responses to the Census.

14. First, by excluding undocumented people from the apportionment count, the Presidential Memorandum creates confusion by contradicting one of the key messaging about the Census that Ahri highlights in its education and outreach programming: political representation. Because the President has said that the Census responses of some non-citizens will not be used for Congressional apportionment, some people may now neglect or decline to fill out the Census because of its diminished importance. The Presidential Memorandum dilutes the efficacy of our existing materials and programming, which will require Ahri to divert resources from other programmatic areas to conduct additional education and outreach to get the same number of people to respond to the Census questionnaire. By contradicting the message that filling out the Census is important to Congressional apportionment, people in the communities we serve will discount the value of our current education and outreach materials or programs, requiring us to make new materials or conduct new outreach that address the Presidential Memorandum. This includes training staff and volunteers on how to address these concerns, editing our hotline and phone banking scripts, sending emails and mailers to members about the Presidential Memorandum, and updating our website. Ahri staff members have also had to divert time from other activities to respond to inquiries from Korean-language media about this issue to assure people that everyone, regardless of their immigration status, should fill out the Census questionnaire and that every person will be counted for apportionment purposes.

15. Second, by excluding undocumented people from the apportionment count, the Presidential Memorandum dehumanizes and marginalizes undocumented residents by excluding them from the category of "persons" required by the Constitution to be included in the apportionment count. Furthermore, the exclusion of undocumented immigrants from the apportionment base in the Presidential Memorandum indicates efforts by the Administration to identify where undocumented immigrants live and their numbers in order to exclude them from the Census. By undermining our messaging about the purpose of the Census and further marginalizing and confusing immigrants who are already among the population most often overlooked by the Census, the Presidential Memorandum makes it less likely that the immigrant communities and communities of color we serve will be responsive to our Census education and outreach efforts.

16. Third, Ahri has received an uptick in questions from the public concerning the privacy and confidentiality of responses to the Census questionnaire since the Presidential Memorandum. Members of the community we serve are concerned that the Presidential Memorandum's exclusion of people "not in lawful immigration status" from the Census base count indicates that the Administration will use information from the Census to attempt to identify undocumented immigrants for deportation or other adverse consequences. Ahri is planning to conduct more education and outreach than we would have otherwise to address those concerns and to assure people that they can respond to the Census without fear of immigration enforcement consequences for themselves or their families.

17. Ahri will be forced to expend more resources than initially anticipated to try to reduce the negative effect of the Presidential Memorandum on Census response rates in the immigrant communities of color it serves. Ahri expects that it will need to interact with its constituents more times than previously planned to try to convince them to participate in the 2020 census. Ahri's target is to contact at least 10,000 individual households, and it expects that it will now need to spend more resources to reach the same number of people and that ultimately it will be less successful in convincing its constituents to participate in the 2020 Census due in large part to the Administration's decision to exclude undocumented immigrants from the apportionment base. Ahri's funding is based in part on meeting our target, and Ahri will thus also have to divert resources away from other priorities and program areas to meet this target and avoid losing this funding. Ahri will have to increase staff time and spending devoted its Census education and outreach efforts by approximately 15 percent over current levels to address the Presidential Memorandum.

18. Because of the need to increase the time and money spent on Census outreach due to the fear and/or confusion generated by the Presidential Memorandum, Ahri will need to divert resources from other areas critical to its mission including civic engagement, community organizing, youth programs, and legal services. In particular, Ahri will have to divert staff time away from our advocacy and outreach campaigns on DACA, ethnic studies, education funding, voter education and outreach, housing insecurity related to the COVID-19 pandemic, and raising money for a COVID-19 community assistance fund, critical programmatic areas right

now during the COVID-19 and ahead of an important general election. I have personally spent at least 35 hours on Census-related work that I otherwise would have spent on other areas of work, including direct legal services, to develop, coordinate, and implement our additional education and outreach efforts.

19. Ahri puts significant resources in Census education and outreach work because our members and the immigrant communities we serve face significant negative consequences in the event of an undercount. Ahri members reside in Orange and Los Angeles Counties, the populations of which include immigrant communities of color that far exceed national averages. An undercount of those populations will deprive Ahri members of political influence and Census-guided funding to which they would be entitled by a more accurate count.

20. One of the many Ahri members who will suffer injury due to the Presidential Memorandum and the effects of this policy on Census response rates is Julie Kim. I have known Ms. Kim for over 10 years. I know Ms. Kim is a U.S. citizen and a resident of Anaheim, California, and that she works as a high school guidance counselor in Orange County, California. I know that Ms. Kim is a commuter and thus depends on federal highway funds. As a resident of California, Ms. Kim will also lose political power because of California's loss of at least one seat in the House of Representatives and the loss of a presidential elector due to the Memorandum's exclusion of undocumented immigrants from the apportionment count.

21. Another Ahri member who will suffer injury due to the exclusion of undocumented immigrants from the apportionment base and the effects of this policy on

Census response rates is Simon Lee. I have known Mr. Lee for eight years. Mr. Lee is a resident of Los Angeles, California, where he works for an accounting firm. As a resident of California, he will also lose political power because of California's loss of at least one seat in the House of Representatives and the loss of a presidential elector. Mr. Lee is entitled to remain and work lawfully in the United States through the DACA Program. He is entitled to be counted in the ongoing 2020 Decennial Census and included in the apportionment base along with all other residents of California, regardless of immigration status.

22. Unfortunately, Ahri will have less time than anticipated to address the fear and confusion caused by the Presidential Memorandum among the immigrant communities that we serve. The actual counting period of the Census is only a few months, but the consequences of the Census in terms of political power and funding allocation will last for a decade. At the time the Presidential Memorandum was published on July 21, there were 102 days remaining in the nonresponse follow-up period, which was then scheduled to end on October 31. However, on July 31, the Census Bureau abruptly accelerated the end of non-response follow-up to September 30. With only 57 days left in the headcount, every single day remaining is a critical opportunity for Ahri to conduct further Census outreach. Ahri will have to accelerate its remaining Census education and outreach efforts to address the Presidential Memorandum's negative effect on Census responses.

I, Jenny Seon, declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and recollection.

Dated: Aug. 5, 2020, in Los Angeles, California

/s/   <u>JENNY SEON</u>
Jenny Seon

Exhibit 1

What is the
2020 Census

AHRI

- A questionnaire that gathers the head count of every person living in the United States and its territories.
- Only conducted once every decade!

How to participate:

1. Online (RECOMMENDED)
   - Go to "my2020census.gov" and hit the begin questionnaire button
   - Insert 12 digit ID number if you have it.
     - If not, click "If you do not have a Census ID, click here."

2. Phone Response
   - Visit https://2020census.gov/en/ways-to-respond/responding-by-phone.html for different languages
   - English: 844-330-2020, Korean: 844-392-2020, Spanish: 844-468-2020

3. Mail (paper questionnaire)

2020 CENSUS

WHY IS IT IMPORTANT:

Federal Apportionment

- The process of dividing the 435 seats in the U.S. House of Reps among the 50 states
- Division of seats -- based on state population gathered from census data.
- Each state is entitled to at least one seat

Federal Funding

- Informs the decision on how billions of dollars are allocated annually for critical public services
  - Roads, schools, emergency responses, hospitals and healthcare clinics, housing, etc.
- Less participation, less funding!

Redistricting

- the process by which census data is used to redraw the lines and boundaries of electoral districts within a state.
- affects districts at all levels of government — from local school boards and city councils to state legislatures and the U.S. House of Representatives.

Less than 40% of OC have participated in the 2020 Census.

FAQ

1. I lived in my dorm/in-campus housing, do I fill out my home address or that address?

When responding to the 2020 Census, college students should be counted where they live and sleep most of the time as of April 1, 2020. For most students, that means in their college town, not back home with their parents.

2. Do I report everyone in the household? Will I get in trouble for having "extra" people live with me?

Please report everyone in your household! We want everyone to be counted. You will not get in trouble for including everyone in your home. You're protected under Title 13. Your private information is never published. What you fill out is confidential.

3. I don't want to fill out the Census. Will I be fined if I don't fill it out?

Fill out the Census for political power and funding for your community! You're required by law to fill out the Census or else you may be fined.

4. Does the Census ask about my immigration status? Can I fill it out if I am undocumented?

The 2020 Census does NOT ask about immigration status. Please still fill in the Census regardless of status! Your information is protected under Title 13.

5. Who fills it it out the Census for each household? Do we all fill it out?

Only the head of household fills out the Census! That person is expected to count everyone in their home

any more questions? Email us at **organizing@ah-ri.org** or send us a message through FB or Instagram

Exhibit 44

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

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20 Civ. 5770 (JMF)

STATE OF NEW YORK, ET AL., PLAINTIFFS

v.

TRUMP, ET AL., DEFENDANTS

———————

DECLARATION OF VATSADY SIVONGXAY

———————

Pursuant to 28 U.S.C. § 1746(2), I, Vatsady Sivongxay, hereby declare as follows:

1. I am over the age of eighteen. This declaration is made based on my personal knowledge and business records kept by the Massachusetts Immigrant and Refugee Advocacy Coalition ("MIRA").

2. I serve as the Director of Organizing and Census Manager for MIRA. In this role, I develop, implement, and manage MIRA's statewide organizing and civic engagement strategies, including working closely with our partner organizations. I joined MIRA in July 2019 to lead its statewide outreach for the 2020 Census. Prior to my work at MIRA, I served as the Director of Public Policy for the City of Boston for two years. I have been licensed as an attorney in the Commonwealth of Massachusetts for 8 years.

3. MIRA, founded in 1987, is the largest immigrant and refugee advocacy organization in New England, representing approximately 130 organizational members, including organizations that provide services for immigrants and foreign-born individuals such as community

health care centers, unions, English for Speakers of Other Languages groups, faith-based and grassroots organizations, and ethnic groups and associations. Through our membership and networks, MIRA represents around 1.2 million foreign-born people, many of whom are part of the 1.6 million people in Massachusetts who are "hard to count" for purposes of the decennial census. Since our founding, we have worked diligently in collaboration with our partners across the state and nation to build trust, provide services and resources, and share critical information with our immigrant communities. MIRA's mandate is to increase the economic, social, civil, and linguistic integration of foreign-born individuals and their families in the Commonwealth.

4. MIRA has participated in past decennial census efforts, including in the 2000 and 2010 censuses. MIRA's past census work centered on organizing outreach efforts with partner organizations, including media and faith-based groups, to conduct door-to-door canvassing, disseminate translated materials in key spaces, and create public service announcements and advertising to attempt to increase participation and reduce the amount of any undercount.

5. For the 2020 Census, MIRA is the recipient of a grant from the Secretary of the Commonwealth to assist with community education and outreach aimed at ensuring a complete count of the residents of Massachusetts. As a part of this work, MIRA convenes the Statewide Complete Count Committee, which includes partner organizations from around the state, including MassCounts (a coalition of nonprofits working on census outreach), service providers, state agencies (*i.e.*, Department of Secondary Education, Council on Aging), faith-based

groups, immigrant-led organizations, local and regional complete count committees, and other civic organizations, including ethnic groups and associations. MIRA also coordinates census messaging with national and state partners; trains local partner organizations on outreach to hard-to-count populations; produces educational, communication, and advertising materials for local distribution to encourage participation in the census; and tracks response rates for planning and targeting efforts to increase response rates in historically undercounted areas and populations.

6. Notwithstanding our preparations and commitment to achieving a complete count, the 2020 Census has been beset with challenges and barriers to participation that were not present during the 2000 or 2010 census. These issues include the ultimately unsuccessful attempt to add an untested citizenship question to the 2020 census form, the COVID-19 global pandemic, and, now, a last-minute Presidential Memorandum directing the Department of Commerce to omit undocumented people from the population count to be reported to Congress for the purpose of apportioning seats in the U.S. House of Representatives.

7. These unforeseen challenges have seriously impacted implementation of the 2020 Census. For example, Non-Response Follow-Up ("NRFU")—the critical, in-person phase of the census designed to help count hard-to-count populations and other non-responders—was scheduled to begin in Massachusetts on May 13, 2020. However, due to COVID-19, NRFU will not begin until August 11, 2020, for most of the state (however, there are soft launches in certain areas that started on and around July 30, 2020). In addition to this delay to

NRFU, Massachusetts census partners have had to reduce outreach activities due to coronavirus. Moreover, many local partners lack funding and are working at reduced capacity. For instance, one entire region of our state no longer has an organization to convene its local Complete Count Committee because the convener's funding for census-related activities ran out in July, when NRFU was originally supposed to have been completed.

8. Additionally, we just learned on Friday, July 31, 2020, that the Census Bureau is shortening its timeline for NRFU: it is now planning to conclude its efforts by September 30 versus October 31, 2020, effectively halving the time to complete NRFU activities.

9. Each of these unprecedented challenges to the 2020 Census has also had real world consequences on people's trust in the confidentiality of the decennial census as well as their willingness to participate in the count, particularly among Massachusetts' immigrant communities.

10. Prior to the launch of the census in mid-March, MIRA identified forty-five historically hard-to-count municipalities for participation monitoring. These are cities with large immigrant populations that had low participation rates (less than 76%) in the 2010 census. As COVID-19 surged in Massachusetts, we saw more and more of these municipalities fall below the statewide response rate; and, as of July 31, 2020, more than half (26) had fallen below the statewide response rate. At an even more granular level, there are nearly 300 census tracts with immigrant populations of at least 30%, and *all* of these tracts are below the statewide response rate. These immigrant-rich communities in cities such as Chelsea, Everett, Lawrence, Worcester, and Boston,

among others, are also some of the places that have been hit the hardest by both the health and economic impacts of COVID-19.

11.   Presently, I am working to anticipate and address the impact of President Trump's July 21, 2020, memorandum (the "Memorandum"), which, among other things, directs the Department of Commerce to exclude undocumented residents from its transmittal of the population count for purposes of apportionment in Congress.   In short, despite MIRA's ongoing efforts to achieve a complete count and the efforts of our local partners and similar organizations nationwide, the President has directed that undocumented residents be retroactively disregarded for calculating Congressional apportionment.

12.   We are very concerned that the Memorandum will have the effect of discouraging undocumented individuals from participating in the census: if undocumented individuals will be erased from the count, why should they participate at all?   Moreover, a major component of our messaging thus far has been that census participation is critical because it determines the allocation of resources and representation over the next decade.   This is a simple and historically accurate message that runs parallel to messaging from the Census Bureau.   However, the Memorandum directly contradicts this messaging.

13.   We are also very concerned that the Memorandum discourages documented individuals, including U.S. citizens, from participating in the census.   Many documented individuals and U.S. citizens live with undocumented individuals.   There is already pervasive fear about participation in the census in immigrant communities, spurred on by the Trump Administration's earlier

effort to include a citizenship question. A major component of our messaging—again borrowed from the Census Bureau—has been that the census is safe and confidential. We have highlighted the Title 13 protections, which threaten severe financial penalties and imprisonment for any Census Bureau staff who discloses individuals' data. Yet, the Memorandum undermines this message by directing the Census Bureau to identify and remove undocumented people from the apportionment base. As we have heard directly from communities across Massachusetts, given this latest development, immigrants are afraid that legal protections will be insufficient. They fear that if the President wishes to identify undocumented individuals, he will use any means to do so, regardless of present assurances regarding census confidentiality. In fact, several partners, including Agencia Alpha, are no longer willing to champion the security and confidentiality of the 2020 Census.

14. This Memorandum has been incredibly disruptive to MIRA's complete count work, particularly in light of the already significant delays and strained funding and resources for census outreach due to COVID-19.

15. Among other things, prior to the Memorandum, MIRA had developed messaging that was consistent with our national partners for use by local partners in their outreach efforts. Following the issuance of the Memorandum, we have had to spend time reconsidering our messaging to evaluate if it is still accurate and if it sufficiently addresses new concerns raised by the Memorandum.

16. At the very least, we know that this Memorandum will make our work and that of our partner organizations significantly more difficult as we continue to

work toward a complete count in Massachusetts. In
the first ten days following issuance of the Memoran-
dum, my staff and I collectively spent more than 25
hours reviewing it, researching its impact on the census
and our own messaging, and meeting internally to dis-
cuss these issues and coordinate our response and ex-
ternal messaging. We also attended meetings with na-
tional partners such as Census Counts to stay on top of
the developments and ensure that our message to immi-
grant communities would stay consistent nationally.

17. I have spent significant time since the Memoran-
dum was issued talking to local partner organizations
who contacted me concerned and confused about the
Memorandum and its impact on their census outreach
and on the communities they are helping to count. These
include Agencia Alpha, a faith-based non-profit serving
Latinos across the Commonwealth, the Immigrant Fam-
ily Services Institute, a Massachusetts non-profit that
provides targeted academic and enrichment services to
immigrant children, and the Brazilian Women's Group,
a non-profit serving the Portuguese-speaking commu-
nity. We anticipate needing to provide additional train-
ing to our partner groups relating to this Memorandum
and have scheduled an emergency webinar for August 5
to address the Memorandum and other related opera-
tional changes by the Census Bureau. Additionally,
given the resource constraints, I am concerned that
even if we expend the necessary resources to produce
and run such trainings, some of our partners may not
have capacity to participate.

18. Prior to the Memorandum, we had created digi-
tal graphics and physical outreach materials, including
palm cards, for partners to distribute in the areas in

which they work. We ordered 30,000 of these cards in mid-July and ordered another 30,000 in late July, which cost approximately $6,000. To date, the total cost of the creation of digital graphics and advertising, as well as the staff time required to research and develop these materials, is well over $60,000. Because of the Memorandum, I am concerned that these materials will not be as effective, especially in our immigrant communities and with mixed-status households. As I discussed in paragraphs 12 and 13 above, the Memorandum critically undermines our present messaging about the importance of the decennial census for all inhabitants of our Commonwealth and its safety and confidentiality. There was no way to anticipate the existence or issuance of this Memorandum when we designed our outreach materials, so our current materials do not address any new questions arising from the Memorandum. For instance: "Is it safe for undocumented individuals to participate if the government is going to investigate their status in order to exclude them for the purposes of apportionment?" and "Why bother to be counted at all if the government is just going to exclude you later?" While, out of necessity, our original messaging may still ultimately be used, additional one-on-one conversations and relational outreach are necessary to maintain trust among communities and census partners to ensure confidence that census information will remain confidential and that there are still important benefits to responding to the census, such as ensuring receipt of critical federal funding.

19. At this stage, we do not have the time or funding to replace the palm cards, translate new messaging to reach our immigrant communities, hire additional outreach workers, or provide financial support to our partner organizations to conduct effective in-person, direct

outreach. Organizations, including government departments, are already overwhelmed by adjusting census outreach plans during COVID-19. It is especially challenging to conduct the necessary outreach with limited capacity during the shortened NRFU period.

20. The week of July 27 through July 31, 2020, was supposed to be a huge organizing surge before NRFU begins. However, I and other MIRA staff, as well as our partner organizations, have had to divert time and resources to dealing with issues related to the Memorandum rather than focusing on the planned surge. We anticipate that the loss of time dedicated to encouraging residents to self-respond will result in a significantly larger non-response rate on August 11, 2020, thereby increasing the necessary scope of the resource-intensive NRFU process.

21. Moreover, MIRA partner organizations, including those mentioned in paragraph 17, are reporting that they believe their outreach efforts will be less effective because of the Memorandum, and that people who have not responded to the 2020 Census to date are even less likely to respond to NRFU efforts following the Memorandum. I share these concerns.

22. Since the issuance of the Memorandum, MIRA and our partner organizations have received questions and concerns from other census partners and community members. Local census partners reached out to us to ask if the messaging and outreach needs to be changed, in light of the Memorandum, to include special messaging to immigrants who live in mixed-status households in order to avoid or reduce fear, misinformation, or disinformation and clarify the directives in the Memorandum for these households. A few of our partners

have also specifically asked for guidance on communicating the impacts of the Memorandum to immigrants who already took the census and feel that their information will no longer be kept confidential. As one example, Agencia Alpha's outreach workers shared that when they followed up with immigrant families, those families asked whether or not they should be worried about the information they had shared when they completed the census. Partners have requested simple and clear talking points explaining: the importance of taking the census; the present attempt by the Trump Administration to exclude undocumented individuals from the apportionment base; that undocumented individuals will still be included in the count for other purposes; and how the Census Bureau could discern documentation status data while maintaining confidentiality (to the extent that an answer exists to this question). Grassroots partners have also shared that they anticipate an increase in community fears that the census could be used to identify people for deportation, similar to the wave of fear that followed the 2018 attempt to add a citizenship question to the 2020 census questionnaire.

23. Although MIRA and our partner organizations are still planning the extent of our response to the Memorandum, it is clear that we must act to mitigate the anticipated negative impacts of the Memorandum on census response rates in Massachusetts. While this is a novel situation, our years of experience in organizing underscore our concern that an effective response will require significant additional expenditures of time and money, during a very short period of time, to develop messaging and materials, as well as to ensure these materials reach the hard-to-count communities we are working to engage in the census.

24. Mitigating the negative impact of the Memorandum on response rates will be a costly, time-consuming effort, which comes at a time when funding for census outreach is essentially exhausted and time to complete the census count is running out.

I declare under penalty of perjury that, to the best of my knowledge, the foregoing is true and correct.

Executed on this 5th day of Aug., 2020

/s/ <u>VATSADY SIVONGXAY</u>
Vatsady Sivongxay

Exhibit 45

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

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20 Civ. 5770 (JMF)

STATE OF NEW YORK, ET AL., PLAINTIFFS

v.

DONALD J. TRUMP, IN HIS OFFICIAL CAPACITY
AS PRESIDENT OF THE UNITED STATES, ET AL.,
DEFENDANTS

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**DECLARATION OF ROSAMARIA Y. SOTO
(AKA ROSEMARY SOTO)**

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Pursuant to 28 U.S.C. § 1746(2), I, Rosamaria Y. Soto (AKA Rosemary Soto), hereby declare as follows:

1.   I am over the age of eighteen and have personal knowledge of all the facts stated herein.

2.   I am Management Analyst III for the County Administrative Office for the County of Monterey.   I oversee special projects and strategic initiatives of the Board of Supervisors, including the 2020 Census Complete Count Committee for Monterey County.   I have been employed by the County of Monterey since 2007.

3.   The County is a partner of the California Complete Count Committee, Chaired by Secretary of State Alex Padilla, and the County Administrative Office leads a local Complete Count Committee (CCC) charged with the task of educating, encouraging, and empowering Hard-to-Count (HTC) populations in Monterey County. My role has been to establish and manage the Monterey County CCC, which was established in October of 2018

with the commitment of all incorporated cities, community leaders representing unincorporated communities, elected officials, and community-based organizations. The cross-sector membership of partners provided a vast diversity of expertise in community organizing and cultural awareness needed to reach the HTC populations who most feared and mistrusted government, and exhibited the greatest reluctance to participate in the 2020 Census. I have led the development of strategies for outreach and education: media messaging and recruitment of trusted voices to disseminate Census information and encourage HTC populations to participate in the Census; the development of Census training curriculum; recruitment and training of volunteers; leading the implementation of Census assistance kiosks to meet the digital divide by providing access to the online questionnaire; answering questions; addressing concerns people might have about the Census questionnaire; ensuring completion and submission of the questionnaire by participants; and developing and implementing strategies for the Non-Response Follow Up Period (NRFU), this being the final effort to get out the count during the last three months of the Census enumeration period.

4. For the 2020 Census, the County of Monterey has invested $300,000 to support organizing, outreach, and advertising efforts, leveraging California CCC funding of $441,446 and local philanthropic contributions of $622,650. Collectively, a total investment of $1,364,096 has been made to ensure a complete count of all people living in Monterey County.

5. Efforts to increase participation in the 2020 Census and reduce undercounting began with building partnerships with organizations and community leaders who

have deep connections with the HTC populations. Together we developed a social marketing campaign with culturally relevant and linguistically appropriate key messages to educate and inform communities about the importance of the decennial Census, and its impact on community resources through federal funding and the apportionment of Congressional representation. Messages were centered on "Everyone Counts," highlighting the U.S. Census Bureau's own message of "Everyone living in the United States is required by law to be counted in the 2020 Census." Other key messages focused on education about the fact that the Census questionnaire does not ask about one's citizenship or immigration status. Trusted messengers were recruited and trained to disseminate key messages in a variety of forms and through various outlets, including public service announcements, print images, social media memes and graphics, radio show features, theater skits and "fotonovelas," or photobook dramatizations of theater skits. The social marketing campaign launched in April 2019 with an eleven-month series of community outreach activities conducted in census tracts where HTC populations reside and congregate, particularly Latino immigrant populations.

6. The Presidential Memorandum completely undermines our efforts to ensure a complete and accurate count of everyone living in Monterey County and contradicts our social marketing campaign's message. More importantly, the Presidential Memorandum contradicts the U.S. Constitution's mandate to count whole persons living in the United States, further increasing the deeply rooted pre-existing mistrust of government of immigrant populations living in Monterey County.

7.   The impacts of COVID-19 on Census outreach has been significant: a series of planned community events with mobile Census questionnaire assistance centers were canceled; public spaces previously frequented by community members, such as recreation centers, public libraries, shopping malls, school-based sporting events, spring and summer social gatherings and celebrations, all had to be canceled; all of our planned in-person outreach strategies were brought to a screeching halt. Many of the volunteers were retirees who, because of their age and/or underlying health conditions, were forced to scale back or terminate their community outreach activities.   The involvement of students and young adults was constrained by their educational institutions' adherence to State and County shelter-in-place ordinances, further impacting our volunteer base and immobilizing our outreach capacity and ability to implement our "get out the count" strategies.

8.   While our outreach strategies have shifted to "virtual" online efforts, we have managed to operate contactless questionnaire assistance centers in the census tracts with the highest rates of HTC populations.

9.   Monterey County has the most census tracts with high indexes of HTC populations of any region in the central coast of California.   Those high index census tracts are currently responding at rates below 50%, among the lowest in the country.   Many of the census tracts are in either high density urban parts of the county or in rural communities predominantly inhabited by Latino immigrant populations.

10. Computer literacy and internet access have proven to be barriers for many if not all the HTC popu-

lations. The Census Bureau's late start has exacerbated this challenge. Not only have the Census Bureau's operations been delayed, there has been no apparent effort to shift their operations to virtual or contactless operations. As of July 30, 2020, Monterey County's response rate is at 60.1%, trailing behind the state's rate of 64.1% and the nation's rate of 62.8%.

11. Since the Presidential Memorandum was issued on July 21, 2020, our community partners have reported an increase in concerns in immigrant communities. Confusion has set in about why our messages over the past year highlighting the importance of counting everyone in the decennial Census, and emphasizing the security of Census data, are now contradicted by the U.S. President.

12. Immigrants and their families, including those who *do* have legal status, have long lived in the shadows of our society due to the fear that providing personal information to the government would potentially expose them to harm. After having heard messages of empowerment—to be visible and counted for the sake of their community's future—the President's words have renewed their fears, and generated mistrust of the federal government's commitment to upholding their Constitutional right to be counted in the Census and included in the apportionment of Congressional representation. Remarks I and my colleagues have commonly heard following the issuance of the Presidential Memorandum while hosting mobile Questionnaire Assistance Kiosks at the open air market La Cocina on Broadway Ave in King City, La Princesa Market and EZ Wash & Dry both on N. Sanborn Rd. in East Salinas, all locations in a high HTC index census tract, include statements such as "if the

President can force a federal agency to manipulate the Census count, what more can we expect he will do to destroy us and our access to resources that provide for our basic needs"; "why would I fill out the Census, giving you the address of where my family and I sleep, which is supposed to be my safe place, knowing that all the President has to do is issue an order and we could be wiped out by the stroke of a pen?"; and, "We don't matter, why be counted if at the end of the day being counted doesn't matter in terms of political power, which is where we need it most." Many such comments come from *documented* immigrants who have been discouraged and dissuaded from participating in the enumeration process.

13. The Presidential Memorandum already has deterred many people in Monterey County from participating in the decennial Census and contributed to the low response rate. We are once again forced to adjust our outreach messaging and strategies to mitigate the negative impact of the Presidential Memorandum. To do so, we will need additional investment to augment funding to increase messaging through media outlets and in-person contactless outreach strategies. Such strategies will bear significant unexpected costs, but are imperative as we try, at the last minute, to address the challenges of carrying out our mission to count everyone.

I declare under penalty of perjury that, to the best of my knowledge, the foregoing is true and correct.

Executed on this third day of Aug., 2020

/s/ <u>ROSEMARY SOTO</u>
ROSEMARY SOTO

Exhibit 46

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

———————

20 Civ. 5770 (JMF)

STATE OF NEW YORK, ET AL., PLAINTIFFS

v.

DONALD J. TRUMP, IN HIS OFFICIAL CAPACITY
AS PRESIDENT OF THE UNITED STATES, ET AL.,
DEFENDANTS

———————

DECLARATION OF JONATHAN STERNESKY

———————

Pursuant to 28 U.S.C. § 1746(2), I, JONATHAN STERNESKY, hereby declare as follows:

1.   I am over the age of eighteen and have personal knowledge of all the facts stated herein.

2.   I am the Manager of Policy and Legislative Affairs for the New Jersey Housing and Mortgage Finance Agency (NJHMFA).   In this role, I oversee NJHMFA's executive policy team and work directly with NJHMFA's programmatic divisions to develop and implement new Agency programs, as well as analyze and review the efficacy of existing Agency programs.   I have been employed by NJHMFA since 2018 and have a bachelor's degree from Kean University and a master's degree in public administration from Seton Hall University.

3.   NJHMFA is the State of New Jersey's primary vehicle for developing and funding affordable homeownership and rental housing for New Jersey residents. Agency staff rely heavily on data prepared by the United

States Census Bureau to administer federal and state
housing programs. Decennial Census and American
Community Survey data provide NJHMFA with socio-
economic and population characteristics (e.g., age, race
and ethnicity, individual and household income, employ-
ment, poverty, form of tenure (i.e., rental or ownership),
housing quality, rent and mortgage costs, and housing
vacancy), as well as aggregate characteristics of geo-
graphic areas (e.g., area median income; housing cost
burden; fair market rent; qualified low-income Census
tracts; and Difficult to Develop Areas). To operate most
effectively, NJHMFA needs accurate Census data, which
is directly or indirectly utilized to inform a significant
subset of programmatic targeting and policy determina-
tions.

4. NJHMFA regularly relies on Census data for
policy and programmatic decision-making for two pri-
mary reasons. First, the Decennial Census is the gov-
ernment and policy-making reference point for better
understanding the diverse populations within communi-
ties across the United States, acting as the baseline for
key forward-looking economic and population estimates.
Second, the Decennial Census—unlike other data ser-
vices and products provided by the United States Cen-
sus Bureau—is an actual enumeration, or count, of the
total population of the country, providing a fuller, more
comprehensive point-in-time understanding of the pop-
ulation when compared to an estimate derived from a
sample.

5. Census data deeply influences the way that
NJHMFA designs and plans for the allocation of hous-
ing funds across the state. For example, the Agency
uses income, poverty, employment, housing density, and

housing vacancy data from the Census to direct its annual $20 million to $25 million allocation of federal 9% Low-Income Housing Tax Credits (LIHTC). These credits are then used to leverage roughly a ten-fold influx of private investment into equity for development costs to both high-opportunity and high-need areas of New Jersey.

6. Census data also determines the design and parameters of state-level programs. For instance, New Jersey's First-Time Homebuyer mortgage and down payment assistance programs are targeted toward low- and moderate-income households, using Census-derived data, including area median incomes and Urban Target Areas, which are referred to as "Targeted Areas" or "Targeted Area Residences" for federal purposes. Similarly, several special needs housing trust funds in New Jersey rely on Census-informed area median incomes to target units to the most vulnerable renters and to set affordable rents.

7. Finally, we use Census data to evaluate our programs and determine whether we are serving low-income and other historically marginalized or otherwise vulnerable populations effectively. Most recently, we carried out a racial equity analysis on our down payment assistance program to determine whether we were serving homebuyers of all races and ethnicities effectively. Without accurate Census data, including accurate data reporting the characteristics of the enumerated population, we would not be able to assess the Agency's performance and make adjustments to be able to serve all New Jerseyans in an equitable manner.

8.   As illustrated in the preceding paragraphs, Census data underpins so much of NJHMFA's program design, planning, and implementation that its accuracy is necessary in order to make key decisions affecting affordable housing in New Jersey.

9.   Poor quality Census data would have a deleterious effect on the residents of New Jersey.   For example, NJHMFA is charged with distributing state and federal resources critical to advancing the socioeconomic opportunities of New Jersey's most vulnerable residents. Without an accurate representation of the State's population, NJHMFA would be at risk of inadvertently diverting such resources away from the residents and communities the programs are designed to serve.   Inaccurate Census data would also place NJHMFA at increased risk of setting policies and goals that are responsive to the faulty data, instead of the actual needs of these communities.   Additionally, poor quality census data would compromise the calculation of maximum permissible rents for both 4% and 9% LIHTC projects. Those rents are calculated based on affordability for families at different income levels. If data regarding the number of households and area median income measures are distorted because the Census disproportionately undercounts certain communities and income brackets or because the quality of the Census data is otherwise degraded, there would be a direct impact on the maximum rent calculations.   For example, if poor-quality Census data inaccurately reflected an inflated median income for an area, maximum rent levels would be set higher than what is truly "affordable" for low- and moderate-income families in those areas.

10. In sum, inaccurate Census data would produce substantial harm to NJHMFA, compromising its ability to effectively administer programs serving vulnerable communities.

I declare under penalty of perjury that, to the best of my knowledge, the foregoing is true and correct.

Executed on this fourth day of Aug., 2020

/s/ <u>JONATHAN STERNESKY</u>
JONATHAN STERNESKY

Exhibit 47

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

———————

20-CV-5770 (JMF)

STATE OF NEW YORK, ET AL., PLAINTIFFS

v.

DONALD J. TRUMP, IN HIS OFFICIAL CAPACITY
AS PRESIDENT OF THE UNITED STATES, ET AL.,
DEFENDANTS

———————

20-CV-5781 (JMF)

NEW YORK IMMIGRATION COALITION, ET AL.,
PLAINTIFFS

v.

DONALD J. TRUMP, IN HIS OFFICIAL CAPACITY
AS PRESIDENT OF THE UNITED STATES, ET AL.,
DEFENDANTS

———————

DECLARATION OF GUSTAVO TORRES

———————

I, Gustavo Torres, pursuant to the provisions of 28 U.S.C. § 1746, declare under penalty of perjury that the foregoing is true and correct:

1. I am the Executive Director of CASA de Maryland, Inc. ("CASA"). In this capacity, in which I have served since 1994, my job is to lead an organization that builds power and fights for justice alongside the immigrant, Latino, and working class community in the United States. Over my 26 years at CASA, we have grown from a small welcome center for Central Ameri-

can refugees to the mid-Atlantic's largest immigrant advocacy organization, serving our community in Virginia, Maryland, and Pennsylvania. Through that work, we have grown our membership to over 110,000 lifetime members. We have done this through providing services our community needs and deserves, through organizing working class immigrants from over 140 countries around the world whom we are proud to count as members, and by standing with them in the streets, in the halls of power, and in courtrooms as they fight for justice, dignity, and the opportunity to thrive.

2.   Based on my more than 25 years of professional experience working for Latino and immigrant serving organizations in both the public and private sectors, the current outreach to immigrant communities I oversee in my current capacity at CASA, and my conversations with individual CASA members, I believe the Presidential Memorandum to the Secretary of Commerce on the subject of "Excluding Illegal Aliens from the Apportionment Base Following the 2020 Census" ("Presidential Memorandum") will deter participation of many individuals in the Latino and immigrant communities, and result in a disproportionate undercount of Latinos. As a result of the decision to add this question, CASA has diverted and will continue to be required to divert resources from core organizational priorities to additional, remedial outreach to counteract the Presidential Memorandum's negative effect on Census response rates in our community.

3.   The Presidential Memorandum will directly injure CASA members, many of whom live in areas of the United States in which immigrants of color and other

communities of color exceed national and state averages. Specifically, they will be harmed because the exclusion on undocumented residents from the apportionment base will diminish their political power relative to other parts of their states. In addition, they will be harmed because the disproportionate undercount that will result from the Presidential Memorandum among immigrants of color will well as the amount of Census-guided funding those areas receive for key programs, services, and facilities that our members and their families rely on to succeed in the communities in which they live.

I. CASA's Mission and Activities

4. CASA is a non-profit 501(c)(3) membership organization headquartered in Langley Park, Maryland, with offices in Maryland, Virginia, and Pennsylvania. Founded in 1985, CASA is the largest membership-based immigrants' rights organization in the mid-Atlantic region, with more than 100,000 all-time members.

5. CASA's mission is to create a more just society by increasing the power of and improving the quality of life of low-income immigrant communities. To advance this mission, CASA offers social, health, education, job training, employment, and legal services to immigrant communities. CASA serves nearly 20,000 people a year through its offices and provides support to additional clients over the phone and through email.

6. As Executive Director, I work to increase the power of immigrant voices, including the political power of these communities, by promoting voting rights and participation by our communities in the democratic process. I oversee all aspects of CASA's work, including

our community organizing, services, communications and other departments and programs. I am deeply involved in all key decision making aspects of the organization, including our large scale Census outreach and education efforts across Maryland, Virginia and Pennsylvania.

7. CASA works with members in navigating and enrolling in public benefits for which they are eligible. This work includes connecting members with public benefits related to health, education, and legal services. CASA assists eligible members in enrolling in food assistance programs such as the Supplemental Nutritional Assistance Program (SNAP), which provides food assistance to low-income individuals, and the Special Supplemental Nutrition Program for Women Infants and Children (WIC), which provides supplemental foods, health care referrals, and nutrition education to eligible individuals. CASA also assists eligible members in enrolling for health care coverage through Medicaid, or enrolling their children in the Children's Health Insurance Program.

8. CASA's Education Department works with families residing in dense immigrant neighborhoods to navigate them through the school enrollment process in Title 1 funded public schools serving these neighborhoods. Staff also provide information about early childhood education programs available in the neighborhoods served by CASA and partner with local providers to enroll eligible children in those programs.

II. CASA's Census-Related Work

9. CASA has an ongoing commitment to promoting engagement in the Decennial Census among its members, constituents, and communities. Member participation in the Decennial Census advances CASA's mission by increasing the political power of low-income immigrant communities.

10. Given CASA's 35 year history working with immigrant communities throughout the Mid-Atlantic region and the trust it has developed with these communities as a result of this history, CASA has consistently been a "go-to" organizational partner in conducting outreach and education around the Decennial Census and other related activities.

11. In 2019-2020, CASA partnered with various state and local government education and outreach campaigns throughout Maryland, Pennsylvania, and Virginia. In addition, CASA received dedicated funding from other sources to conduct door-to-door outreach, facilitate group educational sessions as well as conducting follow up outreach via phone and text message, and social media, and ongoing work with local, ethnic media to inform, engage, and encourage participation in the Census among Limited English Proficient, immigrant communities in the region.

12. CASA's messaging has focused on the importance of the Decennial Census in ensuring that the political power of the districts where our members live reflect the total population of these areas. CASA has emphasized that every person, regardless of citizenship status and whether they are documented or not, is counted in the Census for purposes of political apportionment and

Census-guided funding. As part of these efforts, CASA developed Census outreach materials in English and Spanish, reaching the community through social media and direct outreach, as well as by phone. We utilized physical and digital "Census pledge" cards, gathering commitments from community members to participate in the Census. These efforts were targeted particularly at the immigrant and Latino community, and were specifically designed to reach individuals in families with mixed immigration status. CASA has an ongoing commitment to promoting our members' engagement with the Decennial Census, because a complete and accurate Census count is critical to ensuring that our members receive the full political representation and funding to which they are entitled.

III. Harm to CASA as a Result of the Exclusion of Undocumented Residents from Apportionment

13. As described below, the Presidential Memorandum harms CASA members, as well as the organization more broadly. The Presidential Memorandum is increasing already heightened levels of fear among immigrants. The Trump Administration's anti-immigrant policies and rhetoric have led to decreased engagement with the government generally, and specific fear of participating in the Decennial Census. This latest step by the Trump Administration to exclude undocumented residents from the apportionment base is only serving to increase this fear, and discourage participation in the Decennial Census. This fear and decreased participation harms CASA as an organization, because it undermines our core messaging regarding the importance of the Decennial Census, and is requiring us to divert our resources to encourage participation in the Decennial

Census. In addition, this latest move requires us to change our messaging after nearly 11 months of programming aimed at increasing participation in the Decennial Census.

A. Fear in the Latino Immigrant Community under the Current Administration

14. Based on our conversations and work in the community, immigrant members of CASA have felt targeted, bullied and attacked by the rhetoric and actions of the Trump administration. Starting with the presidential campaign, through to its current policies, CASA members have expressed fear, frustration and despair over how they feel this administration has scapegoated them. In particular, they have expressed fear over the emphasis this administration has placed on increased deportations and immigration enforcement.

15. Policies such as family separation at the border, the "zero-tolerance policy" for immigrants entering the United States without documentation, and the attempted elimination of the Deferred Action for Childhood Arrivals (DACA) and the Temporary Protected Status (TPS) programs have all increased the fear among immigrant communities of being targeted by agencies such as ICE. This fear has led to a chilling effect on the willingness of immigrant communities of all types, regardless of immigration status, to interact with the federal government in any way.

16. CASA and its partner providers have begun to track a decrease in the number of individuals applying for certain public benefits. Most troubling has been a decrease in the number of enrollments into benefits completely unrelated to as of yet announced policies, such as

a decrease in the number of immigrants applying for health insurance made available through the Affordable Care Act or a decrease in the number of Legal Permanent Residents applying for citizenship. We have also noted a marked decrease in individuals accessing food stamps, which has not only made families less food secure but also contributed to local schools systems losing funding, because aid is tied in part to the number of children in the schools who are receiving food stamps. To those of us at CASA, this decreased participation indicates that the Trump Administration's policies are not only affecting those directly targeted by these policies, but are increasing fear among the immigrant community more broadly. Similarly, CASA has noticed a general distrust of government resulting in increased hesitancy among naturalized US Citizens and their family members to register to vote for the first time.

B.   CASA Members are Less Willing to Engage with the Decennial Census Due to Increased Fear

17. Under the current environment, CASA members have expressed fear of even a knock on their door by a stranger given the high number of arbitrary immigration enforcement actions that have resulted in the deportation of immigrants with little or no criminal background in the communities CASA serves. During CASA's census outreach efforts, one of the most effective messages for ensuring that residents completed their census forms was that by self-reporting, they would avoid a surprise visit from a census bureau employee. In addition, Many CASA members have expressed doubts and fears about how information within the government

is shared, and whether an answer to a question on a particular document or application may lead to their family being harmed or separated.

18. Following the announcement by the Trump Administration that they were seeking to exclude millions of immigrants from the Census count, CASA was approached by a number of media outlets, including CNN, to represent the reaction of our community. We conveyed how harmful the action is and our commitment to ensuring that our members are fully counted.

19. The threat that undocumented residents will not be counted for apportionment purposes even if they do participate in the Decennial Census has further discouraged individuals from participating in the Census. This action by the Trump Administration is the latest iteration of its attempts to dehumanize undocumented residents, by stating that they are not "persons" under the 14th Amendment of the U.S. Constitution. In addition, this latest action has heightened concerns regarding the privacy and confidentiality of Census questionnaire responses. The announcement that the Administration will exclude undocumented residents from the apportionment base has led to concerns that the Administration is gaining detailed information regarding where undocumented residents reside, and could use this information to target our members' communities with immigration enforcement actions or other adverse consequences.

20. The Presidential Memorandum decreases the likelihood that CASA members will participate in the Decennial Census, where the perceived costs of potential adverse immigration enforcement actions appears to outweigh the potential benefits, particularly when the

Decennial Census will not contribute to promoting the political power of these communities.

C. CASA is Diverting Resources to Encourage Participation in the Decennial Census

21. CASA recognizes the importance of the Decennial Census for its members and the broader Latino immigrant community. Participation in the Census is necessary to preserve the political power of these communities, and to ensure that these communities receive the vital federal resources that so many of our members rely upon. In order to combat the increased fear in the Latino immigrant community, and the unwillingness of many CASA members to participate in the Decennial Census, CASA has planned and is currently implementing a massive response to try and overcome the many barriers to participation.

22. This latest action by the Trump Administration to exclude undocumented residents from the apportionment base has diluted the efficacy of our Census outreach materials and programming, as it directly contradicts a key component of CASA's messaging and outreach materials. As a result, CASA must now devote additional resources to addressing the confusion and fear that have resulted from this latest action after 15 months of preparation and action in our Decennial Census programming.

23. To address the fear and confusion raised by the Presidential Memorandum in the immigrant communities, CASA will have to reorganize its communication team, reassign staff to Census outreach and education, and revise and redistribute messaging materials that CASA has prepared regarding the Decennial Census.

Given that the significant additional funding for this work was not anticipated, some of the resources required to do this work will have to be diverted from other programs that are key to CASA's mission, including community and issue organizing and other civic engagement efforts, as well as funded through other sources, perhaps including CASA reserves, precious unrestricted funds including membership dues, and leveraged with volunteers. CASA's outreach program was scheduled to end at the end of July, but we have been forced to continue to dedicate staff time to respond to calls and questions, and to place additional funding into communications and digital work to reassure community members and encourage them to complete their census form. The increased focus on Census outreach and education and need to revise all of CASA's Census education and messaging materials will necessarily divert CASA's limited resources, resulting in less resources being allocated to other vital CASA programs.

24. Unfortunately, CASA will have less time than anticipated to address the fear and confusion caused by the Presidential Memorandum among the immigrant communities that CASA serves. The actual counting period of the Census is only a few months, but the consequences of the Census in terms of political power and funding allocation last for a decade. At the time the Presidential Memorandum was published on July 21, there were 102 days remaining in the enumeration period, which was then scheduled to end on October 31. However, on July 31, the Census Bureau abruptly accelerated the end of the enumeration period to September 30. With only 56 days left in the headcount, every single day remaining is a critical opportunity for CASA and

its members to conduct further Census outreach and increase response rates in the immigrant communities we serve. CASA will have to accelerate its remaining Census education and outreach efforts to address the Presidential Memorandum's negative effect on Census responses.

25. I declare under penalty of perjury that the foregoing is true and correct.

Executed: [Aug. 5], 2020
Prince Georges County, MD

/s/ GUSTAVO TORRES
Gustavo Torres

Exhibit 56

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. 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 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. However, subsequent official action to counteract such threats—either court orders or changes in agency policy—have positive effects on trust and engagement. 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 the Census Bureau using proxy-response and imputation techniques that are error-prone and tend to undercount immigrant households.

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

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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/noticiastelemundo/inmigracion/trump-ordena-al-censo-que-no-incluya-los-indocumentados-en-el-recuento-que-determinael-tmna3823616.

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. Undocumented immigrants are deeply inter-twined 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 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.

18. Following the June 2019 ruling by the U.S. Supreme Court blocking the inclusion of a citizenship ques-

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[2] https://latinodecisions.com/wp-content/uploads/2019/06/NALEO_AV_Undoc_Results.pdf

tion, 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 sends a signal of government monitoring citizenship status as it relates to the 2020 Census population count, significantly eroding trust.

19. 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.

20. 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.

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[3] Here we mean persons who are foreign-born and emigrated to the United States.

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

22. 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.

23. If trust is low, attempts to re-interview or re-contact households will be far less successful either. 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.

24. 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 may have alleviated these fears by striking the citizenship question, the July 2020 PM effectively re-confirms those immigrant fears because it sends a signal to immigrant communities that the Trump administration will be monitoring their citizenship status so they 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.

25. 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.

26. 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. In simulated re-contact, my research has demonstrated that a majority of non-responders to the 2020 census will not switch and become participants when asked again to do so. In particular, research has found that NRFU is less successful when immigrant communities have fears about information concerning their citizenship status being collected or revealed.

27. Larger households will be the most difficult to successfully convert from nonparticipation 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 recontact, their average household size is 2.91 compared to an average household size of 3.94 for immigrants who would not participate upon recontact, leaving them, and their larger households uncounted.

28. One of the ways Census Bureau officials try to account for people who refuse 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 there are fears about citizenship status are introduced, non-responding households are statistically different than 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.

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**

29. On July 21, 2020 President Trump issued a Presidential Memorandum declaring that undocumented immigrants will be excluded from the decennial census for

apportionment purposes.[4]   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 re-apportionment of the U.S. House of Representatives. The PM refers to last year's Executive Order 13880[5] 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.[6]   While there are technicalities 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

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[4] 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/

[5] 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/

[6] 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

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 message of exclusion.

30. 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.[7]   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, they 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.[8]

31. 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

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

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

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 be worried the government is attempting to find out their legal status through other means. This is not beyond the realm of possibility, given that the Trump administration has instructed federal agencies to use existing state and federal records to determine citizenship status (Levine, 2020)[9]. 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 with undocumented immigrants may think the government will use other means to find them, such as 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.

32. After the President announced the PM, widespread reports about how the PM would seek to exclude undocumented immigrant populations from the reap-

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[9] 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)

portionment process were published by major news out-
lets throughout the U.S.[10]   Major Spanish-language me-

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[10] 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-illegalaliens-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/

dia and print news outlets throughout the nation also reported on the PM. They included Telemundo,[11] Univision,[12] Azteca America,[13] and Estrella TV[14]—all major media sources for Spanish-speaking viewers with hundreds of local television stations and affiliates throughout the U.S.[15] Newspapers and online media outlets for Spanish-speaking readers also reported on the PM's intention to leave out undocumented immigrants from the

[11] *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/noticiastelemundo/inmigracion/trump-ordena-al-censo-que-no-incluya-los-indocumentados-en-el-recuento-que-determinael-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-decretoindocumentados-censo-2020/2068275/.

[12] *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-alcenso-no-contar-a-los-indocumentados-en-un-memo-de-dudosa-legalidad-y-dificil-de-cumplir.

[13] 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/

[14] 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/

[15] *Owned Stations*, TELEMUNDO, https://www.nbcumv.com/owned-stations/telemundo-stationgroup/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).

reapportionment process.[16]   Whether through television, print, or online mediums, the message relayed by the media was that the order 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.[17]   These reports have conveyed to

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[16] 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-indocumentadosdel-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-inmigrantesindocumentados-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/estadosunidos/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-eleccionesindocumentados-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-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-aindocumentados-de-censo/

[17] 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-

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.[18]

33. Across these news accounts, immigrants, as well as individuals who worked with community-based organizations that serve immigrants, and even journalists, all 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*

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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

[18] 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

. . . y si, fomenta el miedo en nuestras comun-idades. Una ves más, le dice a nuestra comunidad inmigrante, no se cuenten, no los necesitamos." "This memo obviously causes 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."[19]

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

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[19] 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/.

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."[20]

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."[21]

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

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[20] 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.

[21] 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.

Latinos in the United States and to discriminate against other non-white, minority immigrant communities"[22]

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"

34. 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.[23]

35. 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. Vargas stated on Twitter[24]: "With a successful #NALEOVirtual Conference

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[22] 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.

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

[24] https://twitter.com/ArturoNALEO/status/1291764313405812737?s=20

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[25] 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. Spanish-Language News Media is a Trusted Source for Immigrants

36. 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 a medium for the feelings and concerns felt amongst Latino immigrant communities, in particular among undocumented immigrants. Green-Barber discuss these trends in Spanish-speaking media.[26] 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

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[25] https://twitter.com/ArturoNALEO/status/12917925603907297 28?s=20

[26] Lindsay Green-Barber, Latinos and the media: Patterns, changes and ideas for more connection, Center for Investigative Reporting.

central role in mobilizing and educating Latino communities on immigration issues in particular.

37. Research shows that households who more closely follow Spanish-language news rely on that information when it comes to civic and political engagement.[27] 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-related news and current affairs.[28] In 2012, a positive association between Spanish news coverage of President Obama's DACA program and immigrant identity spurred naturalized citizens to vote at higher rates. In other instances, exposure to negative information can lead to withdrawal.

38. 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."[29] To put simply, Spanish-language media is a critical bridge that informs

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[27] 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

[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, p. 78.

[29] 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.

and influences immigrants in politics and is often a direct reflection of Latino immigrant opinion in America. One example is the reliance of 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.

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

39. 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 implementa-

tion 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, nonresponse rates significantly increase. An early study on this topic framed the issue as how much threat potential respondents perceive through the source of the 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.

40. 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.

41. 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, this brand new PM of July 21 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.

42. 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 un-

likely to directly cooperate with the Census if they perceive their immigration status will be revealed. The July 21 PM does precisely this,; 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.

43. 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 ask-

ing 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.

44. 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.

45. Concerns about confidentiality are likely to exacerbate the unwillingness of certain communities to re-

spond 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 29-34) 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.

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

46. 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 to avoid the Census because they will not be counted. 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.

47. 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 threat 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.

48. 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.

49. Prior survey research in January 2020[30] 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.

50. 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,

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

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.

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

52. 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 lo-

cal 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**

53. 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.

54. 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.

55. 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 occur-ring finding was that respondents appeared visibly nervous about disclosing their private information and who would have access to such data. The current polit-ical 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."

56. As this finding makes clear, immigrant commu-nities can be especially vulnerable to the social and po-litical context surrounding the implementation of a sur-vey. A study of immigrants in California and Texas found that respondents' fear over citizenship status cor-related with their non-participation in the health sector (Berk and Schur 2001). This study found strong evi-dence that a threatening context can lead immigrants to withdraw and limit their access to public services, in-cluding 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 identi-fied the context of heightened "immigration policing" as one that erodes trust in other public institutions and cre-ates an environment in which immigrant communities are very selective as to where, when, and how they en-gage 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-par-ticipation during times of threatening context.

57.   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.

58.   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.

59. 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.

60. 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 not be 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 com-

pleted 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).

61. Prior experiences with census data collection efforts that overlapped with anti-immigrant contexts provide evidence that non-response follow-up (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.

62. 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, completely undercuts this incentive to participate. If the government is going to remove them from the base population count, why bother filling out the 2020 Census at all? 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.

63. It is important to note undocumented immigrants and their 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 of legibility to immigration authorities 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).

64. 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 their undocumented 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.

65. One implication of the fear and unrest in the immigrant community is the increased mobility which 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.

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

66. 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 DACA. 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.[31]   Over the course of 2018, USCIS reported 287,709 total requests for DACA renewal were made by

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[31] 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

undocumented immigrants.[32]   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.[33]   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,.

67.   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

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[32] 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

[33] 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

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.[34] 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.[35] 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 con-

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[34] 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.

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

sequences on promoting trust among immigrant communities and influencing behavioral interactions with various aspects of government.

68. 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.[36] 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 their mind and a citizenship question would NOT be included 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.

90. **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

Among Latinos who said they would **not** participate in the census with a citizenship question, 80 percent 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

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[36] *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.

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.[37]

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

G. Non-Response Follow-Up (NRFU) and Imputation of Non-Responding Households

70. The Census Bureau is aware that some households will not respond to the initial request for participation, and as such they have long had a program called Non-Response Follow-Up (NRFU) which provides follow-up contact with any households that do not initially respond. The Census Bureau estimates they conducted follow-up with around 50 million households in 2010 (Rao 2017). NRFU is critical for the Census Bureau to increase participation rates, but it is a costly and difficult undertaking by their own admission. Any increased non-response at initial contact makes NRFU much more difficult, especially if non-responding households come to not trust the survey questions that enumerators are attempting to ask. What's more, NRFU

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[37] *See id.*

is now profoundly more difficult due to COVID-19 and the time available has been shortened. As discussed in this report, the PM increases the likelihood that Latinos, immigrants, and noncitizens are less likely to self-respond to the 2020 census. These non-responding individuals are also unlikely to respond after household visits by census enumerators because of fear of government interaction. (de la Puente 1995; 2004).

71. In fact, with the new focus on excluding undocumented immigrants directed by the PM, the Census outreach efforts after July 21, 2020 could actually create more fear and anxiety in immigrant communities and further drive down response rate and increase the net undercount. For example, the Census Bureau plans to send enumerators into non-responding communities on behalf of the federal government, and if nobody is home, they will leave a "Notice of Visit" from the federal government which includes a unique household "census identification number." Further, they inform the household that additional visits will be made back to their house by enumerators on behalf of the federal government. This sends a clear signal of federal government monitoring of the household and will result in increased anxiety and concern over cooperating (e.g. Menjívar 2011; Szkupinski Quiroga et al. 2014). Research by Hagan et al. (2011) documents with clear evidence the extensive chilling effect of increased presence of government officials who appear to be monitoring immigrants and checking on their status. They find immigrants "withdrawing from the community" as well as "avoiding public places" and that they "spend most of their non-working hours in their homes because it is the safest way to avoid detection." (Hagan et al. 2011.) According to Abrego (2011), undocumented immigrants will go

to great lengths to reduce their visibility in society when they perceive a potential threat of deportation. Her research identifies withdrawal from interactions with government agencies as awareness of immigration checks increases. From the perspective of an anxious immigrant, each additional household visit from a government Census worker, following a PM directing the exclusion of undocumented people, is the exact environment that would produce withdrawal. According to Abrego: "In effect, their well-being and stability are perennially threatened because, as they are constantly reminded, there may be an ICE raid . . . at any time" (2011).

72. Research also finds that increased presence and visibility of government officials who appear to be collecting immigration information creates withdrawal and also misreporting on government forms (Rodriguez and Hagan 2004). Increased presence of immigration officials in the community lead to a decline of student attendance in the nearby school to avoid any contact with the government officials. However, in communities without ICE presence, school attendance is not impacted. The research study observed this trend across three different cities in Texas and attributed increased withdrawal to an increased visibility and presence of government officials asking about immigration status. Further, the same study reported that Hispanics began to change their racial identification to White on government forms at health clinics to avoid any risk of association with immigration officials (Rodriguez and Hagan 2004).

73. Another study specifically examined the willingness of immigrants to participate in surveys and data

collection efforts, in particular examining how fear of deportation impacted response rates and general engagement with government services (Arbona et al. 2010). One of the most important findings of this study was that if immigrants fear their participation could somehow lead to their deportation, they will not participate unless they are fully comfortable and trusting of the survey taker. As the research study progressed, Arbona et al. reported, through quantitative data, that fear of deportation was a strong motivating factor for avoidance and that over 80% of immigrants in their sample stated that they avoided activities such as "ask[ing] for help from government agencies, report[ing] an infraction to the police, attend[ing] court if requested to do so," and other items. The more census enumerators visit immigrant communities to attempt household counts, following the July 21 PM to exclude undocumented immigrants, the more likely they will be to not participate. That is, the outreach itself will produce further non-response as a result of the socio-political climate following the PM.

74. NRFU enumerators may not be able to make contact with adult households. Enumerators may not be sufficiently linguistically or culturally competent in order to persuade undecided households to respond. For example, they may not be able to effectively convince Latinos who may be concerned about immigration issues or enforcement to respond. Many Latinos, in the context of heightened immigration enforcement, are told to not open the door to strangers due to commercial scams and guidance from immigration legal advisors regarding ICE visits (Kissam et al., 2019). Moreover, even if enumerators are able to convince members of immigrant communities to respond despite the existence

of a chilling effect, it may be logistically difficult for enumerators to make contact with adult householders. In many immigrant communities, work hours are long and weekend work is common, increasing the difficulty for NRFU enumerators to conduct a direct interview of the household (Kissam et al., 2019).

75. NRFU also cannot account for households omitted from the Master Address File as a result of "complex households" in low-visibility unconventional and/or hidden housing units (Kissam, 2019). These complex households may be more likely to be made up of immigrants and their direct social ties. Kissam (2019) notes in the San Joaquin Valley, only 95% of the Latino immigrant study population live in housing units included in the Census Bureau's Master Address File, resulting in a 5% household omission rate. The only way these households can be counted in the Census is if they proactively respond via online non-ID processing operations or by phone. However, these alternative mechanisms may not work if these complex households are concerned about the prospect of providing information to a government seeking to identify their citizenship status or exclude them from the count for specific purposes, such as apportionment, as required by the PM.

76. Even if NRFU results in data production, it may be faulty data. High levels of nonresponse force the Census Bureau to rely on alternative statistical procedures such as triangulation via administrative records, proxy interviews with neighbors, and, imputation. Some of these alternative efforts might fail in immigrant communities. Proxy interviews may fail to resolve undercounting due to mistrust of Federal authorities and lack of willingness to provide information on neighbors.

Indeed, only 17% of respondents in a survey of the San Joaquin Valley immigrant community indicated they were willing to provide an enumerator with information about neighbors in the San Joaquin Valley (Kissam, 2019). It is important to note proxy interview efforts are error-prone, since they are, at best, estimates by neighbors of the number and characteristics of neighboring households. The same survey of immigrant communities in the San Joaquin Valley indicates less than half of potential Census respondents believe they know enough about their neighbors to provide accurate responses (Kissam, 2019).

77. Moreover, 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.

78. 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 nonresponding households in immigrant communities may be systematically larger than

those that do respond. Thus, each imputation will contribute to a differential undercut given that "donor" households have less inhabitants (Kissam, 2019).

79. 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 noncontact, 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.

80. 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[38]

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[38] 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,

(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).

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

82. With respect to the U.S. census and counts of Latino and immigrant households, previous research

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not necessarily population counts, which are supposed to serve as the baseline universe estimate in the first place.

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.

83. 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).

84. 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).

85. 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).

86. 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 no amount of NRFU, administrative-record matching, or imputation can 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.

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

Executed on Aug. 7, 2020 at Agoura Hills, CA.

I declare under penalty of perjury that the foregoing is true and correct.

/s/ MATTHEW A. BARRETO
MATTHEW A. BARRETO

References

Abrego, L. J. (2011). Legal consciousness of undocumented Latinos: Fear and stigma as barriers to claims-making for first-and 1.5-generation immigrants. *Law & Society Review*, *45*(2), 337-370.

Amuedo-Dorantes, C., & Arenas-Arroyo, E. (2019). Immigration enforcement, police trust, and domestic violence. *Unpublished manuscript. Retreived on October*, *28*, 2019.

Arbona, C., Olvera, N., Rodrigues, N., Hagan, J., Linares, A., & Wiesner, M. (2010). Acculturative stress among documented and undocumented Latino immigrants in the United States. Hispanic Journal of Behavioral Sciences, 32 (3), 362-384. doi: 10.1177/ 0739986310373210

Asad, Asad L. (2020). "On the Radar: System Embeddedness and Latin American Immigrants' Perceived Risk of Deportation". In: Law & Society Review 54.1. Publisher: Wiley Online Library, pp. 133–167.

Bhaskar, Renuka, Leticia E. Fernandez, and Sonya R. Porter (2018). "Assimilation and coverage of the foreign-born population in administrative records". In: Statistical Journal of the IAOS 34.2. Publisher: IOS Press, pp. 191–201.

Desai, Sarah, Jessica Houston Su, and Robert M. Adelman (2019). "Legacies of Marginalization: System Avoidance among the Adult Children of Unauthorized Immigrants in the United States". In: International Migration Review. Publisher: SAGE Publications Sage CA: Los Angeles, CA, p. 0197918319885640.

Dreby, Joanna (2015). Everyday illegal: When policies undermine immigrant families. University of California Press.

Félix, A., González, C., & Ramírez, R. (2008). Political protest, ethnic media, and Latino naturalization. *American Behavioral Scientist*, *52*(4), 618-634.

Gee, Lisa Christensen, Matthew Gardner, and Meg Wiehe (2016). "Undocumented immigrants' state & local tax contributions". In: The Institute on Taxation and Economic Policy.

Kissam, Edward (Jan. 1, 2019). "How low response among Latino immigrants will lead to differential undercount if the United States' 2020 census includes a question on sensitive citizenship". In: Statistical Journal of the IAOS 35.2. Publisher: IOS Press, pp. 221–243. issn: 1874-7655. doi: 10.3233/SJI-190505.

Kissam, Edward et al. (2019). "San Joaquin Valley Latino Immigrants: Implications of Survey Findings for Census 2020". In: San Joaquin Valley Health Fund.

Levine, Sam (2020). Trump orders undocumented immigrants excluded from key census count. the Guardian. Library Catalog: www.theguardian.com Section: US news.

Liptak, Kevin et al. (2020). Trump signs order targeting undocumented immigrants in the US census. CNN. Library Catalog: www.cnn.com.url: https://www.cnn.com/2020/07/21/politics/white-house-census-undocumented-immigrants/index.html

Smith, Mike (2020). Community groups vow to help undocumented immigrants count in 2020 census in New

Mexico. Carlsbad Current-Argus. Library Catalog: www.currentargus.com.

Torres-Ardila, Fabian, Daniela Bravo, and Franklin Ortiz (2020). "Increasing Latino Participation Rates in the 2020 Census in Chelsea, MA".

Vargas, Edward D. (2015). "Immigration enforcement and mixed-status families: the effects of risk of deportation on Medicaid use". In: Children and youth services review 57. Publisher: Elsevier, pp. 83–89.

Wang, Hansi Lo (2020). Four States Are Sharing Driver's License Info To Help Find Out Who's A Citizen. NPR.org. Library Catalog: www.npr.org.

Watson, Tara (2014). "Inside the refrigerator: Immigration enforcement and chilling effects in Medicaid participation". In: American Economic Journal: Economic Policy 6.3, pp. 313-38.

Yoshikawa, Hirokazu (2011). Immigrants raising citizens: Undocumented parents and their children. Russell Sage Foundation.

Abowd, John, Depositions on August 15, 2018 (hereinafter Abowd Deposition) and August 29, 2018 (Abowd 30(b)(6).

Andridge, Rebecca R. and Little, Roderick J. 2010. "A Review of Hot Deck Imputation for Survey Non-Response." International Statistical Review 78(1): 40-64.

Ball, John C. 1967. "The Reliability and Validity of Interview Data Obtained from 59 Narcotic Drug Addicts." *American Journal of Sociology* 72(6): 650-654.

Berk, Marc L., and Claudia L. Schur. 2001. "The Effect of Fear on Access to Care among Undocumented Latino Immigrants." *Journal of immigrant health* 3(3): 151-156.

Bradburn, Norman M., Seymour Sudman, Ed Blair, and Carol Stocking. 1978. "Question Threat and Response Bias." *Public Opinion Quarterly* 42(2): 221-234.

Casey Foundation. 2018. "2018 Kids Count Data Book."

Center for Survey Measurement. 2017. "MEMORANDUM FOR Associate Directorate for Research and Methodology (ADRM)."

Claes-Magnus Cassell et al., 1977. Foundations of inference in survey sampling. 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.*

————. 2004. *Census 2000 Ethnographic Studies.* Bureau of the Census.

Ericksen, Eugene P., and Teresa K. Defonso. 1993. "Guest Commentary: Beyond the Net Undercount: How to Measure Census Error." *Chance* 6(4): 38-14. Federal Committee on Statistical Methodology. 1990. Statistical Working Paper 17—Survey Coverage. http://www.fcsm.gov/working-papers/wp17.html

Frost, Amanda. 2017. "Can the Government Deport Immigrants Using Information It Encouraged Them to Provide?"

García, A. S. (2019). *Legal passing: Navigating un-documented life and local immigration law.* University of California Press.

Groves, Robert M. And Mick P. Couper. 1998. Non-response in Household Interview Surveys. New York, NY: John Wiley and Sons

Groves, Robert. 2004. Survey Errors and Survey Costs, 2nd ed.

Groves, Robert, Floyd J. Fowler Jr., Mick P. Couper James M. Lepkowski, Eleanor Singer, and Roger Tourangeau. 2004. Survey Methodology. New York, NY: John Wiley and Sons. (Cites 3873)

Hagan, J. M., Rodriguez, N., & Castro, B. (2011). Social effects of mass deportations by the United States government, 2000-10. *Ethnic and Racial Studies*, *34*(8), 1374-1391

Kalton, Graham. 1983. "Compensation for Missing Survey Data." University of Michigan Survey Research Center Research Report Series.

Lohr, Sharon L. 1999. Sampling: Design and Analysis. New York, NY: Brooks/Cole.

Kissam, Edward. 2017. "Differential Undercount of Mexican Immigrant Families in the US Census." *Statistical Journal of the IAOS* 33(3): 797-816.

Krysan, Maria. 1998. "Privacy and the Expression of White Racial Attitudes: A Comparison across Three Contexts." *Public Opinion Quarterly*: 506-544.

Lajevardi, Nazita, and Kassra AR Oskooii. 2018. "Old-Fashioned Racism, Contemporary Islamophobia, and the

Isolation of Muslim Americans in the Age of Trump." *Journal of Race, Ethnicity and Politics* 3(1): 112-152.

National Research Council. 2002. *The 2000 Census: Interim Assessment.* National Academies Press.

———. 2004. *The 2000 Census: Counting under Adversity.* National Academies Press.

Menjívar, C. (2011). The power of the law: Central Americans' legality and everyday life in Phoenix, Arizona. *Latino Studies*, *9*(4), 377-395

Meyers, Mikelyn. 2017. "Respondent Confidentiality Concerns and Possible Effects on Response Rates and Data Quality for the 2020 Census."

Michelson, Melissa R., and Jessica L. Lavariega Monforti. 2018. "Back in the Shadows, Back in the Streets." *PS, Political Science & Politics* 51(2): 282

Montoya, Martin. 1992. "Ethnographic Evaluation of the Behavioral Causes of Undercount: Woodburn, Oregon." Ethnographic Evaluation of the 1990 Decennial Census Report #25. Prepared under Joint Statistical Agreement 90-06 with the University of Oregon. Bureau of the Census, Washington D.C.

Cruz Nichols, Vanessa, Alana MW LeBrón, and Francisco I. Pedraza. 2018. "Spillover Effects: Immigrant Policing and Government Skepticism in Matters of Health for Latinos." *Public Administration Review* 78(3): 432-443.

O'Hare, William, Yeris Mayol-Garcia, Elizabeth Wildsmith, and Alicia Torres. 2016. "The Invisible Ones: How Latino Children Are Left Out of Our Nation's Census Count."

Oskooii, Kassra AR. 2016. "How Discrimination Impacts Sociopolitical Behavior: A Multidimensional Perspective." *Political Psychology* 37(5): 613-640.

Pedraza, Francisco I., and Maricruz Ariana Osorio. 2017. "Courted and Deported: The Salience of Immigration Issues and Avoidance of Police, Health Care, and Education Services among Latinos." *Aztlan: A Journal of Chicano Studies* 42(2): 249-266. Rubin, Donald B. 1976. "Inference and Missing Data." Biometrika 63(3): 581-592.

Raines, Marvin D. 2001. "Gaining Cooperation from a Multi-Cultural Society of Respondents: A Review of the US Census Bureau's Efforts to Count the Newly Immigrated Population." *Statistical Journal of the United Nations Economic Commission for Europe* 18(2, 3): 217-226.

Rao, Krishna. 2017. "Discussion of 2018 End-to-End Census Test: Nonresponse Follow-up" Census Scientific Advisory Committee. Fall 2017 Meeting.

Sanchez, Gabriel R., and Barbara Gomez-Aguinaga. 2017. "Latino Rejection of the Trump Campaign." *Aztlán: A Journal of Chicano Studies* 42(2).

Rodriguez, N., & Hagan, J. M. (2004). Fractured families and communities: Effects of immigration reform in Texas, Mexico, and El Salvador. *Latino Studies*, *2*(3), 328-351.

Stepick, Alex. 1992. "Ethnographic Evaluation of the 1990 Decennial Census Report Series." Ethnographic Evaluation of the 1990 Decennial Census Report #8. Prepared under Joint Statistical Agreement #90-08 with Florida International University. Bureau of the Census, Washington D.C.

Szkupinski Quiroga, S., Medina, D. M., & Glick, J. (2014). In the belly of the beast: Effects of anti-immigration policy on Latino community members. *American Behavioral Scientist*, *58*(13), 1723-1742

Terry, Rodney L. et al. 2017. "Exploring Inconsistent Counts of Racial/Ethnic Minorities in a 2010 Census Ethnographic Evaluation." *Bulletin of Sociological Methodology/Bulletin de Méthodologie Sociologique* 135(1): 32-49.

Tourangeau, Roger, and Tom W. Smith. 1996. "Asking Sensitive Questions: The Impact of Data Collection Mode, Question Format, and Question Context." *The Public Opinion Quarterly* 60(2): 275-304.

Tourangeau, Roger, and Ting Yan. 2007. "Sensitive Questions in Surveys." *Psychological bulletin* 133(5): 859.

U.S. Government Accountability Office. 2003. "Decennial Census: Lessons Learned for Locating and Counting Migrant and Seasonal Farm Workers." (GAO-03-605). https://www.gao.gov/products/GAO-03-605 (April 18, 2018).

U.S. Census Bureau. 2013. "U.S. Census Bureau Statistical Quality Standards" July 2013. https://www.census.gov/about/policies/quality/standards.html. 2017b. "Investigating the 2010 Undercount of Young Children—Analysis of Census Coverage Measurement Results."

Velasco, Alfredo. 1992. "Ethnographic Evaluation of the Behavioral Causes of Undercount In The Community of Sherman Heights, San Diego, California." Ethnographic Evaluation of the 1990 Decennial Census Report #22. Prepared under Joint Statistical Agreement

89-42 with the Chicano Federation of San Diego County. Bureau of the Census, Washington, D.C.

Wines, Michael. 2018. "Census Bureau's Own Expert Panel Rebukes Decision to Add Citizenship Question." New York Times. March 30

Exhibit 57

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

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20-CV-5770 (JMF)

STATE OF NEW YORK, ET AL., PLAINTIFFS

v.

DONALD J. TRUMP, IN HIS OFFICIAL CAPACITY
AS PRESIDENT OF THE UNITED STATES, ET AL.,
DEFENDANTS

———————

20-CV-5781 (JMF)

NEW YORK IMMIGRATION COALITION, ET AL.,
PLAINTIFFS

v.

DONALD J. TRUMP, IN HIS OFFICIAL CAPACITY
AS PRESIDENT OF THE UNITED STATES, ET AL.,
DEFENDANTS

———————

EXPERT DECLARATION OF MR. JOHN THOMPSON

———————

I.   Introduction

1.   On July 21, 2020 President Trump issued a Memorandum for the Secretary of Commerce on *Excluding Illegal Aliens from the Apportionment Base Following the 2020 Census* (in the remainder of this document I will use the term "Memorandum" to refer to this document).   I am extremely concerned that this action will adversely affect the quality and accuracy of the 2020 Census.

2. The 2020 Census results will be of great importance to our nation. The Constitution requires that the census be used for reapportioning the Congress of the United States and the Electoral College. The 2020 Census will also be used for numerous other functions to support good policymaking and economic growth including: redrawing congressional and state legislative voting districts; allocating over $1.5 trillion of federal funds annually; informing sound policy development; providing critical information for state, local and tribal government planning; and supplying critical information to large and small businesses to generate growth and job creation. Inaccuracies or errors in the 2020 Census will have grave consequences on these uses for the subsequent 10-year period.

3. I have carefully reviewed the Memorandum instructing the Secretary of Commerce to provide information to exclude undocumented persons from the Apportionment counts. I have also reviewed the 2020 Census Operational Plans as well as the documentation that the Census Bureau has issued describing the actions it is taking in response to the COVID-19 pandemic. I have two serious concerns regarding the Memorandum: (1) it will significantly increase the risk of larger total and differential undercounts, relative to previous censuses, for the hard-to-count populations, including immigrant communities; and (2) it lacks transparency as required by law and the Census Bureau Statistical Quality Standards that would allow for the assessment of the methodology that might be used in response to the direction to exclude undocumented

persons from the 2020 Census Apportionment counts.

II. Qualifications

4. Below I briefly describe specific aspects of my qualifications and work experience that establishes my credentials as an accomplished statistician and an expert on the Census Bureau and Decennial Census. I have also attached a copy of my CV to this declaration.

5. I have served as both the Director of the U.S. Census Bureau and as the career senior executive in charge of management of all aspects of the 2000 Decennial Census. I am also a distinguished professional in the area of statistics and survey design. I have a deep understanding of the processes that are necessary to achieve a complete and highly accurate Decennial Census.

6. I served as the Director of the U.S. Census Bureau from August 2013 to June 2017. Prior to becoming Director, I worked at the Census Bureau for 27 years (from 1975 to 2002). I started my career as a mathematical statistician in 1975. I spent the majority of my employment at the Census Bureau focused on the Decennial Census and ultimately served as the Associate Director for the 2000 Decennial Census, with management responsibility for all phases of the 2000 Decennial Census.

7. The Census Bureau is the largest Statistical Agency and produces a wide range of demographic and economic statistics including: the Decennial Census; the American Community Survey; the Current Population Survey; the National Crime Victimization

Survey, the National Health Interview Survey; the Economic Census; the release of 13 principle key economic indicators on a monthly or quarterly basis; and conducts about 100 additional surveys. The Director of the Census Bureau is appointed by the President and confirmed by the Senate.

8. My responsibilities as Director of the Census Bureau included overseeing the research and testing that produced the design for the 2020 Census. During my tenure, the original operational plan for conducting the 2020 Census was released, as was an updated version 2.0 of this plan. In addition, major field tests were conducted in 2013, 2014, 2015 and 2016. The results of these tests informed the final 2020 Census Design that was tested in the 2018 end-to-end test. During my service, the Census Bureau reviewed the residence criteria used to determine where to count the residents of the United States. A preliminary proposal for the 2020 residence criteria was issued for public comment on June 30, 2016.[1] In particular, the Census Bureau was following the same principles that had guided each previous Decennial Census—the Constitution requires that everyone living in the United States should be included in the enumeration, regardless of immigration status, for all uses of the census, including Apportionment. The final 2020 Census residence criteria were issued on February 5, 2018, and again followed these same principles to count everyone living in the United States at their usual

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[1] Federal Register, 81 FR 42577, Proposed 2020 Census Residence Rule and Residence Situations, June 30, 2016.

place of residence regardless of immigration status for Apportionment and all other uses.[2]

9. Prior to being appointed Director of the Census Bureau I was at National Opinion Research Center (NORC) at the University of Chicago, serving as Executive Vice President from 2002 to 2008 and President from 2008 to 2013. NORC is an objective, non-partisan independent research institution that delivers reliable data and rigorous analysis to guide critical programmatic, business, and policy decisions. Clients include government, corporate, and nonprofit organizations around the world who partner with NORC to transform increasingly complex information into useful knowledge. NORC conducts research in five main areas: Economics, Markets, and the Workforce; Education, Training, and Learning; Global Development; Health and Well-Being; and Society, Media, and Public Affairs. NORC services include designing and conducting surveys (telephone, Internet, and in-person) as well as analytical studies.

10. From July 2017 to August 2018, I served as the Executive Director of the Council of Professional Associations on Federal Statistics (COPAFS). COPAFS is an organization with a membership consisting of professional associations and research organizations that depend on and support high quality federal statistics. The Executive Director of CO-

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[2] Albert E. Fontenot, Jr., 2020 Census Residence Criteria and Residence Situations, 2020 Census Program Memorandum Series: 2018.04, February 5, 2018.

PAFS must have a deep understanding of the Federal Statistical System and the wide range of data products that are produced. Serving as the Executive Director of COPAFS reinforced my appreciation of the importance of high-quality Decennial Census data to the entire Federal Statistical System.

11. In addition to the work experience described above, I am an elected Fellow of the American Statistical Association and was selected to serve on the National Academies of Science, Engineering, and Medicine Committee on National Statistics.

III. Concerns

A. *Background on the Decennial Census*

12. The uses of the data generated by the Decennial Census are extremely important for all components of our democracy and economy, including: the constitutionally required reapportionment of the Congress; redrawing congressional and state legislative voting districts; allocating over $1.5 trillion in federal funds annually; supporting evidence based policy making by state, local and tribal governments; and allowing informed decisions by large and small business to generate economic growth and job creation. Inaccuracies or undercounts in Decennial Census data will result in under-representation of the affected population groups not just in the immediate term, but for ten subsequent years until the next Decennial Census results are available.

B. *The 2020 Census was already facing unprecedented challenges prior to the release of the Memorandum.*

13. The COVID-19 pandemic forced the delay of key operations out of concerns for the safety of both census workers and the general public.   The in-person components of the local partnership program to increase response rates of the traditionally hard-to-count populations were delayed, as was the operation to collect responses from those households that do not self-respond.   This operation is referred to as nonresponse follow-up or NRFU.   In my opinion, NRFU is the most critical operation to achieving a fair and accurate enumeration.   Currently the national self-response rate is 63 percent, which means that over 37 percent or over 50 million housing units and their occupants must still be enumerated.[3]   A successful NRFU is therefore essential to achieving a complete enumeration for the 2020 Census.

14. The NRFU operation had been scheduled to start on May 15, 2020 and run through July 31, 2020. However, as a result of the COVID-19 pandemic, the Census rescheduled it to start in most of the United States on August 11, 2020 and initially planned to complete it by October 30, 2020.

15. In order to accommodate this delay, the Census Bureau had requested, through the Department of Commerce, a four-month extension of the legal deadlines[4] to deliver Apportionment and redistricting data.   For Apportionment this would extend

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[3] US Census Bureau 2020 Census daily response rate tracker, https://2020census.gov/en/response-rates.html (last accessed August 6, 2020).

[4] Title 13, US Code, Section 141, (b) and (c).

the current deadline of December 31, 2020 to April 30, 2021. For redistricting data, the requested extension was from March 31, 2021 to July 31, 2021.

16. However, the Census Bureau has announced that the deadlines will not be extended, and that the NRFU will now be completed by September 30, 2020.[5] The Census Bureau will have to take steps to complete the NRFU more rapidly than they planned.

17. In this situation the risk that the hard-to-count populations will be underrepresented increases greatly. Cooperation on the part of the households in NRFU is going to be essential. However, as I discuss below, the issuance of the Memorandum will most likely decrease cooperation and willingness to participate further reducing the effectiveness of NRFU in achieving a fair and accurate enumeration.

   C. *The confidence of respondents that the 2020 Census will be confidential will be significantly eroded leading to increased undercounts*

18. The Census Bureau has made good progress since the 1990 Decennial Census, and had great success during both the 2000 and 2010 Decennial Censuses in reducing undercounts. A key component of this success has been the deployment of a combined national and local advertising and local partnership

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[5] Statement from U.S. Census Bureau Director Steven Dillingham: Delivering a Complete and Accurate 2020 Census Count, https://www.census.gov/newsroom/press-releases/2020/delivering-complete-accurate-count.html, August 3, 2020.

program to deliver a message to hard-to-count populations that the census is important to their community, and that the data collected through the census is completely confidential. No individual's information is shared with any other organization or law enforcement entities.

19. This messaging program was responsible for dramatic gains in the accuracy and coverage of the 2000 and 2010 Decennial Census relative to the 1990 Census, which did not include such a program. For example, the undercount of Black or African Americans dropped from 4.6 percent in 1990 to 2.1 percent in 2010.[6] For the Hispanic population the undercount dropped from 5.0 percent to 1.5 percent.[7]

20. Census Bureau research conducted in planning for the 2020 Census has identified serious concerns that potential respondents have with respect to the confidentiality of their information prior to the release of the Memorandum. For example:

    a. Census Bureau researchers conducted qualitative research that was presented at the 2018 American Association of Public Opinion Research annual conference that indicated that fear of government was

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[6] P. Cantwell, DSSD 2010 Census Coverage Measurement Memorandum Series # 2010-G-01, (May 22, 2012), https://www.census.gov/coverage_measurement/pdfs/g01.pdf.

[7] P. Cantwell, DSSD 2010 Census Coverage Measurement Memorandum Series # 2010-G-01, (May 22, 2012), https://www.census.gov/coverage_measurement/pdfs/g01.pdf.

higher than had been experienced in prior years.[8]

b. The 2020 Census Barriers Attitudes and Motivators Study was conducted to understand the concerns of potential respondents to help shape the 2020 Census advertising and communication program themes and messages. The study found that the two most significant barriers to participation in the 2020 Census were: (1) concerns that the Census Bureau would share information with other government agencies; and (2) that the information that respondents provided would be used against them[9]. Non-White and Hispanic groups were much more concerned than the White non-Hispanic group. In addition, respondents that were not proficient in English were much more concerned than those who were (39 percent compared to 23 percent).

c. The Census Bureau also conducted research on the potential effects of adding a citizenship question to the 2020 Census questionnaire.[10] This research indicated

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[8] AAPOR Panel on Changes in Respondent Privacy, Confidentiality, and Data Sharing Concerns, Meyers, Goerman, Harris-Kojetin, Terry, and Fobia, Denver, Colorado, May 18, 2018

[9] CBAMS report

[10] J. David Brown, Misty L. Heggeness, Suzanne M. Dorinski, Lawrence Warren, and Moises Yi *Understanding the Quality of Alternative Citizenship Data Sources for the 2020 Census*, August 6, 2018.

that the question would reduce self-response of the non-citizen population. Furthermore, the research found that it was likely that households that refuse to respond to the census questionnaire because of the citizenship question are also likely to not respond to NRFU enumerators. It is my opinion, based on my experience in implementing the 2000 Census and my work in leading the design and planning for the 2020 Census, that the Memorandum is likely to have similar effects on NRFU response.

21. In order to address these concerns, a cornerstone of the 2020 Census advertising and partnership program, is a message that respondent information is confidential. The Census Bureau will not share it with any outside entities, including law and immigration enforcement. It is my opinion that the Memorandum will reduce the effectiveness of the 2020 Census advertising and partnership program in gaining the confidence of respondents in traditionally hard-to-count communities.

22. For example, a critical factor in underlying response and participation in the 2020 Census is the macro environment under which the NRFU is being conducted. While the 2020 Census advertising and partnership program is designed to positively influence this environment, other factors such as the issuance of the Memorandum can have the opposite effect. As Census Bureau Chief Scientist, Dr.

John Abowd, acknowledged during recent trial testimony[11] in the matter considering the potential effects of adding a citizenship question to the 2020 Census questionnaire, the macro environment was likely to be affected by actions to add a citizenship question. Furthermore, Dr. Abowd acknowledged that the political environment around immigration could amplify the effects of a citizenship question on decreased response.

23. It is my opinion that the effects of the Memorandum on the current macro environment are likely to be as great if not greater than the addition of a citizenship question. Therefore, immigrants and the families of immigrants will be reluctant to participate in the NRFU and many will not be enumerated. It is also likely, in my opinion, that this reluctance to participate will extend to other hard-to-count populations as well. The issuance of the Memorandum has significantly increased the risk of larger total and differential undercounts, relative to previous censuses.

D. Lack of transparency

24. At this point, little is known about the ultimate quality and accuracy of the 2020 Census. The location and magnitude of errors caused by potential undercounts and overcounts has not been determined. In addition, the level of inclusion of undocumented persons in the 2020 Census is also unknown.

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[11] Trial Testimony of Dr. John Abowd, Nov. 13, 2018, *New York Immigration Coalition, et al. v. United States Department of Commerce, et al.,* 18-CV-5025-JMF (S.D.N.Y), at 926-27.

25. It will be very challenging for the Census Bureau to determine the number of undocumented persons that are included in the 2020 Census at the time when Apportionment data is required to be reported. It is critical for the Census Bureau and the Department of Commerce to describe the methodology that they intend to utilize to estimate the numbers of undocumented persons enumerated in the 2020 Census and what are appropriate measures of accuracy that would support the usage of such methodologies. The Memorandum does not provide any specific directions and the Census Bureau has not described how it will comply with the Memorandum.

26. There are legal and statistical standards that the Census Bureau has followed and should continue to follow with respect to transparency:

   a. The Census Bureau is a Federal Statistical Agency and as Director Dillingham noted in sworn testimony July 29, 2020, the Census Bureau intends to follow the principles and practices identified by the Committee on National Statistics for Federal Statistical Agencies.[12] Principle 2, *Credibility among Data Users*, states: "Also essential to building credibility are for an agency to be open and transparent about its data sources and their limitations, demonstrate understanding of users' needs and priorities, fully document the processes used to

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[12] Committee on National Statistics, Principles and Practices for a Federal Statistical Agency 2 (6th ed. 2017).

produce and disseminate statistical products, and take proactive steps to preserve data for future use."

b. The Office of Management and Budget issued a Memorandum on April 24, 2019 *Improving Implementation of the Information Quality Act* to the Heads of all Executive Departments and Agencies strengthening previous guidance in this area.[13] This document states: "The IQA requires agencies conduct pre-dissemination review of their information products. During this review, each agency should consider the appropriate level of quality for each of the products that it disseminates based on the likely use of that information."

27. In 2013 the Census Bureau issued Statistical Quality Standards that are currently guiding the conduct of all their programs including the 2020 Census.[14]

a. In particular: Statistical Quality Standard F1, *Releasing Information Products Requirement F1-6* states: "Information products must comply with the Census Bureau's statistical quality standards and must be free of serious data quality issues in order to be released outside the Census Bureau without restrictions." Statistical Quality Standard F2, *Providing Documentation to*

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[13] Russel T. Vought, Acting Director OMB, Memorandum for the Heads of Executive Departments and Agencies, Subject: *Improving Implementation of the Information Quality Act* (Apr. 24, 2019).

[14] U.S. Census Bureau Statistical Quality Standards (Jul. 2013).

> *Support Transparency in Information Products* Requirement F2-2 states: "Documentation must be readily accessible in sufficient detail to allow qualified users to understand and analyze the information and to reproduce (within the constraints of confidentiality requirements) and evaluate the results."

28. The most important information produced and released by the Census Bureau is the constitutionally mandated Apportionment data. Because this information is so vital to our democracy, it is critically important that the Department of Commerce and the Census Bureau are transparent in their adherence to their legal and statistical standards. At a minimum, the Census Bureau has an obligation to assure the public and stakeholders that any methods it develops for determining the number of undocumented individuals is statistically sound.

VI. Conclusion

In conclusion, it is my opinion that the issuance of the Memorandum will significantly increase the risk of much larger undercounts for the 2020 Census than measured in previous censuses, including undercounts of immigrant communities. In addition, there is no transparency or documentation of how the quality and fitness for use of the Apportionment counts will be determined, nor is there any documentation of how the number of undocumented persons potentially included in the 2020 Census will be determined.

Executed on Aug. 6, 2020 at Bend, Oregon.

I declare under penalty of perjury that the foregoing is true and correct.

/s/ <u>JOHN THOMPSON</u>
JOHN THOMPSON

Exhibit 58

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

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20-CV-5770 (JMF)

STATE OF NEW YORK, ET AL., PLAINTIFFS

v.

DONALD J. TRUMP, IN HIS OFFICIAL CAPACITY
AS PRESIDENT OF THE UNITED STATES, ET AL.,
DEFENDANTS

———————

20-CV-5781 (JMF)

NEW YORK IMMIGRATION COALITION, ET AL.,
PLAINTIFFS

v.

DONALD J. TRUMP, IN HIS OFFICIAL CAPACITY
AS PRESIDENT OF THE UNITED STATES, ET AL.,
DEFENDANTS

———————

**EXPERT DECLARATION OF
DR. CHRISTOPHER WARSHAW**

———————

I.   Introduction

1.   My name is Christopher Warshaw.   I have been an Assistant Professor of Political Science at George Washington University since August 2017.   I was recently awarded tenure, and will become a tenured Associate Professor on September 1, 2020.   Prior to working at George Washington University, I was an Associate Professor at the Massachusetts Institute of Technology from July 2016 - July 2017, and

an Assistant Professor at MIT from July 2012 - July 2016.

2. I have been asked by counsel representing the plaintiffs in *New York Immigration Coalition* v. *Trump* and *State of New York* v. *Trump* to analyze relevant data and provide my expert opinions.

3. More specifically, I have been asked:

- To forecast the populations of every state in the United States in 2020.

- To estimate the proportion of the population in every state in the United States likely to be excluded if undocumented immigrants are not included in the Census enumeration used for apportionment.

- To analyze the likely effects of the exclusion of undocumented immigrants on the apportionment of representatives across states for the U.S House of Representatives.

4. My opinions are based on the knowledge I have amassed over my education, training and experience, including a detailed review of the relevant academic literature. They also follow from a statistical analysis that I describe in detail below.

A. Qualifications and Publications

5. My Ph.D. is in Political Science, from Stanford University, where my graduate training included courses in political science and statistics. I also have a J.D. from Stanford Law School. My academic research and teaching focuses on public opinion based on surveys and Census data, as well as the study of representation, elections, and polarization

in American Politics.   I have also taught courses on statistical analysis.

6.   My *curriculum vitae* is attached to this Declaration at Appendix C.   All publications that I have authored and published appear in my *curriculum vitae*.   I have published 30 academic articles and book chapters.   My work is published or forthcoming in peer-reviewed journals such as: the *American Political Science Review*, the *American Journal of Political Science*, the *Journal of Politics*, *Political Analysis*, *Political Science Research and Methods*, the *British Journal of Political Science*, *Political Behavior*, the *Annual Review of Political Science*, the *Election Law Journal*, *Nature Energy*, *Public Choice*, and edited volumes from Cambridge University Press and Oxford University Press. My non-academic writing has been published in the *New York Times* and the *Washington Post*.

7.   Most relevantly, I provided an expert report and declaration in *New York Immigration Coalition et al* v. *United States Department of Commerce*, No. 18-CV-2921-JMF (S.D. NY).   In that report, I assessed the consequences of an undercount caused by a potential citizenship question on the U.S. Census.   Specifically, I examined the effects of a net differential undercount of people who live in immigrant households on congressional apportionment. I found that the inclusion of a citizenship question on the Census would likely have led to substantial effects on the population counts of each state, and the apportionment of representatives across states for the U.S House of Representatives.   In that

case, the court found my analysis and findings "credible and persuasive."

8. I have also previously provided expert reports in *League of Women Voters of Pennsylvania* v. *Commonwealth of Pennsylvania*, No. 159 MM 2017 (PA 2018); *League of Women Voters of Michigan* v. *Johnson*, No. 2:17-cv-14148 (E.D. 2019); and *PRI et al* v. *Smith et al.,* No. 18-cv-357 (S.D. Ohio 2018).

9. The opinions in this declaration are my own, and do not represent the views of George Washington University.

B. Research Design

10. President Trump recently issued a presidential memorandum charging the Secretary of Commerce to "exclude from the apportionment base aliens who are not in a lawful immigration status under the Immigration and Nationality Act."[1] In order to assess the consequences of excluding undocumented immigrants from the count of people in the United States used for apportionment, I conduct the following steps:

   A. I estimate the baseline population of each state in 2020 based on the Census Bureau's annual estimates of the population of each state from the past three decades.[2] The

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[1] See https://www.whitehouse.gov/presidential-actions/memorandum-excluding-illegal-aliens-apportionment-base-following-2020-census/.

[2] For the state populations from 2010-2019, I used the file 'nst-est2019-01.xlsx' which I obtained from https://www.census.gov/newsroom/press-kits/2019/national-state-estimates.html. For the populations from 2000-2009, I used the file 'st-est00int-01.xls' from https://www.census.gov/data/tables/time-series/demo/popest/intercensal-2000-

populations used for apportionment also include overseas federal employees and their dependents. Then, based on data from the U.S. Military and the Census Bureau, I estimate the number of overseas federal employees and dependents that would be added to the population of each state for apportionment.

B. I use data from the Pew Research Center to estimate the number of undocumented immigrants in each state in 2020. These are the most widely used data in the academic literature on the undocumented immigrant population. However, I reach very similar conclusions using a variety of alternative sources of data on the number of undocumented immigrants in each state.

C. Based on all of these data, I estimate the proportion of each state's population that would be excluded from the enumeration used for apportionment due to the presidential memorandum. I then use the official apportionment table published by the U.S. Census Bureau to estimate the number of congressional seats that states would gain or lose. Finally, I report the uncertainty in all of my analyses.

2010-state.html. For the population counts from 1990-1999, I used the data available at https://www.census.gov/data/tables/time-series/demo/popest/intercensal-1990-2000-state-and-county-totals.html.

D. I evaluate the robustness of my findings to a variety of alternative data sources and modeling strategies. I also compare my findings to four other independent reports from different research groups. My findings are robust to alternative modeling assumptions and are similar to these other groups' findings.

C. Summary of Findings

11. Based on my analysis, I have reached the following conclusions:

- The exclusion of undocumented immigrants from the apportionment base (i.e., the population enumeration used for apportionment) is likely to have substantial effects on the population counts of each state, and the apportionment of representatives across states for the U.S House of Representatives.

- It will almost certainly lead Texas to lose a seat in Congress. It is likely to lead California and New Jersey to lose a congressional seat. It also could lead other states, such as Arizona, Florida, New York, or Illinois, to lose seats. These conclusions are similar across multiple data sources on the prevalence of undocumented immigrants. They are also similar to the conclusions reached by a variety of independent analysts and organizations.

- The exclusion of undocumented immigrants from the apportionment base would affect political representation in Congress. For instance, it is likely to affect the distribution of federal funds

to each state, and the general power that each state holds in Congress.

II. Projecting the State Populations in 2020

12. The first stage of my analysis is to develop baseline projections of the population of each state in the country in 2020.   These projections are critical to determining the likely effects of excluding undocumented immigrants from the apportionment base. In order to develop these estimates, I use the Census Bureau's official estimates of the population of each state from 1990-2019.   The Census Bureau does not provide public estimates of each geographic unit's populations in future years.

13. In this section, I first discuss several possible approaches for estimating future populations.   I show that my preferred approach performs as well or better at a similar modeling problem than alternative approaches.   I then discuss how I incorporate uncertainty into my population projections.   Finally, I present estimates of the 2020 populations in each state in the country.

A. Data

14. The Census Bureau's Population Estimates Program (PEP) produces estimates of the population for the United States, states, counties, cities, towns, and other geographic areas.   These aggregate estimates are based on the demographic components of population change (births, deaths, and migration)

at each level of geography.[3]   My population projec-
tions are based on these official population esti-
mates for each state for the period from 1990-2019.[4]

B. Statistical Model for Population Projections

15. There are a number of potential options for fore-
casting the likely population of each state in 2020.
One possible forecasting option would be to allow
the forecasts to increase or decrease over time,
where the amount of change over time (called the
drift) is set to be the average change in the histori-
cal data (see Hyndman and Athanasopoulos 2018,
48-49).   Some related methods in this family of
forecasting approaches are:

- Model 1:   Linear trend between 2010-2019:   One
approach would be to project forward based on
the linear trend in the population estimates since
the last Census (e.g., Election Data Services
2017).   This approach assumes that each geo-
graphic unit's population follows the same linear

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[3] I do not directly use the more detailed cohort-component method
used by the Census for my population projections because this infor-
mation is unavailable for some geographic levels, particularly for the
2000-2010 period. It is also unclear whether the additional com-
plexities associated with this approach would yield substantial gains
in predictive accuracy.

[4] For the state populations from 2010-2019, I used the file 'nst-
est2019-01.xlsx' which I obtained from https://www.census.gov/
newsroom/press-kits/2019/national-state-estimates.html.   For the
populations from 2000-2009, I used the file 'st-est00int-01.xls' from https://
www.census.gov/data/tables/time-series/demo/popest/intercensal-
2000-2010-state.html.   For the population counts from 1990-1999, I
used the data available at https://www.census.gov/data/tables/time-
series/demo/popest/intercensal-1990-2000-state-and-county-totals.
html.

rate of change in the future that it has followed over the past decade. This approach has the benefit of using many years of data, but it could yield biased estimates if the population trends have changed over this period. I estimate linear trends using a simple linear regression model in the software program R.

- Model 2: Linear trend between 2016-2019: Another possibility is to project forward based on the linear trend in the population estimates over the past 4 years. This approach assumes that each geographic unit's population follows the same linear trend in the future that it has followed over this shorter time period. This approach has the benefit of being sensitive to more recent trends, but it could be noisier than estimates based on the longer time series. That is, it could be overly sensitive to short-term trends. I estimate linear trends using a simple linear regression model in R.

- Model 3: Change between two most recent years (i.e., 2018 to 2019): A third possibility is to focus on the change between each geographic unit's populations in the two most recent years and assume that future years will follow this recent trend. This approach has the benefit of being based on the most recent changes in populations, but it could also be overly sensitive to short-term idiosyncratic trends. I estimate these short-term trends using the software program R.

16. As Hyndman and Athanasopoulos (2018, 50) discusses: "Sometimes one of these simple methods will be the best forecasting method available; but in

many cases, these methods will serve as benchmarks rather than the method of choice. That is, any forecasting methods [] will be compared to these simple methods to ensure that the new method is better than these simple alternatives. If not, the new method is not worth considering." I consider one more complex approach against these benchmarks:

- <u>Model 4: A state space model with exponential smoothing</u>: This approach uses an exponential smoothing model that weights levels and trends to an extent determined by the data (Hyndman et al. 2008; Hyndman and Athanasopoulos 2018). This model uses all of the available data, but it gives more weight to the most recent years. I estimate the exponential smoothing model using the ets function in the forecast package in R.

C. Validation of Population Projections

17. The accuracy of forecasting models can only be determined by considering how well a given model performs on new data that were not used when fitting the original model (Hyndman and Athanasopoulos 2018, 62). In order to choose the best model for this analysis, I evaluated each model using a benchmark that is similar to the challenge of forecasting the 2020 populations. Specifically, I forecasted the 2019 population estimates in each state based on 1990-2018 population data. For each analysis I used the following evaluation metrics (see Hyndman and Athanasopoulos 2018, 64-65).

- The mean error across states (ME): This helps assess whether a given metric has a systematic bias in one direction or another.

- The root mean-squared error across states (RMSE): This helps assess the accuracy of the forecasts. It penalizes larger errors more than smaller errors.

- The mean absolute error across states (MAE): This helps assess the accuracy of the forecasts. It penalizes all errors equally.

- The mean percentage error across states (MPE): This helps assess whether a given metric has a systematic bias in one direction or another. It has the advantage of being unit-free (i.e., the interpretation is similar in small and large states).

- The mean absolute percentage error across states (MAPE): This metric also helps assess the accuracy of the forecasts. It has the advantage of being unit-free (i.e., the interpretation is similar in small and large states).

Table 1: Validation of State Population Projections at Predicting 2019 State Populations

	Model	ME	RMSE	MAE	MPE	MAPE
(1):	Linear model (decade)	-20,821	71,748	32,448	-0.29%	0.57%
(2):	Linear model (4 years	-12,219	33,933	14,513	-0.11%	0.21%
(3):	Delta in last two years	-2,940	12,129	6,073	-0.02%	0.09%
(4):	State space model	-4,034	12,623	6,766	-0.04%	0.13%

18. Table 1 shows the results. Overall, the state space model (4) and delta model (3) perform the best in this validation exercise. These models have much less error than the other models across all the metrics. Other studies have shown that state space

models generally outperform other modeling approaches due to its flexibility (Hyndman et al. 2008; Hyndman and Athanasopoulos 2018). It also provides measures of uncertainty. As a result, I use this approach in my main analysis. I also show below, however, that I reach very similar findings using the delta model (3) (see Additional Scenario #6).

D. Baseline estimates of 2020 populations

19. The next stage is to use the official Census population estimates to project each geographic unit's population in 2020. Table 2 shows the results.[5] Note that all of the analysis of apportionment that follow fully incorporate the uncertainties in these projections.

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[5] The projections shown here do not include the overseas military population, federal employees, and dependents. However, the apportionment projections in Table 6 do include these groups.

Table 2: State population projections

State	2010 Population	2019 Population	2020 Population Projection
Alabama	4,779,736	4,903,185	4,918,700
Alaska	710,231	731,545	728,000
Arizona	6,392,017	7,278,717	7,399,400
Arkansas	2,915,918	3,017,804	3,025,900
California	37,253,956	39,512,223	39,724,500
Colorado	5,029,196	5,758,736	5,833,000
Connecticut	3,574,097	3,565,287	3,565,300
Delaware	897,934	973,764	982,000
District of Columbia	601,723	705,749	710,000
Florida	18,801,310	21,477,737	21,706,500
Georgia	9,687,653	10,617,423	10,723,200
Hawaii	1,360,301	1,415,872	1,411,500
Idaho	1,567,582	1,787,065	1,823,600
Illinois	12,830,632	12,671,821	12,622,100
Indiana	6,483,802	6,732,219	6,769,900
Iowa	3,046,355	3,155,070	3,168,400
Kansas	2,853,118	2,913,314	2,915,500
Kentucky	4,339,367	4,467,673	4,474,200
Louisiana	4,533,372	4,648,794	4,650,500
Maine	1,328,361	1,344,212	1,349,400
Maryland	5,773,552	6,045,680	6,071,200
Massachusetts	6,547,629	6,892,503	6,904,900
Michigan	9,883,640	9,986,857	9,986,900
Minnesota	5,303,925	5,639,632	5,676,100
Mississippi	2,967,297	2,976,149	2,972,300
Missouri	5,988,927	6,137,428	6,152,400
Montana	989,415	1,068,778	1,077,400
Nebraska	1,826,341	1,934,408	1,946,500
Nevada	2,700,551	3,080,156	3,132,200
New Hampshire	1,316,470	1,359,711	1,363,300
New Jersey	8,791,894	8,882,190	8,894,300
New Mexico	2,059,179	2,096,829	2,100,400
New York	19,378,102	19,453,561	19,377,200
North Carolina	9,535,483	10,488,084	10,594,600
North Dakota	672,591	762,062	766,100
Ohio	11,536,504	11,689,100	11,706,400
Oklahoma	3,751,351	3,956,971	3,971,200
Oregon	3,831,074	4,217,737	4,260,000
Pennsylvania	12,702,379	12,801,989	12,803,100
Rhode Island	1,052,567	1,059,361	1,059,400
South Carolina	4,625,364	5,148,714	5,213,000
South Dakota	814,180	884,659	891,700
Tennessee	6,346,105	6,829,174	6,886,700
Texas	25,145,561	28,995,881	29,432,600
Utah	2,763,885	3,205,958	3,259,800
Vermont	625,741	623,989	624,100
Virginia	8,001,024	8,535,519	8,570,600
Washington	6,724,540	7,614,893	7,707,400
West Virginia	1,852,994	1,792,147	1,780,000
Wisconsin	5,686,986	5,822,434	5,836,800
Wyoming	563,626	578,759	578,700

III. Estimating the Overseas Federal Population Allocated to each State

20. The population estimates above include all people living in the United States. However, the populations used for apportionment also include overseas federal employees and their dependents.[6] Thus, it is necessary to estimate how overseas federal employees and dependents would be allocated for purposes of apportionment.

21. In the 2010 Census, the overseas military population were generally allocated to their "home of record" (the address provided when the service member entered the military) for purposes of apportionment.[7] For the 2020 Census, however, all overseas federal personnel will be counted at their usual residential address in the United States.[8] In other words, military personnel will typically be counted as residing in or near the domestic base where they are stationed. Unfortunately, there is no currently available public estimate of how these overseas personnel will be allocated to individual states. The Census Bureau has stated that it plans to count federal personnel living outside the United States, and

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[6] "Overseas" is defined as anywhere outside the 50 U.S. States and the District of Columbia.

[7] See the Census Bureau's FAQ on Congressional Apportionment in the 2010 Census. https://webcache.googleusercontent.com/search?q=cache:WTXwriFql5AJ:https://www.census.gov/population/apportionment/about/faq.html+&cd=2&hl=en&ct=clnk&gl=us&client=safari and https://www.prb.org/how-does-the-u-s-census-bureau-count-people-who-have-more-than-one-address/.

[8] See https://www.prb.org/how-does-the-u-s-census-bureau-count-people-who-have-more-than-one-address/.

their dependents living with them outside the United States, using administrative data provided by the Department of Defense and the Department of Homeland Security.[9]

22. I used the following process to estimate the number of overseas federal population that will be allocated to each state for apportionment:

- First, I estimated the number of military personnel overseas in each branch using data from the Department of Defense from March, 2020.[10]

- Second, I allocated these personnel to each state in proportion to the number of service members in each branch based in each state.[11] This approach implicitly assumes that each member of the military has an equal probability of being assigned abroad. While this is clearly a simplification, I believe it is the most reasonable analytical approach with currently available data.

- Third, I assumed that military personnel have the same number of dependents (1.44) as they did in the 2010 Census.[12]

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[9] See https://www.doi.gov/sites/doi.gov/files/uploads/oia-02052020-census-and-the-military.pdf.

[10] I used the spreadsheet DMDC_Website_Location_Report_ 2003.xlsx that is available from https://www.dmdc.osd.mil/appj/dwp/ dwp_reports.jsp.

[11] I used the spreadsheet DMDC_Website_Location_Report_2003. xlsx that is available from https://www.dmdc.osd.mil/appj/dwp/dwp_ reports.jsp.

[12] I used the "2010 Census Federally Affiliated Overseas Count Operation Assessment Report" that is available at https://www.census.

- Finally, I assumed that the overseas federal civilian population is the same as in 2010 (39,674). Since the majority of overseas federal civilian employees are with the State Department,[13] I assume these are all headquarters staff that work in Washington DC. I use ACS Commuting Flows from the Census to allocate them between the District of Columbia, Virginia, and Maryland.[14] I also assumed that these civilian employees each have 1.44 dependents.

- Of course, this estimation method has considerable uncertainty. So I assumed that there is a standard error associated with my estimates of the overseas federal population for each state that is equal to 10% of the size of the estimates.

23. Based on this methodology, I estimate that there are about 230,000 overseas federal personnel. Including dependents, I estimate there are about 561,000 federal employees and dependents overseas population will be included for purposes of apportionment for the 2020 Census. Table 3 shows the state-by-state results. A copy of Table 3 is provided in Appendix A to this Declaration. My estimates indicate that California, North Carolina,

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gov/2010census/pdf/2010_Census_Federally_Affiliated_Overseas_ Count_Operation_Assessment.pdf.

[13] See the '2010 Census Federally Affiliated Overseas Count Operation Assessment Report' that is available at https://www.census. gov/2010census/pdf/2010_Census_Federally_Affiliated_Overseas_ Count_Operation_Assessment.pdf.

[14] 98% of people that work in Washington DC live in Maryland, Virginia, or Washington, DC. See https://www.census.gov/data/tables/ 2015/demo/metro-micro/commuting-flows-2015.html.

Texas, and Virginia have the largest overseas federal populations.[15]   It is important to note that the federal overseas population is down by nearly 50% since the 2010 Census.[16]   This likely reflects the reduction in the nation's military deployments in conflict areas over the past decade.[17]

IV. Estimating the Number of Undocumented Immigrants in Each State

24. The President's Memorandum charges the Secretary of Commerce to "exclude from the apportionment base aliens who are not in a lawful immigration status under the Immigration and Nationality Act."[18]   In order to assess the impact of this memorandum, we next need to estimate the number of undocumented immigrants in each state.

25. There is no official estimate from the Census Bureau or any other federal government agency of the number of undocumented immigrants in each state that would be affected by the President's memorandum.   The most commonly used estimates of the

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[15] These estimates seem to be in-line with discussions in news coverage of apportionment.   See https://www.rollcall.com/2020/02/26/census-troop-counting-rules-could-tip-congressional-balance/.

[16] I use information on these populations from the 2010 apportionment available at https://www.census.gov/data/tables/2010/dec/2010-apportionment-data.html.

[17] See Pew's report on the number of overseas military personnel at https://www.pewresearch.org/fact-tank/2017/08/22/u-s-active-duty-military-presence-overseas-is-at-its-smallest-in-decades/.

[18] See https://www.whitehouse.gov/presidential-actions/memorandum-excluding-illegal-aliens-apportionment-base-following-2020-census/.

number of undocumented people have been developed by the Pew Research Center.[19]   There are hundreds of citations in Google Scholar for Pew's estimates of the number of undocumented immigrants in the United States.   As a result, I use these estimates in my main analysis.   However later, I also examine the estimates of the number of undocumented immigrants from a number of other organizations that use a variety of slightly different methodologies.   Each of these analyses yields substantively similar conclusion as my main analysis using Pew's data.

26. Pew estimates the U.S. unauthorized immigrant population from 1995-2017 in each state based on a residual estimation methodology that compares a demographic estimate of the number of immigrants residing legally in the country with the total number of immigrants as measured by either the American Community Survey (ACS) or the March Supplement to the Current Population Survey (CPS).[20] The difference is assumed to be the number of unauthorized immigrants in the survey, a number that later is adjusted for omissions from the survey (see below).   The basic estimate is:

$$\text{Unauthorized Immigrants (U)} = \text{Survey, Total Foreign Born (F)} -$$

$$\text{Estimated Lawful Immigrant Population (L)}$$

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[19] See https://www.pewresearch.org/fact-tank/2019/06/12/us-unauthorized-immigrant-population-2017/.

[20] The next few paragraphs of this section are adapted from Pew's discussion of their methodology at https://www.pewresearch.org/hispanic/2018/11/27/unauthorized-immigration-estimate-methodology/.

27. The lawful resident immigrant population was estimated by applying demographic methods to counts of lawful admissions covering the period since 1980 obtained from the Department of Homeland Security's Office of Immigration Statistics[21] and its predecessor at the Immigration and Naturalization Service, with projections to current years, when necessary. Initial estimates were calculated separately for age-gender groups in six states (California, Florida, Illinois, New Jersey, New York and Texas) and the balance of the country. This residual method has been used in a wide variety of government reports and peer reviewed articles (e.g., Baker 2018; Warren and Warren 2013; Passel 2016).

28. The overall estimates for unauthorized immigrants built on these residuals by adjusting for survey omissions in these six states and the balance of the country, subdivided for Mexican immigrants and other groups of immigrants (balance of Latin America, South and East Asia, rest of world) depending on sample size and state. Once the residual estimates were produced, Pew assigned individual foreign- born respondents in the survey a specific status (one option being unauthorized immigrant) based on the individual's demographic, social, economic, geographic and family characteristics in numbers that agree with the initial residual estimates for the estimated lawful immigrant and unauthorized immigrant populations in the survey. A

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[21] See https://www.dhs.gov/immigration-statistics/yearbook/2016/.

last step in the weighting-estimation process involves developing state-level estimates that take into account trends over time in the estimates.

29. Overall, Pew estimates there were about 10,481,000 undocumented immigrants in the United States in 2017.[22] They estimate that the states with the most undocumented immigrants are California, Texas, Florida, New York, and New Jersey. The states with the fewest undocumented immigrants are Maine, Montana, Vermont, and West Virginia.

30. Of course, Pew's estimation process has substantial uncertainties inherent in it. First, there is no way to know that individual respondents to the ACS and CPS are undocumented immigrants. Pew estimates undocumented status based on a variety of pieces of information.[23] Second, the ACS and CPS are themselves surveys, subject to sampling error. There could also be misreporting of country of birth on the ACS and/or unit non response by undocumented immigrants (Brown et al. 2018). In order to characterize these uncertainties, Pew provides a 90% confidence interval for their estimates of the number of undocumented people in each state.

31. Lastly, Pew's data of the number of undocumented immigrants in each state between 1995-2017 need to

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[22] These estimates seem plausible since the Department of Homeland Security estimated there were 12 million undocumented immigrants in the country in January 2015 (Baker 2018). They are also similar to estimates of the number of undocumented immigrants developed by other think tanks (see below).

[23] See https://www.pewresearch.org/hispanic/2018/11/27/unauthorized-immigration-estimate-methodology/.

be projected 3 years forward to 2020.[24]   To determine how to forecast the number of undocumented immigrants in each state, I compared the same four modeling strategies that I discussed earlier for the state population projections.   For each method, I used data through 2014 to evaluate its performance at predicting the number of undocumented immigrants three years forward in 2017.

32. All of the models generate significant levels of error compared to the population forecasting validation shown above in Table 4.   However, the state space model (4) and a linear time trend (2) using the previous four years of data perform somewhat better than the other models.   In my main analysis, I use the state space model to project the number of undocumented immigrants in 2020.   Moreover, I ensured that the state space model estimates fully incorporate the uncertainty in Pew's estimates in the number of undocumented immigrants (see Treier and Jackman 2008; Caughey and Warshaw 2018).[25] I checked the robustness of my analysis by showing

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[24] Pew's data are available at https://www.pewresearch.org/hispanic/ interactives/unauthorized-trends/.

[25] Specifically, I used the following approach.   First, I constructed 100 simulations of the number of undocumented immigrants in each state from 2005-2017 using Pew's estimates and the associated confidence intervals.   For each simulation, I used the state space model to forecast each state's number of undocumented immigrants in 2020.   I then constructed a bootstrap sample of the forecast of undocumented immigrants in each state based on the mean and confidence intervals in the state space model's population forecast.   Finally, I estimated the number of undocumented immigrants in each state in 2020, and its associated standard error to represent uncertainty, based on these simulations.

that I reach similar substantive conclusions using the linear time trend model (see Additional Scenario #7).

Table 4: Validation of Forecasting Pew's Estimates of the Number of Undocumented Immigrants in 2017

	Model	ME	RMSE	MAE	MPE	MAPE
(1):	Linear model (decade)	-21,998.25	90,634.40	31,639.51	-3.34	14.56
(2):	Linear model (4 years)	-10,944.23	50,403.96	25,971.15	-3.95	17.59
(3):	Delta in last two years	-12,884.62	58,005.64	28,961.54	-0.40	19.24
(4):	State space model	-13,688.05	55,204.49	22,794.32	-3.46	15.48

33. Table 5 shows the estimates of the number of undocumented immigrants in each state (standard errors that represent uncertainty are in parentheses). A copy of Table 5 is provided in Appendix A to this Declaration. Its shows that California, Florida, Illinois, New Jersey, New York, and Texas each have at least 400,000 undocumented immigrants.[26]

34. These final estimates take into account the uncertainty in Pew's initial estimates of the number of undocumented immigrants from 2005-2017. They also take into account the uncertainty in projecting the trends in each state from 2017-2020. In general, the additional uncertainty associated with forecasting to 2020 approximately triples the size of Pew's confidence intervals for their estimates of undocumented immigrants in each state in 2017.

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[26] These state-by-state figures are similar to those in a 2015 Department of Homeland Security report, which provided estimates of the number of undocumented immigrants in several states (Baker 2018).

A. Incorporating Uncertainty

35. All modeled estimates have uncertainty. My analyses uses bootstrap simulations to incorporate three sources of uncertainty in all my models:

    • The uncertainty in the population forecasts in every state for 2020.

    • The uncertainty in the estimates of the overseas federal employees and dependents, and how they are allocated to states.

    • The uncertainty in the estimate of the number of undocumented immigrants in each state in 2020.

V. State-level Effects of Excluding Undocumented Immigrants from Apportionment Base

36. Now that we have calculated population projections and estimates of the number of undocumented immigrants in each state, we are in a position to estimate state-level impacts.

A. Effect on State Population Enumerations

37. To begin, I analyzed the effects on the enumerated population of each state in 2020. The results are shown in Table 6. Column (1) of Table 6 shows the baseline apportionment population projections for each state (including the overseas military population, federal employees, and dependents). Column (2) shows my estimate of the number of undocumented immigrants in each state in 2020. Column (3) shows my estimate of the percentage of the apportionment population in each state that consists of undocumented immigrants.

Table 6: Estimates of Effect on State Population Enumerations in 2020

State	Baseline 2020 Apportionment Population	Undocumented Immigrants (Pew)	Undocumented Percentage
	(1)	(2)	(3)
Alabama	4,926,400	71,900	1.5%
Alaska	735,700	8,400	1.1%
Arizona	7,410,500	274,400	3.7%
Arkansas	3,028,800	65,300	2.2%
California	39,799,200	2,066,000	5.2%
Colorado	5,846,100	190,100	3.3%
Connecticut	3,568,100	148,300	4.2%
Delaware	984,300	29,700	3%
Florida	21,736,600	796,000	3.7%
Georgia	10,749,300	375,700	3.5%
Hawaii	1,428,900	43,800	3.1%
Idaho	1,825,700	38,300	2.1%
Illinois	12,633,400	409,300	3.2%
Indiana	6,773,300	103,200	1.5%
Iowa	3,169,100	51,000	1.6%
Kansas	2,924,300	81,300	2.8%
Kentucky	4,485,300	44,700	1%
Louisiana	4,657,900	100,100	2.1%
Maine	1,350,400	4,000	0.3%
Maryland	6,105,000	261,600	4.3%
Massachusetts	6,907,400	231,900	3.4%
Michigan	9,989,700	103,800	1%
Minnesota	5,677,700	86,800	1.5%
Mississippi	2,979,500	23,000	0.8%
Missouri	6,160,800	63,100	1%
Montana	1,079,300	4,400	0.4%
Nebraska	1,950,200	55,800	2.9%
Nevada	3,137,300	211,200	6.7%
New Hampshire	1,363,700	10,400	0.8%
New Jersey	8,899,400	493,200	5.5%
New Mexico	2,107,400	59,200	2.8%
New York	19,386,100	679,800	3.5%
North Carolina	10,639,700	330,800	3.1%
North Dakota	770,300	5,900	0.8%
Ohio	11,715,100	94,400	0.8%
Oklahoma	3,981,800	90,100	2.3%
Oregon	4,261,500	109,100	2.6%
Pennsylvania	12,809,600	217,800	1.7%
Rhode Island	1,061,000	32,900	3.1%
South Carolina	5,229,800	101,500	1.9%
South Dakota	893,800	5,700	0.6%
Tennessee	6,888,900	139,200	2%
Texas	29,479,700	1,649,100	5.6%
Utah	3,263,900	106,100	3.3%
Vermont	624,400	3,500	0.6%
Virginia	8,639,600	297,600	3.4%
Washington	7,730,300	274,400	3.5%
West Virginia	1,780,600	4,300	0.2%
Wisconsin	5,838,300	72,900	1.2%
Wyoming	580,300	4,800	0.8%

38. Overall, Table 6 indicates that each state would be affected by an exclusion of undocumented immigrants. Figure 1 shows a map of the percentage of people in each state that would be dropped from the Census apportionment base if undocumented immigrants are excluded. Arizona, California, Colorado, Connecticut, Florida, Georgia, Hawaii, Maryland, Massachusetts, Nevada, New Jersey, New York, North Carolina, Rhode Island, Texas, Utah, Virginia, and Washington would all lose at least 3% of their population from their apportionment base. Thus, they could be at risk of losing a congressional seat during apportionment.
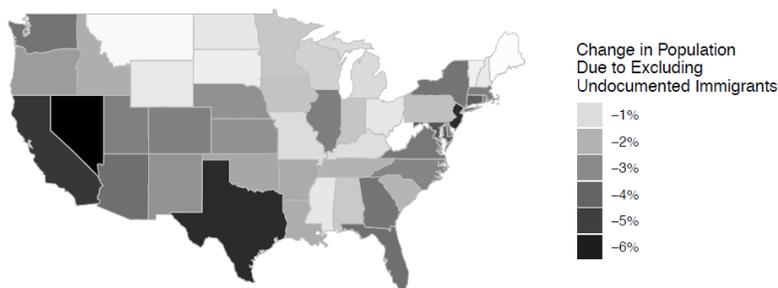
Figure 1: Effects on State Populations

B. Effect on Apportionment

39. Next, I used the population projections and estimates of undocumented immigrants in each state to examine the likely effect of excluding undocumented immigrants from the Census count on the apportionment of seats in the House of Representatives. Article 1, Section 2, of the United States Constitution states: "Representatives and direct Taxes shall be apportioned among the several States

which may be included within this Union, according to their respective Numbers.”

40. Since the first census in 1790, five methods of apportionment have been used. The government currently uses a method called the Method of Equal Proportions, which was adopted by Congress in 1941 following the census of 1940. This method first assigns each state one seat. Then, additional seats in the House of Representatives are assigned to a “priority” value. The priority value for each seat is determined by multiplying the population of a state by a “multiplier.” The multiplier is $1/\sqrt{n(n-1)}$. So the formula for calculating the multiplier for the second seat is $1/\sqrt{2(2-1)}$ or 0.70710678, the formula for calculating the multiplier for the third seat is $1/\sqrt{3(3-1)}$ or 0.40824829, and so on. The Census provides an official table of these multipliers, which I used for my calculations.[27]

41. The next step is to multiply the multipliers by the population total for each of the 50 states (the District of Columbia is not included in these calculations). The resulting numbers are the priority values. Multipliers and priority values must be calculated for the largest number of seats that could be assigned to a state. In my analysis, I calculated the priority values for each state for seats 2 through 60. The next step is to rank and number the resulting priority values starting with seat 51 until all 435 seats have been assigned. The final step is to tally the number of seats for each state to arrive at

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[27] See https://www.census.gov/population/apportionment/about/computing.html.

the total number of seats in the House of Representatives apportioned to each state.

42. I conducted these steps for 1,000 simulations of the population projections and undocumented populations in each state. Table 7 shows the results.[28] Column (1) shows the rounded, baseline projections for the number of seats that each state is likely to receive in 2020 if there is a full population enumeration. Column (2) shows the rounded projections for the number of seats that each state is likely to receive in 2020 if undocumented immigrants are excluded from the apportionment base. Column (3) shows the rounded, average change in the number of congressional seats each state would gain or lose due the exclusion of undocumented immigrants. Finally, column (4) shows the probability that each state would lose at least one seat.

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[28] Table 12 in the Appendix A shows unrounded numbers for this table.

Table 7: Estimates of Effect of Excluding Undocumented Immigrants on Congressional Apportionment

State	Baseline Seats (1)	Seats after Exclusion (2)	Seat Delta (3)	Prob. Seat Loss (4)
Alabama	6	7	1	0%
Alaska	1	1	0	0%
Arizona	10	10	-0	0.3%
Arkansas	4	4	0	0%
California	52	51	-1	72.1%
Colorado	8	8	-0	0.3%
Connecticut	5	5	-0	3.4%
Delaware	1	1	0	0%
Florida	29	28	-0	38.4%
Georgia	14	14	0	0%
Hawaii	2	2	0	0%
Idaho	2	2	0	0%
Illinois	17	17	-0	10.1%
Indiana	9	9	0	0%
Iowa	4	4	0	0%
Kansas	4	4	0	0%
Kentucky	6	6	0	0%
Louisiana	6	6	0	0%
Maine	2	2	0	0%
Maryland	8	8	0	0%
Massachusetts	9	9	0	0%
Michigan	13	13	0	0%
Minnesota	7	8	1	0%
Mississippi	4	4	0	0%
Missouri	8	8	0	0%
Montana	2	2	0	0%
Nebraska	3	3	0	0%
Nevada	4	4	0	0%
New Hampshire	2	2	0	0%
New Jersey	12	11	-1	69.8%
New Mexico	3	3	0	0%
New York	26	25	-0	18.9%
North Carolina	14	14	0	0%
North Dakota	1	1	0	0%
Ohio	15	16	1	0%
Oklahoma	5	5	0	0%
Oregon	6	6	0	0%
Pennsylvania	17	17	0	0%
Rhode Island	1	1	0	0%
South Carolina	7	7	0	0%
South Dakota	1	1	0	0%
Tennessee	9	9	0	0%
Texas	39	38	-1	98.3%
Utah	4	4	0	0%
Vermont	1	1	0	0%
Virginia	11	11	0	0%
Washington	10	10	0	0%
West Virginia	2	2	0	0%
Wisconsin	8	8	0	0%
Wyoming	1	1	0	0%

43. My analysis indicates that there is a 98% chance that Texas would lose a Congressional seat if undocumented immigrants are excluded from the apportionment base. It loses a seat in nearly every single one of my simulations. In addition, my analysis indicates that there is a 72% chance that California would lose a Congressional seat. On average, it loses .83 seats across my simulations (i.e., in most simulations it loses 1 seat, in some it loses 2 seats, and in some it loses zero seats). My analysis also indicates that there is a 70% chance that New Jersey would lose a Congressional seat if undocumented immigrants are excluded from the apportionment base. There are smaller chances that several other states could lose seats, including Connecticut, Florida, Illinois, and New York.[29]

44. The states that lose seats in Congress would likely see decreases in their share of federal outlays due to their reduction in voting power in Congress. A number of economics and political science studies have found that distributive spending is allocated in part based on the number of seats that a geographic area has in Congress (e.g., Ansolabehere, Gerber, and Snyder 2002; Cascio and Washington 2014; Elis, Malhotra, and Meredith 2009). For instance, Elis, Malhotra, and Meredith (2009) find that a 10% increase in a state's share of the U.S. House of Representatives equates to a 0.7% increase in a state's share of the federal budget. This implies that an

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[29] Note the rounded numbers in Table 7 imply that Florida and New York would lose seats. The unrounded numbers in the Appendix (Table 12), however, show that there is a less 50% chance that they would lose a seat.

extra congressional seat can gain a state as much as $100 per capita in additional federal funding (360).

VI. Robustness Checks

45. It is always helpful to evaluate the robustness of any analysis to alternative modeling assumptions. In this section, I undertake four different robustness checks. First, I evaluate the impact of using alternative sources of information on the number of undocumented immigrants in each state on my analysis. Second, I evaluate the impact of alternative population forecasting methodologies. Third, I evaluate whether my conclusions would differ if former Census Director John H. Thompson is correct that the exclusion of undocumented immigrants from the apportionment base would cause an undercount of immigrant populations. I used the foreign-born population in the United States to evaluate the impact of an undercount of immigrants. Fourth, I compare my results to the conclusions of various organizations' reports on the impact of excluding undocumented immigrants on apportionment.

46. Overall, the analysis in this section shows that my conclusions are robust to a wide variety of alternative data sources and modeling strategies. They are also consistent with the findings of other organizations and analysts. All of these alternative data sources, methodologies, and third-party reports indicate that Texas would lose a congressional seat if undocumented immigrants are excluded from the apportionment base. They nearly all indicate that California would lose a seat. They also indicate that some mix of Florida, New Jersey, and New York could lose seats.

A. Robustness to Alternative Estimates of the Number of Un documented Immigrants

47. Due to the substantial uncertainties in Pew's estimates of the number of undocumented people in each state, I conducted a canvass of alternative sources of estimates for the undocumented population. I identified several alternative sources of data:

    • Additional Scenario 1: The Migration Policy Institution (MPI) has developed estimates of the number of undocumented people in each state based on the U.S. Census Bureau's 2012-16 American Community Survey data.[30] They estimate there are about 11,300,000 undocumented immigrants in the United States. Their national estimate is very similar to Pew's estimate.[31] However, their estimates differ more in some states. For instance, MPI estimates that there are about 50% more undocumented immigrants in California than Pew estimates. They do not provide measures of uncertainty for their estimates so I assume that each state has a standard error that is 10% of the state's point estimate.

    • Additional Scenario 2: The Center for Migration Studies (CMS) has developed estimates of the number of undocumented people in each

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[30] See https://www.migrationpolicy.org/programs/us-immigration-policy-program-datahub/unauthorized-immigrant-population-profiles.

[31] MPI's national estimate is about 8% higher than Pew's estimate.

state in 2018.[32]   Their methodology is described in two articles that were published in the *Journal of Migration and Security* (Warren 2014, 2019).   They estimate there are about 10,543,500 undocumented immigrants in the United States, which is nearly identical to Pew's national estimate.[33]   They do not provide measures of uncertainty for their estimates so I assume that each state has a standard error that is 10% of the state's point estimate.

- Additional Scenario 3:   Third, I examine a scenario where the national estimates of the number of undocumented immigrants are somewhat too high.   To do this, I simply decrease all of my main estimates using Pew's data of the number of undocumented immigrants in each state by 20% to examine the effects on apportionment if the Pew, MPI, and CMS estimates of the total number of undocumented immigrants in the United States are all too high.

- Additional Scenario 4:   Fourth, I examine a scenario where the national estimates of the number of undocumented immigrants are much too high.   To do this, I decrease all of my main estimates using Pew's data on the number of undocumented immigrants in each state by 40%.

- Additional Scenario 5:   Finally, I examine a scenario where the national estimates of the

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[32] Their estimates are available at http://data.cmsny.org/state.html.

[33] CMS's national estimate is about 0.5% higher than Pew's estimate.

number of undocumented immigrants are much too low. To do this, I increase all of my main estimates using Pew's data on the number of undocumented immigrants in each state by 50%.

48. Table 8 compares my main findings (the "Main Analysis" column) to analyses based on alternative estimates of the number of undocumented immigrants. It shows each of the states that at least one scenario (including my main analysis) finds has a 33% chance or more of losing a seat if undocumented immigrants are excluded from the apportionment base. For each of these states, it shows the probability that my analysis indicates the state would lose a seat and the probability it would lose a seat under the various alternative scenarios.

49. Overall, all of these analyses yield substantively similar results as my main analysis. In each scenario, Texas has more than 95% chance of losing a congressional seat if un documented immigrants are excluded from the apportionment base. Moreover, in all of the additional scenarios but one, California has about a 50% chance or more of losing a congressional seat. There is also a significant chance that Florida, New Jersey, and New York could lose a seat in most of the scenarios.

B. Robustness to Alternative Modeling Approaches

50. As I discussed above, there are a number of alternative approaches we could use to project the 2020 populations and estimates of undocumented immigrants in each state. In this section, I discuss alternative forecasting methodologies for each of these:

- • Additional Scenario 6: For the population forecasts of each state in 2020, I use a forecasting methodology based on the deltas in the two most recent years. In Table 1, I found that this approach was roughly equivalent to the state space model. The state space model is preferable because it is more flexible and provides a measure of uncertainty.

- • Additional Scenario 7: For the forecasts of the number of undocumented immigrants in each state in 2020 based on Pew's data, I use a methodology based on a linear time trends over the four most recent years. In Table 4, I found that this approach performed nearly as well as the state space model. The state space model is preferable because it is more flexible and requires fewer assumptions about future time trends.

51. Both of these alternative-modeling strategies produce similar results as my main results (Table 9). In each scenario, Texas is nearly certain to lose a seat. California and New Jersey are likely to lose seats in each scenario. Florida and New York also have significant chances of losing a seat in each scenario.

Table 9: Comparison of My Findings with Alternative Modeling Strategies. The table shows the probability that various states would lose seats in each scenario.

State	Main Analysis	Scenario #6 Alternative Population Forecasts	Scenario #7 Alternative Forecasts of Undoc. Imm.'s
California	72%	84%	75%
Florida	38%	45%	96%
New Jersey	70%	73%	51%
New York	19%	58%	30%
Texas	98%	99.5%	100%

C.   Robustness to a Possible Census Undercount

52. The testimony of the former U.S. Census Bureau Director, John H. Thompson, to Congress on July 29, 2020 raises the possibility that the president's memorandum could lead to nonresponse to the Census by hard-to-count populations, including noncitizens and immigrants.[34]   This, in turn, could lead the Census to undercount foreign-born people.   It is possible that planned reductions in door-to-door canvassing due to COVID-19 could lead to a further undercount of foreign-born people.[35]

53. In this section, I examine whether an undercount of foreign-born people would affect my findings about the effects of excluding undocumented immigrants from the apportionment base.   I use my estimates from *New York Immigration Coalition et al* v. *United States Department of Commerce*, No. 18-CV-2921-JMF (S.D. NY) of the number of foreign-born people in each state.   I then assess the consequences of a scenario with a 10% undercount of foreign-born people using the same methodology that I use in my main analyses.   I am adopting my declaration provided in that matter by reference and include a copy in Appendix B.

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[34] See Statement of John H Thompson, Former Director U.S. Census Bureau (August 2013-June 2017), For the House Committee on Oversight and Reform, U.S. House of Representatives, July 29, 2020 https://tinyurl.com/y67ojjqb.

[35] See https://www.npr.org/2020/07/30/896656747/when-does-census-counting-end-bureau-sends-alarming-mixed-signals and https://www.nytimes.com/2020/08/04/us/2020-census-ending-early.html.

Table 10: Comparison of My Findings with Analyses that Assume 10% Undercount of Foreign-born People. The table shows the probability that various states would lose seats in each scenario.

State State	Main Analysis	Scenario #8 Undercount
California	72%	67%
Florida	38%	0%
New Jersey	70%	93%
New York	19%	0%
Texas	98%	76%

54. Table 10 compares my main findings to the results of this undercount scenario. It shows each state that my analysis indicates has a significant chance of losing a seat if undocumented immigrants are excluded from the apportionment base. Once again, in this scenario Texas is likely to lose a congressional seat if undocumented immigrants are excluded from the apportionment base. California and New Jersey are also likely to lose congressional seats.

D. Comparison with Other Organizations' Analyses

55. There have been a number of studies and reports by various organizations estimating how excluding undocumented immigrants would affect apportionment. These include:

- The Pew Research Center[36]

- The Center for Immigration Studies (CIS)[37]

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[36] See https://www.pewresearch.org/fact-tank/2020/07/24/how-removing-unauthorized-immigrants-from-census-statistics-could-affect-house-reapportionment/

[37] See https://cis.org/sites/default/files/2019-12/camarota-apportionment-12-19_1.pdf.

- The Center for Politics at the University of Virginia (CfP)[38]

- A peer reviewed academic study published in 2019 (Baumle and Poston Jr 2019).

Table 11: Comparison of My Findings with Other Studies. The table shows whether each study finds various states would lose a seat.

State	Main Analysis (1)	Pew (2)	CIS (3)	CfP (4)	Academic Study (5)
Arizona	0.3%				X
California	72%	X	X	X	X
Florida	38%	X			X
New Jersey	70%			X	
New York	19%		X		
Texas	98%	X	X	X	X

56. Table 11 compares my main findings to the results of these studies. It shows each state that at least one study finds would lose a seat if undocumented immigrants are excluded from the apportionment base. For each of these states, it shows the probability that my analysis indicates the state would lose a seat and an X for each of the other studies that shows it would lose a seat.

57. Overall, each of these four other studies reaches substantively similar conclusions as the ones in this Declaration. They all conclude that California and Texas would lose congressional seats if undocumented immigrants are excluded from the apportionment base. They also find a mix of other states

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[38] See http://centerforpolitics.org/crystalball/articles/excluding-undocumented-immigrants-from-the-2020-u-s-house-apportionment/.

that might lose seats, including Arizona, Florida, New Jersey, and New York.

VII. Conclusion

58. Based on the analyses in this Declaration, I conclude that failing to count undocumented immigrants for apportionment is likely to have effects on the population counts of each state, and the apportionment of representatives across states for the U.S. House. Texas is nearly certain to lose a congressional seat. California and New Jersey are very likely to each lose a congressional seat. Other states, such as Florida and New York could lose seats as well. This would affect political representation in Congress. For instance, it is likely to affect the distribution of federal funds to each state, and the general power that each state holds in Congress.

I reserve the right to amend or supplement my opinions if additional information or materials become available. I declare under penalty of perjury under the laws of the United States that the forgoing is true and correct to the best of my knowledge.

Executed on Aug. 7, 2020, in Bethesda, Maryland.

/s/ CHRISTOPHER WARSHAW
CHRISTOPHER WARSHAW

References

Ansolabehere, Stephen, Alan Gerber, and Jim Snyder. 2002. "Equal votes, equal money: Court-ordered redistricting and public expenditures in the American states." *American Political Science Review* 96 (4): 767-777.

Baker, Bryan. 2018. "Estimates of the Unauthorized Immigrant Population Residing in the United States: January 2015." Department of Homeland Security, December.

Baumle, Amanda K, and Dudley L Poston Jr. 2019. "Apportionment of the US House of Representatives in 2020 under Alternative Immigration-Based Scenarios." *Population and Development Review* 45 (2): 379-400.

Brown, David J., Misty L. Heggeness, Suzanne M. Dorinski, Lawrence Warren, and Moises Yi. 2018. Understanding the Quality of Alternative Citizenship Data Sources for the 2020 Census.

Cascio, Elizabeth U, and Ebonya Washington. 2014. "Valuing the vote: The redistribution of voting rights and state funds following the voting rights act of 1965." *The Quarterly Journal of Economics* 129 (1): 379-433.

Caughey, Devin, and Christopher Warshaw. 2018. "Policy Preferences and Policy Change: Dynamic Responsiveness in the American States, 1936-2014." *The American Political Science Review* 112 (2): 249-266.

Election Data Services. 2017. Some Change in Apportionment Allocations With New 2017 Census Estimates, But Greater Change Likely by 2020. Available at https://www.electiondataservices.com/wpcontent/uploads/2017/12/NR_Appor17c2wTablesMapsC1.pdf.

Elis, Roy, Neil Malhotra, and Marc Meredith. 2009. "Apportionment cycles as natural experiments." Political Analysis 17 (4): 358-376.

Hyndman, Rob J, and George Athanasopoulos. 2018. Forecasting: principles and practice. O-Texts.

Hyndman, Rob, Anne B Koehler, J Keith Ord, and Ralph D Snyder. 2008. Forecasting with exponential smoothing: the state space approach. Springer Science & Business Media.

Passel, Jeffrey S. 2016. Overall Number of US Unauthorized Immigrants Holds Steady Since 2009: Decline in Share From Mexico Mostly Offset by Growth From Asia, Central America and Sub-Saharan African. Pew Research Center.

Treier, Shawn, and Simon Jackman. 2008. "Democracy as a latent variable." *American Journal of Political Science* 52 (1): 201-217.

Warren, Robert. 2014. "Democratizing data about unauthorized residents in the United States: estimates and public-use data, 2010 to 2013." Journal on Migration and Human Security 2 (4): 305-328.

Warren, Robert. 2019. "US undocumented population continued to fall from 2016 to 2017 and visa overstays significantly exceeded illegal crossings for the seventh consecutive year." *Journal on Migration and Human Security* 7 (1): 19-22.

Warren, Robert, and John Robert Warren. 2013. "Unauthorized immigration to the United States: Annual estimates and components of change, by state, 1990 to 2010." *International Migration Review* 47 (2): 296-329.

Appendix A

1. Estimates of Overseas Federal Personnel

Table 3: Estimates of Overseas Federal Personnel in each State in 2020.

State	Overseas Personnel
Alabama	7,700
Alaska	7,500
Arizona	11,000
Arkansas	2,900
California	74,900
Colorado	14,200
Connecticut	2,600
Delaware	2,100
Florida	29,500
Georgia	26,800
Hawaii	17,500
Idaho	2,200
Illinois	10,300
Indiana	3,300
Iowa	900
Kansas	8,300
Kentucky	11,200
Louisiana	7,300
Maine	1,100
Maryland	33,600
Massachusetts	2,700
Michigan	2,900
Minnesota	1,600
Mississippi	6,700
Missouri	8,400
Montana	2,000
Nebraska	3,600
Nevada	6,200
New Hampshire	700
New Jersey	5,300
New Mexico	7,000
New York	9,300
North Carolina	44,500
North Dakota	4,000
Ohio	8,600
Oklahoma	10,700
Oregon	1,200
Pennsylvania	6,900
Rhode Island	1,700
South Carolina	16,400
South Dakota	2,000
Tennessee	2,600
Texas	51,500
Utah	4,200
Vermont	300
Virginia	68,800
Washington	23,000
West Virginia	700
Wisconsin	1,600
Wyoming	1,800

2. Estimates of Undocumented Immigrants

Table 5: Estimates of Undocumented Immigrants in each State in 2020. Standard errors, which represent the uncertainty in each estimate, are shown in parentheses.

State	Undocumented Immigrants
Alabama	71,900 (28,800)
Alaska	8,400 (3,500)
Arizona	274,400 (56,400)
Arkansas	65,300 (20,400)
California	2,066,000 (275,700)
Colorado	190,100 (50,200)
Connecticut	148,300 (67,700)
Delaware	29,700 (12,100)
Florida	796,000 (105,300)
Georgia	375,700 (140,000)
Hawaii	43,800 (19,000)
Idaho	38,300 (9,400)
Illinois	409,300 (70,100)
Indiana	103,200 (48,200)
Iowa	51,000 (20,400)
Kansas	81,300 (27,900)
Kentucky	44,700 (20,400)
Louisiana	100,100 (61,500)
Maine	4,000 (1,900)
Maryland	261,600 (76,300)
Massachusetts	231,900 (69,300)
Michigan	103,800 (37,500)
Minnesota	86,800 (34,200)
Mississippi	23,000 (11,600)
Missouri	63,100 (31,300)
Montana	4,400 (1,700)
Nebraska	55,800 (17,900)
Nevada	211,200 (31,600)
New Hampshire	10,400 (4,400)
New Jersey	493,200 (90,000)
New Mexico	59,200 (16,600)
New York	679,800 (102,000)
North Carolina	330,800 (73,400)
North Dakota	5,900 (3,200)
Ohio	94,400 (43,400)
Oklahoma	90,100 (30,200)
Oregon	109,100 (32,200)
Pennsylvania	217,800 (85,500)
Rhode Island	32,900 (12,000)
South Carolina	101,500 (47,500)
South Dakota	5,700 (2,300)
Tennessee	139,200 (56,000)
Texas	1,649,100 (182,200)
Utah	106,100 (19,100)
Vermont	3,500 (1,600)
Virginia	297,600 (104,600)
Washington	274,400 (82,600)
West Virginia	4,300 (2,000)
Wisconsin	72,900 (31,000)
Wyoming	4,800 (1,900)

3. Unrounded Main Results for Congressional Apportionment

Table 12: Unrounded Estimates of Excluding Undocumented Immigrants on Congressional Apportionment

State	Baseline Seats (1)	Seats after Exclusion (2)	Seat Delta (3)	Prob. Seat Loss (4)
Alabama	6.46	7.00	0.54	0%
Alaska	1.00	1.00	0.00	0%
Arizona	10.00	10.00	-0.00	0.3%
Arkansas	4.00	4.00	0.00	0%
California	52.15	51.32	-0.83	72.1%
Colorado	8.00	8.00	-0.00	0.3%
Connecticut	5.00	4.97	-0.03	3.4%
Delaware	1.00	1.00	0.00	0%
Florida	28.86	28.47	-0.38	38.4%
Georgia	14.00	14.02	0.02	0%
Hawaii	2.00	2.00	0.00	0%
Idaho	2.00	2.12	0.12	0%
Illinois	17.00	16.90	-0.10	10.1%
Indiana	9.00	9.00	0.00	0%
Iowa	4.00	4.00	0.00	0%
Kansas	4.00	4.00	0.00	0%
Kentucky	6.00	6.00	0.00	0%
Louisiana	6.00	6.02	0.02	0%
Maine	2.00	2.00	0.00	0%
Maryland	8.00	8.00	0.00	0%
Massachusetts	9.00	9.00	0.00	0%
Michigan	13.00	13.28	0.28	0%
Minnesota	7.07	8.00	0.92	0%
Mississippi	4.00	4.00	0.00	0%
Missouri	8.00	8.00	0.00	0%
Montana	1.92	2.00	0.08	0%
Nebraska	3.00	3.00	0.00	0%
Nevada	4.00	4.00	0.00	0%
New Hampshire	2.00	2.00	0.00	0%
New Jersey	12.00	11.30	-0.70	69.8%
New Mexico	3.00	3.00	0.00	0%
New York	25.54	25.35	-0.19	18.9%
North Carolina	14.00	14.00	0.00	0%
North Dakota	1.00	1.00	0.00	0%
Ohio	15.00	16.00	1.00	0%
Oklahoma	5.00	5.00	0.00	0%
Oregon	6.00	6.00	0.00	0%
Pennsylvania	17.00	17.00	0.00	0%
Rhode Island	1.00	1.17	0.17	0%
South Carolina	7.00	7.00	0.00	0%
South Dakota	1.00	1.00	0.00	0%
Tennessee	9.00	9.00	0.00	0%
Texas	38.99	37.93	-1.06	98.3%
Utah	4.00	4.00	0.00	0%
Vermont	1.00	1.00	0.00	0%
Virginia	11.00	11.16	0.16	0%
Washington	10.00	10.00	0.00	0%
West Virginia	2.00	2.00	0.00	0%
Wisconsin	8.00	8.00	0.00	0%
Wyoming	1.00	1.00	0.00	0%

Appendix B

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

———————

Civil Action No. 18-CV-2921-JMF

NEW YORK IMMIGRATION COALITION, ET AL.

v.

UNITED STATES DEPARTMENT OF COMMERCE, ET AL.,
DEFENDANT

———————

DECLARATION OF DR. CHRISTOPHER WARSHAW

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I. Qualifications

1. I have been asked by counsel representing the plaintiffs in *New York Immigration Coalition* v. *U.S. Dept of Commerce* and *State of New York* v. *U.S. Dept of Commerce* to analyze relevant data and provide my expert opinions. More specifically, I have been asked: to forecast the populations of every state, county, and city in the United States in 2020; given the assumption that various demographic groups are likely to be undercounted due to the inclusion of a citizenship question on the Census, to estimate the proportion of the population that belongs to those groups; to estimate the proportion of the population in every state, county, and city in the United States that belongs to those demographic groups assumed to be likely to be undercounted in 2020 due to the inclusion of a citizenship question on the Census; to analyze the likely effects of an undercount caused by the citizenship question affecting those same demographic groups on the apportionment of representatives across states for the U.S.

House of Representatives; and to examine the likely consequences of an undercount caused by the citizenship question affecting those demographic groups on the distribution of people in urban and rural counties.   My expert report is PX-32 and the errata to that report is PX-323.

2.   I have been an Assistant Professor of Political Science at George Washington University since August 2017.   Prior to that, I was an Associate Professor at the Massachusetts Institute of Technology from July 2016 - July 2017, and an Assistant Professor at MIT from July 2012 - July 2016.

3.   My Ph.D. is in Political Science, from Stanford University, where my graduate training included courses in political science and statistics.   I also have a J.D. from Stanford Law School.

4.   My academic research focuses on public opinion based on surveys and census data, as well as the study of representation, elections, and polarization in American Politics.   I have also taught courses on statistical analysis.   My curriculum vitae is PX-323.   All publications that I have authored and published appear in my curriculum vitae.   My work is published or forthcoming in peer-reviewed journals such as: American Political Science Review, the American Journal of Political Sciences, the Journal of Politics, Political Analysis, Political Science Research and Methods, the British Journal of Political Science, Political Behavior, the Election Law Journal, Nature Energy, Public Choice and edited volumes from Cambridge University Press and Oxford University.

5. I am also on the Editorial Board of the *Journal of Politics*.   I have previously provided expert reports in *League of Women Voters of Pennsylvania v. Commonwealth of Pennsylvania* and *League of Women Voters of Michigan* v. *Johnson*.   My non-academic writing has been published in the New York Times Upshot.

6. The opinions in this declaration are my own, and do not represent the views of George Washington University.

7. I offer these opinions with a strong degree of professional certainty based on the knowledge I have amassed over my education, training and experience, and through a detailed review of the relevant academic literature.

II. Projecting Future Populations

8. The first stage of my analysis is to develop baseline projections of the population of each state, county, and city in the country in 2020.   These projections are critical to determining the likely effects of an undercount in the Census due to the inclusion of a citizenship question.   In order to develop these estimates, I use the Census's official estimates of the population of each state, county, and city from 2000-2017.   The Census does not provide public estimates of each geographic unit's populations in future years.

A. Data

9. The Census Bureau's Population Estimates Program (PEP) produces estimates of the population for the United States, states, counties, cities, towns,

and other geographic areas. These aggregate estimates are based on the demographic components of population change (births, deaths, and migration) at each level of geography.[1]

10. My population projections are based on these official population estimates for each state, county, and city for the period from 2000-2017.

11. For the state populations from 2010-2017, I used the file 'nst-est2017-01.xlsx' which I obtained from https://www.census.gov/data/tables/2017/demo/popest/state-total.html. For the populations from 2000-2009, I used the file 'st-est00int-01.xls' from https://www.census.gov/data/tables/time-series/demo/popest/intercensal-2000-2010-state.html.

12. For the county populations from 2010-2017, I used the file 'co-est2017-alldata.csv' from https://www.census.gov/data/tables/2017/demo/popest/counties-total.html. For the populations from 2000-2009, I used the file 'co-est00int-tot.csv' from https://www.census.gov/data/tables/time-series/demo/popest/intercensal-2000-2010-counties.html.

13. For the county populations from 2010-2017, I used the file 'co-est2017-alldata.csv' from https://www.census.gov/data/tables/2017/demo/popest/counties-total.html. For the populations from 2000-2009, I used the file 'co-est00int-tot.csv' from https://www.

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[1] I do not directly use the more detailed cohort-component method used by the Census for my population projections because this information is unavailable for some geographic levels, particularly for the 2000-2010 period. It is also unclear whether the additional complexities associated with this approach would yield substantial gains in predictive accuracy.

census.gov/data/tables/time-series/demo/popest/intercensal-2000-2010-counties.html.

14. For the city populations from 2010-2017, I used the data in Factfinder available from https://www.census.gov/data/tables/2017/demo/popest/total-cities-and-towns.html. For the populations from 2000-2009, I used the file 'sub-est00int.csv' from https://www.census.gov/data/datasets/time-series/demo/popest/intercensal-2000-2010-cities-and-towns.html.

B. Statistical Model for Population Projections

15. There are a number of potential options for forecasting the likely population of a geographic unit (e.g., states) in 2020. One possible forecasting option would be to allow the forecasts to increase or decrease over time, where the amount of change over time (called the drift) is set to be the average change in the historical data. *See* Hyndman and Athanasopoulos 2018, at 48-49. Some related methods in this family of forecasting approaches are:

 a. <u>Linear trend between 2010-2017</u>: One possibility is to project forward based on the linear trend in the population estimates since the last Census (e.g., Election Data Services 2017). This approach assumes that each geographic unit's population follows the same linear rate of change in the future that it has followed over the past decade. This approach has the benefit of using many years of data, but it could yield biased estimates if the population trends have changed over this period.

I estimate linear trends using a simple linear regression model in the software program R.

b. <u>Linear trend between 2014-2017</u>: Another possibility is to project forward based on the linear trend in the population estimates over the past 4 years. This approach assumes that each geographic unit's population follows the same linear trend in the future that it has followed over this shorter time period. This approach has the benefit of being sensitive to more recent trends, but it could be noisier than estimates based on the longer time series. That is, it could be overly sensitive to short-term trends. I estimate linear trends using a simple linear regression model in R.

c. <u>Change between two most recent years (i.e., 2016 to 2017)</u>: A third possibility is to focus on the change between each geographic unit's populations in the two most recent years, and assume that future years will follow this recent trend. This approach has the benefit of being based on the most recent changes in populations, but it could also be overly sensitive to short-term idiosyncratic trends. I estimate these short-term trends using the software program R.

16. As Hyndman and Athanasopoulos discuss, "Sometimes one of these simple methods will be the best forecasting method available; but in many cases,

these methods will serve as benchmarks rather than the method of choice. That is, any forecasting methods . . . will be compared to these simple methods to ensure that the new method is better than these simple alternatives. If not, the new method is not worth considering." *Id.* at 50.

17. I consider one more complex approach against these benchmarks, a state space model with exponential smoothing: This approach uses an exponential smoothing model that weights levels and trends to an extent determined by the data. *See* Hyndman and Athanasopoulos. This model uses all of the available data, but it gives more weight to the most recent years. I estimate the exponential smoothing model using the ets function in the forecast package in R.[2]

C. Validation of Population Projections

18. The accuracy of forecasting models can only be determined by considering how well a given model performs on new data that were not used when fitting the original model. *Id.* at 62. In order to choose the best model for this analysis, I evaluated each model using two benchmarks that are similar to the challenge of forecasting the 2020 populations.

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[2] For my state-level population projections, I used the default parameters for the ets function in R, which allowed the function to choose the exponential smoothing state space model that best fit the data in each state. The best model was usually an 'MAN' or 'AAN' model. For the population projections for cities and counties, I estimated an 'MAN' state space model using the ets function. The details of the state space model specification, however, do not affect any of my substantive conclusions. All of the state space models yield very similar results.

First, I forecasted the Census 2010 population in each state based on 2000-2007 population estimates data. Second, I forecasted the 2017 population estimates in each state based on 2007-2014 population data. For each analysis, I used the following evaluation metrics. *Id.* at 64-65.

    a. The mean error across states: This helps assess whether a given metric has a systematic bias in one direction or another.

    b. The mean absolute error across states: This helps assess the accuracy of the forecasts.

    c. The mean absolute proportional error across states: This metric also helps assess the accuracy of the forecasts. It has the advantage of being unit-free (i.e., the interpretation is similar in small and large states).

19. Table 1 shows the results. For the forecast of the 2010 population, the state space model performs the best, with the lowest error, the second lowest mean absolute error, and the lowest absolute proportional errors. The two linear trend models perform the worst on this forecasting exercise. For the forecast of the 2017 population, the state space model and the linear trend model using data from 2010-2017 perform the best. The state space model has slightly lower mean errors, and the two models have similar mean absolute errors and absolute proportional errors.

Table 1: Validation of State Population Projections

Model	2010			2017		
	Mean Error	Mean Abs. Error	Mean Abs. Prop. Error	Mean Error	Mean Abs Error	Mean Abs. Prop. Error
Linear model (full period)	22,800	62,860	0.013	7,827	32,003	0.007
Linear model (4 years)	27,399	82,106	0.014	33,420	59,396	0.014
Delta in last two years	20,383	50,663	0.010	140,472	142,506	0.020
State space model	5,826	51,033	0.009	-2,599	33,378	0.008

20. Overall, the state space model performs the best across the two validation exercises. It has an average absolute proportional error of only .8% and an average absolute error of only about 40,000 people in each state. As a result, I use the state space model as my main forecasting model to generate population projections. However, the results of all the analyses that follow would be substantively similar using any of these population forecasting approaches.

D. Incorporating Uncertainty

21. All modeled estimates have uncertainty. My analyses use bootstrap simulations to incorporate two sources of uncertainty in all my models:

    • The uncertainty in the population forecasts in every geographic unit

    • Where available, uncertainty in the undercount estimates for each group

E. Baseline estimates of 2020 populations with no undercount

22. I used the official Census population estimates to project each geographic unit's population in 2020. Table 2 shows the population projections for a selec-

tion of cities and counties involved in lawsuits regarding the citizenship question. Table 3 shows the population projections for each state.[3] All of the analysis of apportionment that follows fully incorporates the uncertainties in the projections discussed above. But for simplicity, the tables themselves do not show the uncertainties.

Table 2: Population Projections in Select Counties and Cities

County/City	2010 Population	2017 Population	2020 Population Projection
Phoenix, AZ	1,446,909	1,626,078	1,698,187
Los Angeles County, CA	9,818,605	10,163,507	10,256,275
Monterey County, CA	415,052	437,907	444,016
San Francisco, CA	805,193	884,363	909,143
Miami, FL	399,457	463,347	491,295
Chicago, IL	2,695,620	2,716,450	2,704,974
Price Georges County, MD	863,420	912,756	931,412
New York NY	8,174,959	8,622,698	8,645,147
Columbus, OH	788,877	879,170	925,408
Philadelphia, PA	1,526,006	1,580,863	1,598,072
Pittsburgh, PA	305,391	302,407	297,243
Central Falls, RI	19,393	19,359	19,250
Providence, RI	177,997	180,393	181,532
Cameron County, TX	406,219	423,725	429,603
El Paso County, TX	800,647	840,410	851,600
Hidalgo County, TX	774,770	860,661	892,083
Seattle, WA	608,664	724,745	780,550

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[3] The projections shown here do not include the overseas military population, federal employees, and dependents. However, the apportionment projections in Table 5 do include these groups.

Table 3: State population projections

State	2010 Population	2017 Population	2020 Population Projection
Alabama	4,779,736	4,874,747	4,917,351
Alaska	710,231	739,795	739,473
Arizona	6,392,017	7,016,270	7,339,157
Arkansas	2,915,918	3,004,279	3,051,838
California	37,253,956	39,536,653	40,505,540
Colorado	5,029,196	5,607,154	5,823,386
Connecticut	3,574,097	3,588,184	3,589,649
Delaware	897,934	961,939	989,662
District of Columbia	601,723	693,972	722,881
Florida	18,801,310	20,984,400	21,967,862
Georgia	9,687,653	10,429,379	10,776,655
Hawaii	1,360,301	1,427,538	1,429,641
Idaho	1,567,582	1,716,943	1,827,695
Illinois	12,830,632	12,802,023	12,701,647
Indiana	6,483,802	6,666,818	6,761,903
Iowa	3,046,355	3,145,711	3,182,994
Kansas	2,853,118	2,913,123	2,925,781
Kentucky	4,339,367	4,454,189	4,508,391
Louisiana	4,533,372	4,684,333	4,684,247
Maine	1,328,361	1,335,907	1,349,155
Maryland	5,773,552	6,052,177	6,187,649
Massachusetts	6,547,629	6,859,819	6,966,760
Michigan	9,883,640	9,962,311	9,962,308
Minnesota	5,303,925	5,576,606	5,690,791
Mississippi	2,967,297	2,984,100	2,984,630
Missouri	5,988,927	6,113,532	6,180,600
Montana	989,415	1,050,493	1,079,083
Nebraska	1,826,341	1,920,076	1,957,570
Nevada	2,700,551	2,998,039	3,174,453
New Hampshire	1,316,470	1,342,795	1,366,068
New Jersey	8,791,894	9,005,644	9,106,936
New Mexico	2,059,179	2,088,070	2,095,989
New York	19,378,102	19,849,399	19,885,662
North Carolina	9,535,483	10,273,419	10,623,613
North Dakota	672,591	755,393	752,711
Ohio	11,536,504	11,658,609	11,713,096
Oklahoma	3,751,351	3,930,864	3,974,666
Oregon	3,831,074	4,142,776	4,269,590
Pennsylvania	12,702,379	12,805,537	12,838,064
Rhode Island	1,052,567	1,059,639	1,059,639
South Carolina	4,625,364	5,024,369	5,213,894
South Dakota	814,180	869,666	891,229
Tennessee	6,346,105	6,715,984	6,915,723
Texas	25,145,561	28,304,596	29,593,219
Utah	2,763,885	3,101,833	3,274,374
Vermont	625,741	623,657	622,506
Virginia	8,001,024	8,470,020	8,632,998
Washington	6,724,540	7,405,743	7,785,568
West Virginia	1,852,994	1,815,857	1,777,893
Wisconsin	5,686,986	5,795,483	5,858,478
Wyoming	563,626	579,315	565,592

III. Estimating Proportion of People Likely to be Undercounted Due to Citizenship Question

23. I was not asked to and I did not attempt to calculate the specific undercount that the addition of the citizenship question might cause. However, I evaluated a range of potential undercounts of individuals who live in households with at least one non-citizen, Hispanics or foreign-born member to demonstrate the potential effects that the addition of the citizenship question might have. Theory indicates that the addition of a citizenship question could lead to unit non-response, which occurs when a household does not respond to the Census, thereby depressing response rates among non-citizens and immigrant communities. Indeed, the Census acknowledges that it is "a reasonable inference that a question on citizenship would lead to some decline in overall self-response because it would make the 2020 Census modestly more burdensome in the direct sense, and potentially much more burdensome in the indirect sense that it would lead to a larger decline in self-response for noncitizen households." (Abowd 2018, Section B2, p. AR 001281)

24. In my analysis, I use this information to look at three potential undercount scenarios:

   a. First, I used a 5.8% undercount estimate based on the results of the Census Bureau's internal study of the effect of a citizenship question on self-response rates. For these analyses, I assumed that respondents that do not self-respond would not be enumerated.

b. Second, I was asked by legal counsel to examine a potential 10% undercount for the analysis of state-level apportionment as an outer bound for the potential effects of the citizenship question on population enumerations and apportionment. This higher number reflects the Census's finding that the differences between citizen and noncitizen response rates and data quality are likely to be "amplified" compared to historical levels (Abowd 2018, Section B4, p. AR 001282). The Chief Scientist at the Census has acknowledged that the 5.8% estimate of the effect of the citizenship question on self-response rates is "a conservative estimate of the differential impact of the citizenship question on the self-response rates of noncitizens compared to citizens" (Abowd, J. Dep., Aug. 15, 2018, p. 202).

c. Third, I was asked by legal counsel to examine a potential 2% undercount as a lower bound for the potential effects of the citizenship question on population enumerations. My report shows the results for cities and counties, and the calculations for a 2% undercount in states are PX-324. I was not asked to and I did not do any analysis of the impact of the Census Bureau's Non-Response Follow-Up ("NRFU") on non-response rates, but note that the 2% scenario could be viewed as taking into account some NRFU success after an initial larger nonresponse rate.

25. The recent Census Bureau studies discussed above focus largely on the effects of a citizenship question on self-response rates in non-citizen households. As a result, the first set of analyses I conducted for each of these undercount scenarios focuses on *people in households with a non-citizen* in them. Beyond the effects on non-citizen households, there are also strong theoretical reasons to believe that *citizen Hispanics* would also be less likely to respond to the Census if a citizenship question is included. Citizen Hispanics in immigrant communities could fear deportation due to their Census responses.[4] Moreover, a large fraction of citizen Hispanics are likely to know non-citizens or even people that have been deported. The Census's internal analysis has shown that citizenship-related questions are likely to be more sensitive for Hispanics (Brown et al. 2018, p. 10). Indeed, the Census has found clear evidence there are likely to be differential impacts on self-response rates among Hispanics from the addition of a citizenship question. Hispanics have a greater breakoff rate (i.e., item nonresponse) on the citizenship question on the American Community Survey (ACS) than other demographic groups.[5] There is also evidence of growing unit nonresponse rates among Hispanics on the ACS (Brown et al. 2018, p. 12). For these reasons,

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[4] Title 13, U.S.C. prohibits the use of Census data for enforcement purposes, but respondents may still have this concern (Brown et al. 2018).

[5] *See* Abowd (2018, Section b3) and Brown et al. (2018, 7).

I analyzed the effect of all three undercount scenarios (2%, 5.8% and 10%) on *both people in noncitizen households and citizen Hispanics.*

A. Undercount Estimate Based on Original Survey Experiment

26. An empirical approach to determine the potential undercount caused by a citizenship question is through a randomized control trial (RCT). The Census Bureau suggests that an appropriate RCT could compare self-response rates between households "randomly chosen to have [] a citizenship question (the treated group), and a randomly chosen set of control households [that] receive a [] Census questionnaire without citizenship" (Brown et al. 2018, p. 39)

27. We were unable to conduct a real-world RCT. A similar approach, however, is to conduct an experiment that mimics an RCT on a nationally representative survey of Americans. As part of this case, the State of New York and other plaintiffs funded a nationally representative survey that included an experiment along these lines to examine whether the inclusion of a citizenship question would reduce the likelihood that people would complete the Census.[6] This survey was designed by

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[6] As part of my work as an expert in this matter, I reviewed Professor Barreto's expert report that describes the survey methodology and his analysis of the results. However, I ran all of the analyses of the survey used in this report myself. I did not directly use any of Professor Barreto's findings for my report.

Dr. Matt Barreto and conducted by Pacific Market Research.[7]

1. Design of Survey

28. This survey included a probability sample of 6,309 people, including over-samples of Hispanics, Californians, and people in several cities and counties (San Jose, CA, Cameron County, TX, and Hidalgo County, TX).[8] It was conducted via phone by Pacific Research Group to both landlines and cell phones using live interviews and random digit dialing. The survey asked a number of questions about the Census and assessed reactions to the inclusion of a citizenship question. The survey did not include a question about the citizenship of respondents. But it did include a question about whether respondents were born in the United States or a foreign country.

29. In my analysis, I focus on an experiment embedded in the survey that mimics the RCT approach suggested by Brown et al. (2018). This enables us to estimate the causal effect of the citizenship question on the likelihood that various demographic subgroups will complete the Census.

30. In the experiment on our survey, the control group received a vignette stating that the government had decided not to include a citizenship question on the census, while the treatment group received a vignette stating that the government had decided to

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[7] Data and statistical code to replicate my analysis of this survey is available in my replication materials.

[8] The survey includes sampling weights that incorporate these over-samples and make the results representative at the national-level.

include a citizenship question on the census. Then the survey asked whether respondents would 'participate and fill out the 2020 Census form, or not?'

Control Group: Now that you've heard a little bit about the 2020 Census let me ask you one final question about how likely you are to participate. If the government decides in 2020 to NOT include a question about citizenship status, and instead only asks you to report the race, ethnic background, gender of people living in your household, and the government provides assurances that your information will be kept confidential and ONLY used for purposes of counting the total population and nothing more, would you participate and fill out the 2020 Census form, or not?

Treatment Group: Now that you've heard a little bit about the 2020 Census let me ask you one final question about how likely you are to participate. If the government decides in 2020 to include a question about citizenship status, and asks you to report the race, ethnic background, gender and citizenship status of people living in your household, and the government provides assurances that your information will be kept confidential and ONLY used for purposes of counting the total population and nothing more, would you participate and fill out the 2020 Census form, or not?

31. This experimental design is a strong one for assessing the causal effect of the citizenship question on the likelihood that people will complete the Census. However, it does have limitations. First, the experiment on the survey imperfectly captures the actual experience of completing the Census. Second, many respondents are probably already aware of the potential inclusion of the citizenship question

on the Census, which could lead to Stable Unit Treatment Value Assumption (SUTVA) violations. These SUTVA violations could attenuate the effects we detect in the experiment by artificially reducing the differences between the treatment and control groups. Overall, I think these limitations mean the survey-based analysis is conservative in its estimates of the citizenship question on self-response rates on the Census.

2. Results of Survey

32. My primary analyses focus on two immigrant communities that theory indicates are particularly likely to be impacted by the citizenship question. First, I analyze the impact on Latinos.[9] This analysis is helpful because there is little publicly available Census analysis of the potential effects of the citizenship question on this group. Second, I analyze the impact on non-Latino people that are not born in the United States.[10]

33. I ran three sets of analyses that are shown in Table 4. My primary analysis of the effect of the citizenship question on each group is a weighted regression that evaluates the treatment effect of the citizenship question. In other words, it evaluates whether people in the treatment group, that were told the Census would include a citizenship question, are less likely to indicate they would respond

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[9] Note that I use the terms Hispanic and Latino interchangeably throughout this declaration.

[10] I include in this group both people that explicitly stated they were born in a foreign country and the small number of people that refused to answer the nativity question on the survey.

to the Census than people in the control group that were told it would not include a citizenship question.

34. As robustness checks, I also ran two additional models. The middle column of Table 4 for each group is a weighted regression model that includes control variables for other factors that might affect respondents' willingness to complete the Census, including their age, race, and state of residence. The third column of Table 4 for each group is an unweighted regression model that includes this same set of control variables for other factors that might affect respondents' willingness to complete the Census. All of my main analyses in the results below are based on linear probability models. However, logistic regression models yield similar results.

35. Overall, Table 4 shows that the citizenship question makes both Latinos and Foreign-born non-Latinos less likely to respond to the Census. The weighted regression model in column (1) indicates that Latinos are about 5.9% less likely to complete the Census if it includes a citizenship question. The results are similar in the other two models shown in columns (2) and (3). For foreign-born, non-Latinos, the weighted regression in column (4) indicates that they are about 11.3% less likely to complete the Census if it includes a citizenship question. The results are substantively similar, though more statistically significant, in the other two models shown in columns (5) and (6).

Table 4: Experiment Results on Effects of Citizenship Question on Census Response among Latinos and Foreign-born

| | Latinos | | | Foreign-born (not Latino) | | |
	(1)	(2)	(3)	(4)	(5)	(6)
Citizenship Question	−0.059**	−0.070**	−0.062***	−0.113	−0.164**	−0.096**
	(0.029)	(0.028)	(0.016)	(0.072)	(0.066)	(0.039)
Survey Weights	X	X		X	X	
Controls		X	X		X	X
Observations	2,362	2,362	2,362	488	488	488
R^2			0.043			0.117
Adjusted R^2			0.021			0.022
Log Likelihood	−2,851.497	−2,763.581		−782.779	−714.807	

Note: $^*p<0.1$; $^{**}p<0.05$; $^{***}p<0.01$

IV. Baseline Estimates of Proportion of Population in Immigrant Communities Vulnerable to Undercount

36. In order to analyze the effects of an undercount of individuals that live in households with at least one non-citizen and Hispanic on total population enumerations, I used the American Community Survey (ACS) to generate baseline estimates of the proportion of the 2020 population in each state, county, and large city in the following groups that are vulnerable to an undercount:

- Non-citizen households (based on whether any member of a household in the ACS self-reports that they are a noncitizen)[11]

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[11] It is important to note that the Census has found that the ACS might be drastically undercounting the number of households with noncitizens. The ACS implies that about 10% of people live in households with a noncitizen in them. However, Census Bureau found that many people may be misreporting their citizenship status on the

- All Hispanics and citizen Hispanics
- Foreign-born, non-Hispanics

37. To forecast the population margins of each group within each state (e.g., percent Hispanic), I used the individual-level data in the American Community Survey (ACS) from 2007-2016 to forecast the 2020 population distributions using the same approach that I used to forecast state populations. Individual-level data in the ACS is not readily available below the state-level (e.g., for counties and cities). As a result, I used population tables published by the Census based on the five-year ACS samples (2012-2016) to estimate the demographic distributions within counties and cities.[12] I did not attempt to estimate how these substate population distributions are likely to change between 2016 and 2020. Thus, my estimates of the percentage of county and city population that are members of immigrant communities are probably low due to the general growth of these populations.

ACS. Based on administrative records, they estimate that 28.6 percent of all households could potentially contain at least one noncitizen. So my estimate of the percentage of people that reside in households with a noncitizen based on the ACS is likely conservative.

[12] For the selection of cities and counties in Tables 2, 7, and 8, I converted the number of *non-citizens* to the number of *people in households with a non-citizen* using the ratio of these groups in the individual- level 5-year ACS sample (2012-16) for people in the PUMAs that overlapped each city and county. This analysis is necessarily approximate since PUMAs in the ACS micro-data contain multiple cities and counties.

A. State-level Effects of Undercount—Effect of Undercount on State Population Enumerations

38. I analyzed the effects of each undercount scenario on the enumerated population of each state in 2020. The results are shown in Table 5. Column (1) shows the baseline apportionment population projections for each state. Column (2) shows the average change in the enumerated population if 5.8% of people in non-citizen households are not counted due to the citizenship question. Column (3) shows the average change in the enumerated population if 5.8% of non-citizen households and Hispanics are not counted due to the citizenship question. Column (4) shows the average change in the enumerated population if 10% of people in non-citizen households are not counted due to the citizenship question. Column (5) shows the average change in the enumerated population if 10% of non-citizen households and Hispanics are not counted due to the citizenship question. Column (6) shows the average change in the enumerated population in each state based on the results of the survey experiment. Specifically, this scenario assumes that 5.9% of Hispanics and 11.3% of foreign-born, non-Latinos are not counted in the enumerated population.

39. For the analysis of apportionment, I also incorporated estimates of the overseas military population and federal employees, and their dependents living with them. Specifically, I used the 2010 population figures for the overseas military population and federal employees, and their dependents living with them, for each state, and divided this number by

half to approximately reflect the reduction in the nation's military deployments over the past decade. *See* https://www.census.gov/data/tables/2010/dec/2010-apportionment-data.html, for 2010 population figures. *See also* Pew Foundation study, http://www.pewresearch.org/fact-tank/2017/08/22/u-s-active-duty-military-presence-overseas-is-at-its-smallest-in-decades/, for more information on the reduction in the number of overseas military personnel over the past decade.

Table 5: Effect of Undercount on State Population Enumerations in 2020

State	Baseline Apportionment Pop. Projection	5.8% Undercount Noncitizens	5.8% Undercount Noncitizens+ Hispanic	10% Undercount Noncitizens	10% Undercount Noncitizens + Hispanic	Survey Experiment Foreign-born + Hispanics
	(1)	(2)	(3)	(4)	(5)	(6)
Alabama	4,928,974	-0.3%	-0.4%	-0.5%	-0.7%	-0.6%
Alaska	745,119	-0.5%	-0.8%	-0.8%	-1.4%	-1.4%
Arizona	7,349,498	-0.9%	-2.1%	-1.5%	-3.6%	-2.6%
Arkansas	3,056,993	-0.4%	-0.6%	-0.7%	-1%	-0.8%
California	40,549,557	-1.7%	-2.9%	-2.9%	-5%	-4.1%
Colorado	5,831,253	-0.7%	-1.5%	-1.2%	-2.7%	-2%
Connecticut	3,593,415	-0.8%	-1.5%	-1.3%	-2.6%	-2.4%
Delaware	991,133	-0.6%	-1%	-1%	-1.7%	-1.5%
Florida	22,017,594	-1%	-2%	-1.7%	-3.4%	-2.7%
Georgia	10,796,611	-0.7%	-0.9%	-1.2%	-1.6%	-1.5%
Hawaii	1,432,921	-1%	-1.6%	-1.7%	-2.8%	-3%
Idaho	1,830,654	-0.4%	-0.9%	-0.8%	-1.6%	-1.2%
Illinois	12,718,521	-0.8%	-1.4%	-1.4%	-2.4%	-2.1%
Indiana	6,770,793	-0.4%	-0.6%	-0.7%	-1.1%	-0.9%
Iowa	3,186,710	-0.4%	-0.6%	-0.7%	-1%	-0.9%
Kansas	2,931,128	-0.6%	-1%	-1%	-1.7%	-1.3%
Kentucky	4,514,011	-0.3%	-0.4%	-0.5%	-0.7%	-0.6%
Louisiana	4,694,542	-0.3%	-0.5%	-0.5%	-0.8%	-0.6%
Maine	1,351,512	-0.2%	-0.3%	-0.3%	-0.5%	-0.6%
Maryland	6,195,838	-0.9%	-1.2%	-1.6%	-2%	-2.1%
Massachusetts	6,972,768	-0.9%	-1.4%	-1.5%	-2.4%	-2.4%
Michigan	9,976,301	-0.4%	-0.6%	-0.6%	-1%	-1.1%
Minnesota	5,696,268	-0.5%	-0.6%	-0.8%	-1.1%	-1.2%
Mississippi	2,990,101	-0.2%	-0.3%	-0.3%	-0.5%	-0.4%
Missouri	6,191,875	-0.2%	-0.4%	-0.4%	-0.7%	-0.7%
Montana	1,081,584	-0.1%	-0.3%	-0.2%	-0.6%	-0.5%
Nebraska	1,960,312	-0.5%	-0.9%	-0.9%	-1.5%	-1.2%
Nevada	3,178,894	-1.3%	-2.1%	-2.2%	-3.6%	-3%
New Hampshire	1,368,556	-0.3%	-0.5%	-0.5%	-0.8%	-0.9%
New Jersey	9,114,740	-1.2%	-1.9%	-2%	-3.3%	-3%
New Mexico	2,100,036	-0.8%	-3.1%	-1.3%	-5.3%	-3.3%
New York	19,907,138	-1.2%	-1.9%	-2.1%	-3.2%	-3.1%
North Carolina	10,638,762	-0.6%	-0.8%	-1%	-1.4%	-1.2%
North Dakota	754,368	-0.2%	-0.4%	-0.4%	-0.7%	-0.7%
Ohio	11,729,092	-0.2%	-0.4%	-0.4%	-0.7%	-0.7%
Oklahoma	3,981,432	-0.5%	-0.8%	-0.8%	-1.4%	-1.1%
Oregon	4,278,356	-0.7%	-1.1%	-1.1%	-1.9%	-1.6%
Pennsylvania	12,854,327	-0.4%	-0.7%	-0.6%	-1.3%	-1.2%
Rhode Island	1,060,979	-0.7%	-1.3%	-1.2%	-2.3%	-2%
South Carolina	5,224,199	-0.3%	-0.5%	-0.6%	-0.9%	-0.8%
South Dakota	894,019	-0.3%	-0.4%	-0.5%	-0.8%	-0.7%
Tennessee	6,930,386	-0.4%	-0.5%	-0.6%	-0.9%	-0.8%
Texas	29,654,648	-1.3%	-2.7%	-2.2%	-4.6%	-3.2%
Utah	3,277,814	-0.6%	-1.1%	-1.1%	-1.9%	-1.4%
Vermont	624,804	-0.2%	-0.3%	-0.3%	-0.5%	-0.7%
Virginia	8,651,354	-0.7%	-1%	-1.2%	-1.7%	-1.8%
Washington	7,799,983	-0.9%	-1.3%	-1.5%	-2.2%	-2.2%
West Virginia	1,781,304	-0.1%	-0.2%	-0.2%	-0.3%	-0.3%
Wisconsin	5,864,100	-0.3%	-0.6%	-0.6%	-1.1%	-0.9%
Wyoming	567,929	-0.3%	-0.8%	-0.5%	-1.3%	-1%

40. Overall, Table 5 indicates that each state would be affected by an undercount on the Census. The largest impacts would be in states with large numbers of Hispanics, non-Citizens, and foreign-born residents. For example, California would be undercounted by 1.7-5.0% in these scenarios; Florida would be undercounted by 1-3.4%; New Jersey would be undercounted by 1.2-3.3%, New York would be undercounted by 1.2-3.2%; and Texas would be undercounted by 1.3-4.6%.

41. Figure 1 shows a map of the results from the survey experiment (column 6 in Table 5). This map graphically shows that heavily Latino states on the southern border have the largest impacts from an undercount. States in the northeast, such as New York, New Jersey, and Massachusetts, with significant foreign-born populations also have significant impacts.
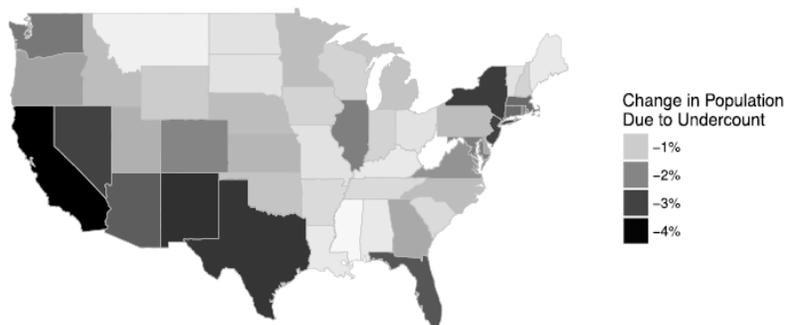

Figure 1: Effects on State Populations

42. I used the population projections and estimated effects of the various undercount scenarios on the enumerated population of each state to examine the likely effect of the citizenship question on the apportionment of seats in the House of Representatives. Article 1, Section 2, of the United States Constitution states: "Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers."

43. Since the first census in 1790, five methods of apportionment have been used. The government currently uses a method called the Method of Equal Proportions, which was adopted by Congress in 1941 following the census of 1940. This method first assigns each state one seat. Then, additional seats in the House of Representatives are signed to a "priority" value. The priority value for each seat is determined by multiplying the population of a state by a "multiplier." The multiplier is $1/\sqrt{n(n-1)}$. So the formula for calculating the multiplier for the second seat is $1/\sqrt{2(2-1)}$ or 0.70710678, the formula for calculating the multiplier for the third seat $1/\sqrt{3(3-1)}$ is or 0.40824829, and so on. The Census provides an official table of these multipliers, which I used for my calculations.[13]

44. The next step is to multiply the multipliers by the population total for each of the 50 states (the District of Columbia is not included in these calcula-

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[13] *See* https://www.census.gov/population/apportionment/about/computing.html.

tions). The resulting numbers are the priority values. Multipliers and priority values must be calculated for the largest number of seats that could be assigned to a state. In my analysis, I calculated the priority values for each state for seats 2 through 60. The next step is to rank and number the resulting priority values starting with seat 51 until all 435 seats have been assigned. The final step is to tally the number of seats for each state to arrive at the total number of seats in the House of Representatives apportioned to each state.

45. I conducted these steps for 500 simulations of the population projections and undercount scenarios in each state. Table 6 shows the results. Column (1) shows the baseline projections for the number of seats that each state is likely to receive in 2020 if there is a full population enumeration. Column (2) shows the average change in the number of congressional seats if 5.8% of people in non-citizen households are not counted due to the citizenship question. Column (3) shows the average change in seats if 5.8% of non-citizen households and Hispanics are not counted due to the citizenship question. Column (4) shows the average change in seats if 10% of people in non-citizen households are not counted due to the citizenship question. Column (5) shows the average change if 10% of non-citizen households and Hispanics are not counted due to the citizenship question. Column (6) shows the average change in seats in each state based on the results of the survey experiment. Specifically, this scenario assumes that 5.9% of Hispanics and 11.3% of foreign-born, non-Latinos are not counted in the enumerated pop-

ulations. Also, each column includes 95% confidence intervals for the seat projections in parentheses. This means that there is a 95% chance that the true number of seats gained or lost in each scenario will be in this range.

46. First, we can examine Columns (2) and (3) of Table 6, which show the effects of a 5.8% undercount of people in non-citizens households and Hispanics. In these scenarios, California is extremely likely to lose a seat. Additionally, if there is an undercount of 5.8% of both people in non-citizen households and Hispanics, there is more than a 51% chance that Texas will lose a seat. There is also a risk that Arizona, Florida, Illinois, and New York could lose seats in some simulations.

47. Columns (4) and (5) of Table 6 show the effects of a 10% undercount of non-citizen households and Hispanics. If only people in non-citizen households are undercounted, California and Texas would be more likely than not to lose a seat. Arizona, Florida, Illinois, and New York would also be at risk of losing seats. If both non-citizens and Hispanics are undercounted, Arizona, California, Florida, and Texas would be likely to lose seats. Illinois and New York would also be at risk of losing a seat.

Table 6: Effect of Undercount on Congressional Apportionment

State	Baseline Seats	5.8% Undercount		10% Undercount		Survey Experiment
		Noncitizens	Noncitizens+ Hispanic	Noncitizens	Noncitizens + Hispanic	Foreign-born + Hispanics
Alabama	6	0 (0,1)	1 (0,1)	1 (0,1)	1 (0,1)	1 (0,1)
Alaska	1	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Arizona	10	0 (-1,0)	0 (-1,0)	0 (-1,0)	-1 (-1,0)	0 (-1,0)
Arkansas	4	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
California	53	-1 (-1,0)	-1 (-1,0)	-1 (-1,0)	-1 (-2,-1)	-1 (-2,0)
Colorado	8	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Connecticut	5	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Delaware	1	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Florida	29	0 (-1,0)	0 (-1,0)	0 (-1,0)	-1 (-1,0)	-1 (-1,0)
Georgia	14	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,1)	0 (0,0)
Hawaii	2	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Idaho	2	0 (0,0)	0 (0,0)	0 (0,1)	0 (0,1)	0 (0,1)
Illinois	17	0 (-1,0)	0 (0,1)	0 (-1,1)	0 (-1,0)	0 (-1,0)
Indiana	9	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Iowa	4	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Kansas	4	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Kentucky	6	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Louisiana	6	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,1)	0 (0,0)
Maine	2	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Maryland	8	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Massachusetts	9	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Michigan	13	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Minnesota	7	0 (0,1)	0 (0,1)	0 (0,1)	1 (0,1)	1 (0,1)
Mississippi	4	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Missouri	8	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Montana	1	1 (0,1)	1 (0,1)	1 (0,1)	1 (0,1)	1 (0,1)
Nebraska	3	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Nevada	4	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
New Hampshire	2	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
New Jersey	12	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
New Mexico	3	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
New York	26	0 (-1,0)	0 (0,0)	0 (-1,0)	0 (-1,0)	0 (-1,0)
North Carolina	14	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
North Dakota	1	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Ohio	15	0 (0,0)	0 (0,1)	0 (0,1)	1 (0,1)	0 (0,1)
Oklahoma	5	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Oregon	6	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Pennsylvania	17	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Rhode Island	1	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
South Carolina	7	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
South Dakota	1	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Tennessee	9	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Texas	39	0 (-1,0)	-1 (-1,0)	-1 (-1,0)	-1 (-1,0)	-1 (-1,0)
Utah	4	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Vermont	1	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Virginia	11	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Washington	10	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
West Virginia	2	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Wisconsin	8	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Wyoming	1	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)

48. Column (6) shows the effects of the undercount of Hispanics and foreign-born residents found in the survey experiment. In this scenario, California, Florida, and Texas would most likely all lose seats. Arizona, Illinois, and New York could lose a seat as well.

49. The states that lose seats in Congress would likely see decreases in their share of outlays of federal funding due to their reduction in voting power in Congress. *See* Elis, Malhotra, and Meredith 2009 (PX-325). The Elis article attached here is just an example. It is a well-established finding in political science and political economy that the loss of political power as a result of the loss of representation leads to the loss of funding. This finding is based on a body of research showing that counties in areas of states that were underrepresented in state legislatures or Congress due to malapportionment received substantially lower shares of distributive spending. In the wake of the *Baker v. Carr* family of Supreme Court cases that required one-person, one-vote, counties that were underrepresented due to malapportionment saw both their representation in legislatures and their share of spending increase substantially when the equal populace district requirement was implemented. *See* Ansolabehere, Gerber, and Snyder 2002 (PX-326). Additionally, it is also based on another body of research comparing states that barely gain or lose Representatives in Congress. *See* PX-325. The census thresholds sometimes are quite close where a state could gain or lose seats. So this research compares those states that are just above and below the population thresholds to gain or lose a seat, and it has found that the

states that just barely gain a seat receive more money than the states that barely lose a seat.

B. City and County Effects of Undercount

50. I also examined the effects of the various undercount scenarios for cities and counties. Irrespective of state-level impacts on apportionment, the enumeration of subnational areas is crucially important for a number of purposes. It affects the distribution of federal and state funds that are tied to population formulas. In addition, it affects the allocation of legislative seats within states since legislative districts are required to be equipopulous.

51. This allocation of voting power within states, in turn, affects distributive spending programs influenced by the legislature. *See* PX-326. Areas with greater population enumerations, and thus more voting power, are likely to receive more funding. This article is just another example of this well-established finding in political science. There is a large body of political science research concluding that vote dilution due to malapportionment leads to a reduction in voting power and less distributive spending.

52. It is reasonable to assume that undercounts like those addressed in my report will more likely than not impact intrastate redistricting because there is no reason to think that a state legislature would correct an undercount on the Census. I think it's a reasonable assumption that state governments would not consciously try to remedy an undercount.

53. Table 7 shows the impact on the counties and cities
that are involved in the lawsuits regarding the citizenship question. The left column shows the baseline 2020 population projection. It also shows the absolute change in population and percentage change in the geographic unit's population due to three undercount scenarios. First, I examine a 2% undercount scenario. Second, I examine a 5.8% undercount scenario. For each of these scenarios, I examine undercounts among people in non-citizen households and among noncitizens households + Hispanics. Finally, I examine a scenario based on the results of the survey experiment.

54. Table 7 shows the effects on a selection of cities and counties involved in the lawsuits regarding the citizenship question. All of these local governments would most likely face smaller population enumerations due to an undercount from the addition of a citizenship question. Some of the largest effects would be in Miami, FL, New York, NY, Central Falls, RI, and Providence RI. In the survey experiment scenario (right-hand column), each of these cities could see a reduction of around 4% or more in their enumerated populations.

Table 7: Effect on Population Counts in Select Counties and Cities

| | | 2% Undercount | | | | 5.8% Undercount | | | | Survey Experiment | |
| | | Noncitizens | | Noncitizens+ Hispanics | | Noncitizens | | Noncitizens+ Hispanics | | Foreign-born+ Hispanics | |
County	2020 Population	Abs. Change	% Change	Abs. Change	% Change	Abs. Change	% Change	Abs. Change	% Change	Abs. Change	% Change
Phoenix, AZ	1,698,187	9,532	-0.6%	15,939	-0.9%	27,644	-1.6%	46,223	-2.7%	53,388	-3.1%
Los Angeles County, CA	10,256,275	74,027	-0.7%	118,962	-1.2%	214,679	-2.1%	344,988	-3.4%	469,163	-4.6%
Monterey County, CA	444,016	3,841	-0.9%	5,525	-1.2%	11,139	-2.5%	16,022	-3.6%	18,215	-4.1%
San Francisco, CA	909,143	4,640	-0.5%	6,141	-0.7%	13,457	-1.5%	17,808	-2%	37,509	-4.1%
San Jose, CA	1,045,953	6,843	-0.7%	10,743	-1%	19,845	-1.9%	31,153	-3%	52,766	-5%
Washington, DC	722,881	1,997	-0.3%	2,690	-0.4%	5,792	-0.8%	7,800	-1.1%	11,859	-1.6%
Miami, FL	491,295	4,868	-1%	7,734	-1.6%	14,118	-2.9%	22,428	-4.6%	24,713	-5%
Chicago, IL	2,704,974	12,334	-0.5%	20,052	-0.7%	35,769	-1.3%	58,152	-2.1%	76,859	-2.8%
Prince Georges County, MD	931,412	4,388	-0.5%	5,054	-0.5%	12,724	-1.4%	14,658	-1.6%	21,592	-2.3%
New York, NY	8,645,147	55,293	-0.6%	83,728	-1%	160,350	-1.9%	242,811	-2.8%	396,647	-4.6%
Columbus, OH	925,408	2,375	-0.3%	2,768	-0.3%	6,886	-0.7%	8,027	-0.9%	12,889	-1.4%
Philadelphia, PA	1,598,072	3,944	-0.2%	7,305	-0.5%	11,438	-0.7%	21,185	-1.3%	32,116	-2%
Pittsburgh, PA	297,243	480	-0.2%	614	-0.2%	1,392	-0.5%	1,780	-0.6%	3,124	-1.1%
Central Falls, RI	19,250	190	-1%	313	-1.6%	550	-2.9%	908	-4.7%	920	-4.8%
Providence, RI	181,532	1,249	-0.7%	1,934	-1.1%	3,622	-2%	5,608	-3.1%	6,833	-3.8%
Cameron County, TX	429,603	3,535	-0.8%	7,759	-1.8%	10,253	-2.4%	22,501	-5.2%	23,272	-5.4%
El Paso County, TX	851,600	5,844	-0.7%	14,227	-1.7%	16,947	-2%	41,259	-4.8%	43,069	-5.1%
Hidalgo County, TX	892,083	8,455	-0.9%	16,540	-1.9%	24,520	-2.7%	47,965	-5.4%	49,626	-5.6%
Seattle, WA	780,550	2,483	-0.3%	2,987	-0.4%	7,200	-0.9%	8,661	-1.1%	17,083	-2.2%

55. The three Texas counties would also face particularly negative impacts. Each of these heavily Latino counties could have a reduction in their enumerated populations of over 5%.

56. Figure 2 shows the reduction in the enumerated population for every county in the country based on the survey experiment (last column of Table 7). It shows that the largest effects are in counties on the southern border, the California coast, and in the region around New York City. The counties and cities that are plaintiffs in this suit are labeled on the graph. All of these geographic units are in the most heavily impacted areas of the country.
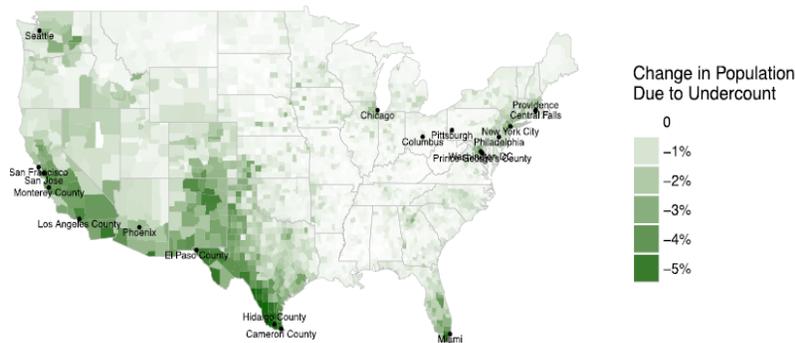
Figure 2: Effects on County Populations

57. Table 8 shows the change in each area's share of its state population due to the undercount. This statistic is important for estimating the potential effects of the undercount on state-level formula grants, as well as on the relative voting power of each geographic area in congressional and state legislative elections. Geographic areas that see a reduction in their share of the state population are likely to get less representation in Congress and their state legislature. This reduction in voting power is likely to lead to less distributive spending. *See* PX-326. As stated before, this article is just an example. There is a large body of political science research that finds localities have their vote diluted because they are malapportioned. This implies that if the enumerated populations used for redistricting are smaller than their actual populations, then this reduction in voting power is very likely to lead to less distributive spending.

Table 8: Effect on Relative Representation in Select Counties and Cities

	2% Undercount		5.8% Undercount		Survey Experiment
	Noncitizens	Noncitizens+ Hispanics	Noncitizens	Noncitizens+ Hispanics	Foreign-born+ Hispanics
Phoenix, AZ	-0.4%	-0.4%	-0.9%	-0.8%	-0.7%
Los Angeles County, CA	-0.3%	-0.3%	-0.5%	-0.6%	-0.6%
Monterey County, CA	-0.4%	-0.4%	-1%	-0.9%	-0.1%
San Francisco, CA	0%	0.2%	0.1%	0.8%	-0.2%
San Jose, CA	-0.2%	-0.1%	-0.3%	-0.2%	-1.1%
Miami, FL	-0.9%	-1.1%	-2.1%	-2.9%	-2.6%
Chicago, IL	-0.3%	-0.4%	-0.6%	-0.9%	-0.9%
Prince Georges County, MD	-0.3%	-0.3%	-0.6%	-0.5%	-0.4%
New York, NY	-0.3%	-0.4%	-0.8%	-1.1%	-1.6%
Columbus, OH	-0.3%	-0.3%	-0.6%	-0.6%	-0.8%
Philadelphia, PA	-0.2%	-0.3%	-0.5%	-0.7%	-1%
Pittsburgh, PA	-0.2%	-0.1%	-0.2%	0%	0%
Central Falls, RI	-0.9%	-1.3%	-2.3%	-3.5%	-2.9%
Providence, RI	-0.6%	-0.7%	-1.4%	-1.9%	-1.9%
Cameron County, TX	-0.6%	-1.1%	-1.3%	-2.8%	-2.5%
El Paso County, TX	-0.5%	-1%	-0.9%	-2.4%	-2.1%
Hidalgo County, TX	-0.7%	-1.2%	-1.7%	-3%	-2.7%
Seattle, WA	-0.2%	-0.1%	-0.2%	0%	-0.2%

58. Table 8 shows the relative change in each area's population using three undercount scenarios. First, I examine a 2% undercount scenario. Second, I examine a 5.8% undercount assumption. For each of these scenarios, I examine undercounts among people in non-citizen households and among non-citizens households + Hispanics. Finally, I examine a scenario based on the results of the survey I discussed in depth above.

59. Under nearly every scenario, each of the cities and counties would face declines in their share of their respective state populations due to an undercount from the citizenship question. Once again, some of the largest effects would be in Miami, FL, New York, NY, Central Falls, RI, Providence RI, and the three Texas counties. Each of these areas would have a reduction in their 'relative populations' (i.e.,

share of the state population) of several percentage points based on the survey experiment.

V. Aggregate Effects on Share of Population in Different Types of Counties

60. I examined the macro effects of an undercount due to the addition of a citizenship question on the distribution of the enumerated population across urban and rural areas.   For simplicity, I use the survey estimates on foreign-born people and Hispanics. But the results are broadly similar for other undercount scenarios.[14]   The best available definition of urban and rural areas is based on a classification system developed by the National Center for Health Statistics (NCHS).[15]   This classification system is often used to study the associations between the urbanization level of residence and health and to monitor the health of urban and rural residents.   NCHS has developed a six-level urban-rural classification scheme for U.S. counties and county-equivalent entities.   The most urban category consists of "central" counties of large metropolitan areas and the most rural category consists of nonmetropolitan "noncore" counties.   Figure 3 shows a map of the NCHS classification scheme.

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[14] For confidentiality reasons, it is not possible to match the ACS micro-data to smaller cities and counties.   So, for this analysis, I calculated the ratio of people in non-citizen households to individual non-citizens for each state in the 2016 ACS.   I then multiplied these ratios by the estimates of the number of non-citizens in each city and county to estimate the number of people in households with a non-citizen.

[15] *See* https://www.cdc.gov/nchs/data_access/urban_rural.htm.
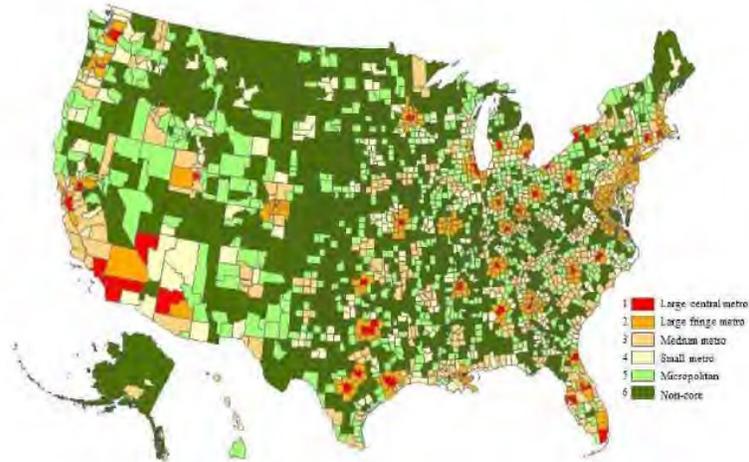
Figure 3: 2013 Urban-Rural Classification Scheme for Counties

61. Figure 3 shows that an undercount due to a citizen-
ship question would have the most substantial im-
pact in large metropolitan counties with major cit-
ies. Based on the survey experiment, these coun-
ties would have a reduction in their enumerated pop-
ulation of 2.9%.[16] This group of counties would also
have a reduction in their share of the national pop-
ulation of 1.1%. This reduction in urban areas' rel-
ative population would likely lead to dilution in their
voting power and a reduction in their representation
in Congress and state legislatures. At the other end
of the continuum, noncore rural counties would only
have a reduction in their enumerated population of
.5%. Moreover, they would actually see a sizable

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[16] The patterns are broadly similar in the other scenarios.

1.4% increase in their share of the national population. This would lead to an increase in their representation in the legislature. Thus, the undercount caused by a citizenship question on the Census would lead to a redistribution of political power in America. It would reduce the representation of urban counties, and increase the voting power of rural counties.

Table 9: Effect on Distribution of Enumerated Population Across Urban and Rural ties

County	2020 Population Projection	Percentage Change Due to Undercount	Percentage Change in Relative Population
Large central metro	103,025,259	-2.9%	-1.1%
Large fringe metro	83,761,694	-1.8%	.1%
Median metro	69,737,033	-1.5%	.3%
Small metro	30,116,705	-1%	.9%
Micropolitan	27,375,961.605	-.8%	1.1%
Noncore	18,760,860	-.5%	1.4%

VI. Conclusion

62. I have reached the following conclusions:

    a. The undercount caused by the inclusion of a citizenship question on the Census is likely to have effects on the population counts of each state, and the apportionment of representatives across states for the U.S House. There is a very high probability that California will lose a congressional seat, and it is more likely than not that Texas will lose a congressional seat. There is also a substantial risk that Arizona, Florida, Illinois, and New York could lose a seat.

    b. The citizenship question is also likely to have effects on the population counts of

large counties and cities within each state. This will affect the distribution of voting power within states, and lead to the dilution of the voting power of New York, NY, Miami, FL, Providence, RI, and other large cities with substantial immigrant populations.

c. Overall, the citizenship question will lead to a large-scale shift in the distribution of political power in the United States. It would dilute the voting power of urban counties, and increase the voting power of rural counties.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: [Oct 26], 2018
            Washington, DC

/s/ CHRISTOPHER WARSHAW
     CHRISTOPHER WARSHAW

Appendix

Table A1: Effect of 2% Undercount on State Population Enumerations in 2020

State	Baseline Apportionment Pop. Projection	Noncitizens	Noncitizens+ Hispanic
Alabama	4,928,974	-0.1%	-0.1%
Alaska	745,119	-0.2%	-0.3%
Arizona	7,349,498	-0.3%	-0.7%
Arkansas	3,056,993	-0.1%	-0.2%
California	40,549,557	-0.6%	-1%
Colorado	5,831,253	-0.2%	-0.5%
Connecticut	3,593,415	-0.3%	-0.5%
Delaware	991,133	-0.2%	-0.3%
Florida	22,017,594	-0.3%	-0.7%
Georgia	10,796,611	-0.2%	-0.3%
Hawaii	1,432,921	-0.3%	-0.6%
Idaho	1,830,654	-0.2%	-0.3%
Illinois	12,718,521	-0.3%	-0.5%
Indiana	6,770,793	-0.1%	-0.2%
Iowa	3,186,710	-0.1%	-0.2%
Kansas	2,931,128	-0.2%	-0.3%
Kentucky	4,514,011	-0.1%	-0.1%
Louisiana	4,694,542	-0.1%	-0.2%
Maine	1,351,512	-0.1%	-0.1%
Maryland	6,195,838	-0.3%	-0.4%
Massachusetts	6,972,768	-0.3%	-0.5%
Michigan	9,976,301	-0.1%	-0.2%
Minnesota	5,696,268	-0.2%	-0.2%
Mississippi	2,990,101	-0.1%	-0.1%
Missouri	6,191,875	-0.1%	-0.1%
Montana	1,081,584	0%	-0.1%
Nebraska	1,960,312	-0.2%	-0.3%
Nevada	3,178,894	-0.4%	-0.7%
New Hampshire	1,368,556	-0.1%	-0.2%
New Jersey	9,114,740	-0.4%	-0.7%
New Mexico	2,100,036	-0.3%	-1.1%
New York	19,907,138	-0.4%	-0.6%
North Carolina	10,638,762	-0.2%	-0.3%
North Dakota	754,368	-0.1%	-0.1%
Ohio	11,729,092	-0.1%	-0.1%
Oklahoma	3,981,432	-0.2%	-0.3%
Oregon	4,278,356	-0.2%	-0.4%
Pennsylvania	12,854,327	-0.1%	-0.3%
Rhode Island	1,060,979	-0.2%	-0.5%
South Carolina	5,224,199	-0.1%	-0.2%
South Dakota	894,019	-0.1%	-0.2%
Tennessee	6,930,386	-0.1%	-0.2%
Texas	29,654,648	-0.4%	-0.9%
Utah	3,277,814	-0.2%	-0.4%
Vermont	624,804	-0.1%	-0.1%
Virginia	8,651,354	-0.2%	-0.3%
Washington	7,799,983	-0.3%	-0.4%
West Virginia	1,781,304	0%	-0.1%
Wisconsin	5,864,100	-0.1%	-0.2%
Wyoming	567,929	-0.1%	-0.3%

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

———————

20-CV-5770 (JMF)

STATE OF NEW YORK, ET AL., PLAINTIFFS

v.

DONALD J. TRUMP, IN HIS OFFICIAL CAPACITY
AS PRESIDENT OF THE UNITED STATES, ET AL.,
DEFENDANTS

———————

20-CV-5781 (JMF)

NEW YORK IMMIGRATION COALITION, ET AL.,
PLAINTIFFS

v.

DONALD J. TRUMP, IN HIS OFFICIAL CAPACITY
AS PRESIDENT OF THE UNITED STATES, ET AL.,
DEFENDANTS

———————

EXPERT DECLARATION OF JOHN M. ABOWD, Ph.D.

———————

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

Qualifications

1. I am the Chief Scientist and Associate Director for Research and Methodology at the United States Census Bureau. I have served in that capacity since June 2016. The following statements are based on my personal knowledge or

on information supplied to me in the course of my professional responsibilities. These statements are provided in support of the Defendants' opposition to the Plaintiffs' motion for partial summary judgment or in the alternative for a preliminary injunction.

2. In 1977, I received my Ph.D. in economics from the University of Chicago with specializations in econometrics and labor economics. My B.A. in economics is from the University of Notre Dame.

3. I have been a university professor since 1976. My first appointment was assistant professor of economics at Princeton University. I was also assistant and associate professor of econometrics and industrial relations at the University of Chicago Graduate School of Business. In 1987, I was appointed associate professor of industrial and labor relations with indefinite tenure at Cornell University. I am currently on unpaid leave from Cornell University to work in my current position at the Census Bureau as part of the Career Senior Executive Service.

4. I am a member and fellow of the American Statistical Association, Econometric Society, and Society of Labor Economists (president 2014). I am an elected member of the International Statistical Institute. I am also a member of the American Economic Association, International Association for Official Statistics, National Association for Business Economists, American Association for Public Opinion Research, Association for Computing Machinery, American Asso-

ciation for the Advancement of Science, and American Association of Wine Economists. I regularly attend and present papers at the meetings of all of these organizations.

5. I have served on the American Economic Association Committee on Economic Statistics. I have also served on the National Academy of Sciences Committee on National Statistics, the Conference on Research in Income and Wealth Executive Committee, and the Bureau of Labor Statistics Technical Advisory Board for the National Longitudinal Surveys (chair: 1999-2001).

Relevant professional experience

6. In 1998, the Census Bureau and Cornell University entered into the first of a sequence of IPAs and other contracts under which I served continuously as Distinguished Senior Research Fellow at the Census Bureau until I assumed my current position in 2016, under a new IPA contract. Since March 29, 2020, I have been in the Associate Director position at the Census Bureau as a career Senior Executive Service employee. While I was a senior re-search fellow, I worked with numerous senior executives. This includes Directors (Martha Riche, Kenneth Prewitt, C. Louis Kincannon, Stephen Murdoch, Robert Groves, and John Thompson), Deputy Directors (Hermann Habermann, Thomas Mesenbourg, and Nancy Potok), Chief Scientists (Roderick Little and Thomas Louis), and numerous other associate directors, assistant directors, and division chiefs. I also worked with Chief Economists John Haltiwanger, J. Bradford Jensen,

Daniel Weinberg, and Lucia Foster, and researchers in all program areas.

7. I was one of three senior researchers who founded the Longitudinal Employer-Household Dynamics (LEHD) program at the Census Bureau. This program produces detailed public-use statistical data on the characteristics of workers and employers in local labor markets using large-scale linked administrative, census and survey data from many different sources. The program is acknowledged as the Census Bureau's first 21st Century data product: built to the specifications of local labor market specialists without additional survey burden, and published using state-of-the-art confidentiality protection. In addition to very substantial financial support from the Census Bureau, this project was supported by a $4.1 million grant from the National Science Foundation (NSF) on which I was the lead Principal Investigator.

8. From 2004 through 2009, I was the lead Principal Investigator on the $3.3 million NSF-supported collaborative project with the Census Bureau to modernize secure access to confidential social science data. This project led to the first production implementation worldwide of differential privacy1 for OnTheMap—a product of the LEHD program. It also produced prototype confidential data access systems with public-use synthetic micro-data supported by direct analysis of the confidential data on validation servers. These projects were the precursors to

the Census Bureau's current program to implement central differential privacy for all publications from the 2020 Census of Population and Housing, which will be the first large-scale production implementation worldwide.

9. From 2011 until I assumed my position as Chief Scientist at the Census Bureau in 2016, I was the Principal Investigator of the Cornell University node of the NSF-Census Research Network (NCRN), one of eight such nodes that worked collaboratively with the Census Bureau and other federal statistical agencies to identify important theoretical and applied re-search projects of direct programmatic importance to the agencies. The Cornell node produced the fundamental science explaining the distinct roles of statistical policymakers and computer scientists in the design and implementation of differential privacy systems at statistical agencies.

10. I have published more than 100 scholarly books, monographs, and articles in the disciplines of economics, econometrics, statistics, computer science, and information science. I have been the principal investigator or co-principal investigator on 35 sponsored research projects. My full professional resume is attached to this report.

Scope of work

11. I have been asked to provide expert opinion responding to the expert report submitted in this case by Dr. Matthew H. Barreto.

Expert opinion

12. The most significant challenge to the quality of 2020 Census data is the COVID-19 pandemic. The effects of the pandemic and the multiple re-programs of the field operations of the 2020 Census make it nearly impossible to predict with any certainty whether any groups will be differentially disadvantaged in the final count. There are no natural or field experiments that speak to disruptions on this scale.

13. The Census Bureau's randomized controlled trial of a census questionnaire with and without a citizenship question, in June 2019, showed no statistically significant difference in the self-response rates with and without a citizenship question. With a sample of 480,000 housing units, capable of detecting differences as small as 0.5 percentage points (see https://www.census.gov/programs-surveys/decennial-census/2020-census/research-testing/testing-activities/2019-census-test/2019-census-test-report.html), this test was large-scale and properly designed to measure the differential self-response rates using the 2020 Census contact and self-response protocols. The June 2019 Census Test did not inform the question of whether overall self-response might have been lower because of the possibility of receiving a question about citizenship (the macro environment), nor did it inform the quality of the overall census procedures, including and especially non-response follow-up (NRFU).

14. An overview of the changes to the 2020 Census field and post-processing operations because of

the COVID-19 pandemic and the shortened time window for the NRFU operation are detailed in the declaration of Albert E. Fontenot, Jr., Associate Director of the Decennial Census Programs for Census Bureau.

15. Pursuant to the President's July 21, 2020 *Memorandum on Excluding Illegal Aliens From the Apportionment Base Following the 2020 Census* ("the PM"), and based on information currently available to it, the Census Bureau is in the process of determining the appropriate methodologies and finalizing, to the extent possible, how it may exclude illegal aliens in keeping with the stated purpose of the PM to use the data for apportionment. At this time, the Census Bureau does not know exactly what numbers the Secretary may report to the President, and it is therefore impossible to assess precisely the effects of the PM on apportionment. The Census Bureau is remaining consistent with best practices for a federal statistical agency.

Comments on Dr. Barreto's report

16. With regard to Dr. Barreto's paragraph 14 (in which he concludes that the PM will reduce participation in the 2020 Census and reduce the accuracy of the 2020 census), paragraph 19 (in which he concludes that the PM erodes trust that many community-based organizations with experience serving immigrants built up over the past year), and paragraph 21 (in which he cites studies finding that Census participation drops in immigrant communities when federal immi-

gration enforcement is perceived to be connected with the Census): As stated above in paragraph 12, the most significant challenge to the quality of 2020 Census data is the COVID-19 pandemic. The effects of the pandemic and the coinciding multiple repro-grams of the field operations of the 2020 Census required to adapt to the circumstances of the COVID-19 pandemic make it nearly impossible to predict with any certainty whether any groups will be differentially disadvantaged in the final count. There are no natural or field experiments that speak to disruptions on this scale. Additionally, as demonstrated in paragraph 13 above, a randomized trial of the actual protocol used would be the best evidence to properly draw any conclusions.

17. With regard to Dr. Baretto's paragraph 68, in which he references 2018 survey research that he conducted in relation to the citizenship question on the 2020 decennial, and his conclusions that participation in the Census would increase after removing any fear of immigration status being exposed: The best way to accurately develop such conclusions is to conduct a randomized trial of the actual protocol being used in the 2020 Census, as referenced in paragraph 13 above. His research failed to do this making his conclusions as set out in paragraph 68 less reliable.

18. With regard to Dr. Baretto's paragraph 77, in which he concludes that administrative records are less useful than direct responses: More field visits by enumerators are still scheduled to

occur. After some number of visit attempts, the enumerator will only try to get a population count, which does not have any associated characteristics (like Hispanic ethnic origins). Such a population count does not present the same incentives to avoid responding nor to misrepresent the number of people in the household. As long as the NRFU reaches comparable levels of completeness in getting population counts for address identifiers (MAFIDs), the differential effects of administrative record linkage with respect to apportionment are controlled.

19. With respect to Dr. Baretto's paragraph 79, his assertions that the count imputation process is biased by non-ignorable non-response are speculative. In the presence of the pandemic, it is very difficult to predict which neighborhoods will have larger count imputation rates and which will have smaller ones.

20. With respect to Dr. Baretto's paragraph 81, he misuses Rubin's missing data definitions. MCAR means that no variables-measured or unmeasured can predict which units are missing. Ignorable missing data (the standard assumption used by statistical agencies) means that the observed responses can be reliably used to predict the unobserved ones. Since the observed responses are all the agency typically has (including data in the sampling frame), that is all the data it can use for imputation. Non-ignorable missing data means that some unobserved information on the non-respondents is required to accurately predict their missing responses. Such

information comes from extra-survey sources. The quote from my previous testimony was taken out of context. As I have previously explained, accuracy has at least two dimensions. These are commonly called bias—the statistic's tendency to systematically over-count or undercount its target—and variance—the statistic's tendency to fluctuate around its target. Count imputation is a statistical measure not based on sampling that has both of these accuracy components. I was commenting on the variance of imputations not the bias. The Census Bureau's count imputation procedure is tested for unbiasedness before use.

/s/ <u>JOHN M. ABOWD, Ph.D.</u>
JOHN M. ABOWD, PH.D.

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

———————

20-CV-5770 (JMF)

STATE OF NEW YORK, ET AL., PLAINTIFFS

v.

DONALD J. TRUMP, IN HIS OFFICIAL CAPACITY
AS PRESIDENT OF THE UNITED STATES, ET AL.,
DEFENDANTS

———————

20-CV-5781 (JMF)

NEW YORK IMMIGRATION COALITION, ET AL.,
PLAINTIFFS

v.

DONALD J. TRUMP, IN HIS OFFICIAL CAPACITY
AS PRESIDENT OF THE UNITED STATES, ET AL.,
DEFENDANTS

———————

DECLARATION OF ALBERT E. FONTENOT, JR.

———————

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

1. I am the Associate Director for Decennial Census Programs, in which capacity I serve as adviser to the director and deputy director on decennial programs. In this role, I provide counsel as to the scope, quality, management and methodology of the decennial programs; provide executive and professional leadership to the di-

visions and central offices of the Decennial Census Programs Directorate; and participate with other executives in the formulation and implementation of broad policies, which govern the diverse programs of the Census Bureau.   I have served in this capacity since November 12, 2017.

2.   The following statements are based on my personal knowledge or on information supplied to me in the course of my professional responsibilities.   These statements are provided in support of the Defendants' opposition to the Plaintiffs' motion for partial summary judgment or in the alternative for a preliminary injunction.

3.   Since March 2020, the Census Bureau has been required to make a number of adjustments to its plans for field data collection for the decennial census as a result of the COVID-19 pandemic, and in order to comply with the statutory deadline of December 31, 2020 to deliver the apportionment count.

4.   A statutory deadline under 13 U.S.C. § 141(b) requires that the tabulation of total population by States as required for the apportionment of Representatives in Congress among the several States shall be completed within nine months after the official start of the census and reported by the Secretary to the President of the United States.   That date is December 31, 2020.

5.   To meet that deadline in light of the delays caused by the Covid-19 pandemic, the Census Bureau, (as reflected in the Census Bureau Director's August 3, 2020 Statement), has updated its operations plan.   Specifically, the Census Bureau intends to improve the speed of the count without sacrificing completeness.   As part

of its revised plan, the Census Bureau will conduct additional training sessions to increase the number of enumerators in the field Additionally we will be providing monetary awards to existing enumerators in recognition of those who maximize hours worked, as well as retention bonuses for those enumerators who serve for multiple weeks. The Census Bureau will also keep phone and tablet computer devices for enumeration in use for the maximum time possible.

The Census Bureau will end field data collection by September 30, 2020. Self-response options will also close on that date to permit the commencement of data processing. Under the revised plan, the Census Bureau intends to meet a similar level of household responses as collected in prior censuses, including outreach to hard-to-count communities. Once the Census Bureau has the data from self-response and field data collection in our secure systems, the Bureau plans to review the data for completeness and accuracy, streamline processing of the data, and prioritize apportionment counts to meet the statutory deadline.

6. Between the time field operations are completed and the statutory deadline, the Census Bureau must engage in post-data collection processing in order to produce the Census Unedited File (CUF), which will then be used to produce the apportionment numbers to be delivered to the Secretary.

7. As of August 18, 2020, over 94 million households, 64 percent of all households in the Nation, have self responded to the 2020 Census. The initial Non-Response Followup field work has begun and combined with the self response numbers approximately 71 percent of all the households in the nation have been enumerated.

Building on our successful and innovative internet response option, the dedicated women and men of the Census Bureau, including our temporary workforce deploying in communities across the country in recent and upcoming weeks, will work diligently to achieve an accurate count.

8.   The Census Bureau has responded to the shortened calendar period for Non-Response Follow-Up (NRFU) operations by taking steps to increase and enhance the ability of its employees in the field to work as efficiently as possible, all in an effort to put in as many hours of work, spread across the total workforce, into field operations as would have been done under the original time frame.   We have aimed to improve the speed of our count by continuing to maintain an optimal number of active field enumerators by conducting additional training sessions, providing awards to enumerators in recognition of those who maximize hours worked and retention awards to those who continue on staff for successive weeks.   Additionally, we are keeping phone and tablet computer devices for enumeration in use for the maximum time possible.

9.   As the Director stated on August 3, 2020, under the revised plan discussed above, the Census Bureau intends to meet a similar level of household responses as collected in prior censuses, including outreach to hard-to-count communities.

10. The Census Bureau will continue to protect and keep confidential respondents' private and personally-identifying information, as is required by law under Title 13.

11. The Census Bureau will continue to comply with the Census Bureau's 2018 Residence Criteria, *Final 2020 Census Residence Criteria and Residence Situations*, 83 Fed. Reg. 5525 (February 8, 2018), which, as in past decennial censuses, requires each person to be counted in their usual place of residence, as defined in the Residence Criteria.

12. The Presidential Memorandum issued on July 21, 2020, *Memorandum on Excluding Illegal Aliens From the Apportionment Base Following the 2020 Census*, has had no impact on the design of field operations for decennial census, or on the Census Bureau's commitment to count each person in their usual place of residence, as defined in the Residence Criteria.

/s/ <u>ALBERT E. FONTENOT</u>
ALBERT E. FONTENOT

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

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20-CV-5770 (JMF)

STATE OF NEW YORK, ET AL., PLAINTIFFS

v.

DONALD J. TRUMP, IN HIS OFFICIAL CAPACITY
AS PRESIDENT OF THE UNITED STATES, ET AL.,
DEFENDANTS

———————

20-CV-5781 (JMF)

NEW YORK IMMIGRATION COALITION, ET AL.,
PLAINTIFFS

v.

DONALD J. TRUMP, IN HIS OFFICIAL CAPACITY
AS PRESIDENT OF THE UNITED STATES, ET AL.,
DEFENDANTS

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Filed: Aug. 19, 2020

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**DEFENDANTS' RESPONSE TO PLAINTIFFS'
LOCAL RULE 56.1 STATEMENT**

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Pursuant to Local Civil Rule 56.1, Defendants submit the following responses to Plaintiffs' Local Rule 56.1 Statement of Material Facts as to Which There is No Genuine Issue to Be Tried.

1.   Defendants do not dispute this statement.

2.   Defendants do not dispute this statement.

3.   Defendants state that the cited DHS document provides estimates that as of 2015, California and Texas are the two states with the two largest populations of illegal aliens.   *See* Office of Immigration Statistics, U.S. Dep't of Homeland Sec., *Population Estimates: Illegal Alien Population Residing in the United States: January 2015* at 2 (Dec. 2018).

4.   Defendants state that the cited DHS document provides estimates that as of 2015, California had an illegal alien population of 2.9 million and Texas had an illegal alien population of 1.9 million.   *Id.* at 4.

5.   Defendants do not dispute this statement.

6.   Defendants do not dispute this statement.

7.   Defendants do not dispute this statement.

8.   Defendants do not dispute that that the quoted language appears in the Memorandum.

9.   Defendants do not dispute that that the quoted language appears in the Memorandum.

10.   Defendants do not dispute this statement.

11.   Defendants do not dispute this statement.

12.   Defendants state that the Census Bureau's total estimated population of the State of California as of July 1, 2019 was 39,512,223. U.S. Census Bureau, Annual Estimates of the Resident Population for the United States, Regions, States, and Puerto Rico: Apr. 1, 2010 to July 1, 2019 (NST-EST2019-02), https://www.census.gov/data/tables/timeseries/demo/popest/2010s-state-total.html (last visited August 17, 2020).

13.   Defendants do not dispute this statement.

14. Defendants do not dispute this statement.

15. Defendants state that the Census Bureau's total estimated population of the State of Texas as of July 1, 2019 was 28,995,881. *Id.*

16. Defendants do not dispute that Florida is the third most populous State after California and Texas, and do not dispute that according to the Census Bureau Florida has a total population of 18,801,310 as of April 1, 2010. *Id.* Defendants state that the Census Bureau's total estimated population of the State of Florida as of July 1, 2019 was 21,477,737. *Id*

17. Defendants do not dispute this statement.

18. Defendants do not dispute this statement.

19. Defendants dispute Plaintiffs' characterization of the Memorandum anticipating any particular outcome of apportionment. Defendants refer the Court to the cited page of the Memorandum for a full and accurate statement of its contents. *See* 85 Fed. Reg. at 44,680.

20. Defendants dispute that Dr. Christopher Warshaw could have performed any modeling based on "the population count used to calculate Congressional apportionment after the 2020 Census" because that count is not yet known. *See* Fontenot Decl. ¶¶ 4-8.

21. Defendants do not dispute that Table 7 of Dr. Warshaw's Expert Declaration contains the stated probability. Defendants dispute the premise underlying Dr. Warshaw's stated probability insofar as Dr. Warshaw assumes that all illegal aliens will be excluded from the apportionment base, a hypothetical proposition that is not yet known. Abowd Decl. ¶ 15. Defendants also

dispute that Dr. Warshaw used a reliable method to reach his stated probabilities.

22. Defendants do not dispute that Table 7 of Dr. Warshaw's Expert Declaration contains the stated probability. But Defendants dispute the premise underlying Dr. Warshaw's stated probability insofar as Dr. Warshaw assumes that all illegal aliens will be excluded from the apportionment base, a hypothetical proposition that is not yet known. Abowd Decl. ¶ 15. Defendants also dispute that Dr. Warshaw used a reliable method to reach his stated probabilities.

23. Defendants do not dispute this statement.

24. Defendants dispute that residents of the City and County of San Francisco will lose political power because it is not yet known whether California will lose any seats in the House of Representatives, or whether all illegal aliens will be excluded from the apportionment base. Abowd Decl. ¶ 15.

25. Defendants do not dispute this statement.

26. Defendants dispute that residents of Monterey County will lose political power because it is not yet known whether California will lose any seats in the House of Representatives, or whether all illegal aliens will be excluded from the apportionment base. Abowd Decl. ¶ 15.

27. Defendants do not dispute this statement.

28. Defendants dispute that residents of Cameron County will lose political power because it is not yet known whether Texas will lose any seats in the House of Representatives, or whether all illegal aliens will be

excluded from the apportionment base. Abowd Decl. ¶ 15.

29. Defendants do not dispute this statement.

30. Defendants dispute that residents of El Paso County will lose political power because it is not yet known whether Texas will lose any seats in the House of Representatives, or whether all illegal aliens will be excluded from the apportionment base. Abowd Decl. ¶ 15.

31. Defendants do not dispute this statement.

32. Defendants dispute that residents of Hidalgo County will lose political power because it is not yet known whether Texas will lose any seats in the House of Representatives, or whether all illegal aliens will be excluded from the apportionment base. Abowd Decl. ¶ 15.

33. Defendants do not dispute this statement.

34. Defendants do not dispute this statement.

35. Defendants do not dispute this statement.

36. Defendants do not dispute this statement.

37. Defendants dispute that Dr. Toubia and Mr. Khoury will lose political power because it is not yet known whether California will lose any seats in the House of Representatives, or whether all illegal aliens will be excluded from the apportionment base. Abowd Decl. ¶ 15.

38. Defendants do not dispute this statement.

39. Defendants dispute that Dr. Toubia and Mr. Khoury will lose political power because it is not yet

known whether California will lose any seats in the House of Representatives, or whether all illegal aliens will be excluded from the apportionment base. Abowd Decl. ¶ 15. Defendants also dispute that Dr. Toubia and Mr. Khoury will lose political power because it is not yet known whether Dr. Toubia and Mr. Khoury will reside in California after apportionment.

40. Defendants do not dispute this statement.

41. Defendants do not dispute this statement.

42. Defendants do not dispute this statement.

43. Defendants dispute that Ms. Palacios will lose political power because it is not yet known whether Texas will lose any seats in the House of Representatives, or whether all illegal aliens will be excluded from the apportionment base. Abowd Decl. ¶ 15. Defendants also dispute that Ms. Palacios will lose political power because it is not yet known whether Ms. Palacios will reside in Texas after apportionment.

44. Defendants do not dispute this statement.

45. Defendants dispute that Ms. Ramos will lose political power because it is not yet known whether Texas will lose any seats in the House of Representatives, or whether all illegal aliens will be excluded from the apportionment base. Abowd Decl. ¶ 15. Defendants also dispute that Ms. Ramos will lose political power because it is not yet known whether Ms. Ramos will reside in Texas after apportionment.

46. Defendants do not dispute this statement.

47. Defendants do not dispute this statement.

48. Defendants do not dispute this statement.

49. Defendants dispute that Ms. Kim will lose political power because it is not yet known whether California will lose any seats in the House of Representatives, or whether all illegal aliens will be excluded from the apportionment base. Abowd Decl. ¶ 15. Defendants also dispute that Ms. Kim will lose political power because it is not yet known whether Ms. Kim will reside in California after apportionment.

50. Defendants do not dispute this statement.

51. Defendants dispute that Mr. Lee will lose political power because it is not yet known whether California will lose any seats in the House of Representatives, or whether all illegal aliens will be excluded from the apportionment base. Abowd Decl. ¶ 15. Defendants also dispute that Mr. Lee will lose political power because it is not yet known whether Mr. Lee will reside in California after apportionment.

Dated: Aug. 19, 2020

Respectfully submitted,

ETHAN P. DAVIS
Acting Assistant Attorney General

AUDREY STRAUSS
Acting United States Attorney for the
Southern District of New York

DAVID MORRELL
Deputy Assistant Attorney General

ALEXANDER K. HAAS
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Counsel for Defendants

Exhibit 62

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UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

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20-CV-5770 (JMF)

STATE OF NEW YORK, ET AL., PLAINTIFFS

v.

DONALD J. TRUMP, IN HIS OFFICIAL CAPACITY
AS PRESIDENT OF THE UNITED STATES, ET AL.,
DEFENDANTS

————

20-CV-5781 (JMF)

NEW YORK IMMIGRATION COALITION, ET AL.,
PLAINTIFFS

v.

DONALD J. TRUMP, IN HIS OFFICIAL CAPACITY
AS PRESIDENT OF THE UNITED STATES, ET AL.,
DEFENDANTS

————

**SUPPLEMENTAL DECLARATION OF
CESAR ESPINOSA**

————

Cesar Espinosa, pursuant to the provisions of 28
U.S.C. § 1746 declares under penalty of perjury as fol-
lows:

1. I am the Executive Director of FIEL Houston, Inc.
("FIEL"). I am over 18 years of age. I have personal
knowledge of the facts stated in this declaration.

2. This declaration supplements my declaration dated
August 6, 2020 in this case.

3.   Obtaining court relief to clarify that every person, including undocumented immigrants will count in the census to determine congressional apportionment will allow FIEL to do meaningful outreach to our constituents.   Every single day available for FIEL to spread this message to the community will help to our outreach efforts.   Specifically, a court order that stops the exclusion of undocumented immigrants from the census would make FIEL's efforts to encourage census participation easier by allowing us to clarify the current confusion and help ease the fear caused by the Presidential Memorandum, and it would take FIEL less time and fewer resources to convince members of the communities we serve to participate in the census.

4.   As stated in my prior declaration, the Presidential Memorandum is deterring Census participation in the communities FIEL serves and burdening our outreach efforts. This is evident when we provide services to our community at our physical office.   Since approximately mid-June of this year FIEL started opening our physical office to provide services by appointment three days a week, while taking extra health and safety precautions.   We had previously closed our physical office temporarily and operated remotely due to the ongoing pandemic in Houston.   While providing our normal range of immigration legal services during client appointments, we also inform our clients about other services and programs we offer to make our engagement with our clients more impactful, given the limited amount of time available.   For example, in the limited time we have per appointment, we also inform our clients about our census outreach and Get Out The Vote (GOTV) efforts.   Recently, we have begun organizing people around COVID relief efforts, because the COVID pandemic has

hit the communities we serve severely and dispropor-
tionately. In addition to our advocacy for greater as-
sistance from state and local authorities , we use the lim-
ited time in our client appointments to also promote
COVID-related safety protocols and provide free masks
if needed and share information on rent assistance pro-
grams during the pandemic.

5. Further, in the course of providing legal services,
we inform our clients about other legal work we are in-
volved in, including serving as plaintiffs in the present
case. As noted above, during appointments we educate
our clients about the census and encourage them to par-
ticipate. As a result of the recent Memorandum, I have
witnessed that about half of the individuals we serve ex-
press apathy or fear about engaging in the census un-
derstanding that the President wants to exclude undoc-
umented immigrant. Some individuals simply ask,
"what's the point?" Other say they would rather not
participate because they come from mixed-status fami-
lies and fear that one or more family members could be
subjected to negative consequences if the government
determines their status. This complicates and extends
the time we engage in census education.

6. The fear and apathy we witness about participating
in the census is not limited to clients to whom we provide
direct services. On August 8, 2020, FIEL participated
in a car parade in the Greenspoint community of north-
ern Houston organized by local agents of the Cen us Bu-
reau. Greenspoint is comprised of a large and growing
Latino population with a significant African American
population. More affordable rent in Greenspoint com-
pared to other Houston communities has allowed for
growing numbers of immigrants to move into the area,

including many mixed-status families. The Census Bureau had reached out to FIEL last year to ask if we could be part of their community outreach efforts. We also had meetings about doing joint outreach efforts with the Census Bureau this year prior to the pandemic and they posted official Census Bureau signs at our offices. As part of that relationship, the Census Bureau invited FIEL and various grassroots organizations, in partnership with local pastors and community leaders, to participate in the car parade to encourage census participation in the midst of a pandemic. FIEL was the only Spanish-speaking organization participating in the parade. FIEL members, including myself, took part in the parade and drove through Greenspoint neighborhoods raising awareness about the census through vocal outreach to residents in Spanish and English. We talked to a gathering of community members and various individuals from our vehicles. During the course of the hour and a half long parade I estimated based on my experience in organizing that FIEL members spoke to about 200 individuals, encouraging them to participate in the census and reach out to us for questions about the process. While some individuals were receptive to our messages, about half of the people we engaged with were apathetic. Unfortunately, of all the individuals we personally engaged with, only one person said to us they already filled out census. By my estimation, about 85% of the individuals who expressed apathy about the census were Latino. Based on my knowledge of and experience working with the Greenspoint community, many Latinos in Greenspoint come from mixed-status families who are afraid to engage in the census due to their perception that undocumented individuals could be targeted by the government through the census.

7.   If FIEL did not have to expend extra efforts to encourage, reiterate or persuade people about the importance of census participation especially individuals who genuinely fear or have apathy about it due to their perception that undocumented individuals will not be counted and could be targeted for immigration purposes by the census it would free up a significant amount of time and resources for FIEL.   As noted previously many of the individuals we serve as well as many of our members, come from mixed-status families where one or more family members may be undocumented. Although it normally takes a few minutes to educate and inform each individual about census participation, the amount of time and personnel resources collectively used by our organization to overcome the confusion and fear caused by the Presidential Memorandum is significant for a nonprofit organization like FIEL.   We could otherwise use that time to promote our other services, like our COVID relief and GOTV efforts.   For example, we would be able to provide other services and information to our clients during our time-limited appointments at our physical office, or we would be able to serve more people during our office hours.   We would be more productive in our mission.

8.   Even with only a limited amount of time left before the end of the count, having a legal mandate to reassure people they will be counted for the purpose of determining Texas' congressional seats and electoral vote would help us encourage census responses among the community we serve through our public communications.   Every additional day to engage in census outreach without having to fight the misinformation of the Presidential Memorandum would allow FIEL to engage in more efficient

and effective outreach, if not in person through our communication streams.   FIEL would be able to employ conventional media, such as press releases, press conferences, and press statements, given our relationships with TV and radio media within both Spanish language and English language networks.   We would also be able to employ our large social media network through platforms such as Facebook, Twitter and Instagram.   All of these avenues of communication would be available to us, even for last minute pushes to amplify our census outreach and encourage our community and constituents to fill out the census.

I, Cesar Espinosa , declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and recollection.

Dated: Houston, Texas
           Aug. 23, 2020

/s/   <u>CESAR ESPINOSA</u>
Cesar Espinosa

Exhibit 63

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

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20-CV-5770 (JMF)

STATE OF NEW YORK, ET AL., PLAINTIFFS

v.

DONALD J. TRUMP, IN HIS OFFICIAL CAPACITY
AS PRESIDENT OF THE UNITED STATES, ET AL.,
DEFENDANTS

———————

20-CV-5781 (JMF)

NEW YORK IMMIGRATION COALITION, ET AL.,
PLAINTIFFS

v.

DONALD J. TRUMP, IN HIS OFFICIAL CAPACITY
AS PRESIDENT OF THE UNITED STATES, ET AL.,
DEFENDANTS

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SUPPLEMENTAL DECLARATION THEO OSHIRO

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THEO OSHIRO, pursuant to the provisions of 28 U.S.C. § 1746, declares under penalty of perjury as follows:

1. As explained in my August 6, 2020 Declaration, I am the Deputy Director at Make the Road New York ("MRNY") and in my capacity as Deputy Director, I am responsible for overseeing our census work and our services teams, which include our legal, health, and adult education departments. I am also part of the Executive Leadership Team of MRNY and am responsible for fundraising and shaping many of MRNY's organizational

priorities. Throughout my tenure with MRNY, I have been in regular contact with MRNY members and I frequently meet with members in the communities in which they reside where I learn about their neighborhoods, their needs, and their concerns to inform communications, organizing, and civic engagement programs for MRNY. During my 15 years at MRNY, I have also familiarized myself with MRNY's internal records and processes; our staff and their responsibilities; our programs and program areas; and our members, and their needs.

2. As discussed in my August 6, 2020 Declaration, the Presidential Memorandum has required MRNY to make additional investments to achieve Census participation rates comparable to what we what would have achieved absent the decision to exclude undocumented immigrants from the apportionment base.

3. Since executing my August 6 declaration, I have received further information from the staff conducting our outreach to the Spanish-speaking immigrant community concerning the impact of the Presidential Memorandum on census response rates. One staff member reported that a Spanish-speaking community member asked her about the President's memo and said that the announcement of a plan to exclude undocumented immigrants from apportionment made them afraid to fill out the census. Another staff member reported that she had spoken to three Spanish-speaking people who said they were afraid to fill out the census because of the President's announcement about excluding undocumented immigrants from apportionment. The same staff member reported that during her follow-up census outreach calls since early August, she had noticed an appreciable

decline in the number of Spanish-speaking individuals answering their phones, which she attributed to a desire not to talk about the census. A third staff member reported that during census outreach, she encountered a Spanish-speaking family who told her that they were convinced by the President's statements that undocumented people should not be included in the Census and therefore decided not to participate in it. This staff member tried to explain that undocumented people should still be counted in the Census; however, the call was upsetting for her and took up time that could have been spent encouraging other households to fill out the census.

4. Overall, MRNY is continuing to divert resources to combat the misinformation, confusion, and feelings of exclusion that have resulted from the Presidential Memorandum.

5. If the court were to issue an injunction against the policy in the Presidential Memorandum or to declare it unlawful, it would help MRNY conduct more efficient and effective census outreach to our members and the community we serve, and allow us to reach more people and to divert some resources back to other mission critical priorities during the pandemic, including ensuring that there is adequate employment, education, housing and health support for our members and their families

I, Theo Oshiro, declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and recollection.

Dated: Aug. 24, 2020
          Croton-on-Hudson, N.Y.

                /s/   <u>THEO OSHIRO</u>
                     THEO OSHIRO

Exhibit 64

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

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20-CV-5770 (JMF)

STATE OF NEW YORK, ET AL., PLAINTIFFS

v.

DONALD J. TRUMP, IN HIS OFFICIAL CAPACITY
AS PRESIDENT OF THE UNITED STATES, ET AL.,
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20-CV-5781 (JMF)

NEW YORK IMMIGRATION COALITION, ET AL.,
PLAINTIFFS

v.

DONALD J. TRUMP, IN HIS OFFICIAL CAPACITY
AS PRESIDENT OF THE UNITED STATES, ET AL.,
DEFENDANTS

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SUPPLEMENTAL DECLARATION JENNY SEON

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Jenny Seon, pursuant to the provisions of 28 U.S.C. § 1746, declares under penalty of perjury as follows:

1. I am the Legal Service Director for Plaintiff Ahri for Justice ("Ahri"). I am a founding member of Ahri and have been on staff since December 2019. I am over 18 years of age. I have personal knowledge of the facts stated in this declaration.

2. This declaration supplements my declaration dated August 5, 2020 in this case.

3.   Ahri provides legal services, has a hotline to address community concerns, and conducts civic engagement work, including census-related outreach.   As part of our census outreach, we have a goal to contact at least 10,000 individual households to encourage them to fill out the census.   We also provide information about the census to our legal services clients and to individuals who call our hotline.   After news of the July 21, 2020, Presidential Memorandum to the Secretary of Commerce ("Presidential Memorandum"), we began to hear concerns from the community concerning the impact of the Presidential Memorandum on the census.   Households that already responded to the census are concerned that they improperly responded, while households that have not yet responded to the census are hesitant to respond because they either believe they are not permitted to respond, or because they fear identifying their household to the federal government.

4.   Although our team has continued to encourage households to respond to the census by highlighting its importance to funding and redistricting, the Presidential Memorandum makes messaging difficult.   We have informed our clients and constituents that we are now involved in a lawsuit to challenge the Presidential Memorandum, but the fact remains that the Memorandum is still in effect.   For this reason, we are spending a longer amount of time trying to convince households to respond to the census, time that could be spent contacting additional households and on our other program areas. With the September 30 deadline quickly approaching, a court order invalidating the Presidential Memorandum would make our census outreach efforts more efficient and effective.   Our messaging to our community would change from "we are trying to stop the Presidential

Memorandum but are not there yet," to "a federal court has halted the Presidential Memorandum." Every single day that we can tell our constituents that they will count for apportionment purposes and that the federal government is not permitted to identify the immigration status of individuals or households to exclude them from apportionment is valuable and will help with outreach.

5. We know this kind of messaging works. We often get questions like, "Do I have to reveal my status on the census?" We immediately quell this concern by pointing to the citizenship question injunctions. We believe that similar messaging that the Court has enjoined the Presidential Memorandum will help to immediately quell community concerns about the Memorandum, making conversations shorter to allow Ahri to reach a larger number of households.

6. Getting relief from the Presidential Memorandum as soon as possible is also key to ensuring that census door knockers have success. With relief from the Memorandum, we can publicize the Court's order to encourage our community to open their doors to census outreach workers, rather than hiding out of confusion or fear and avoiding the census completely.

7. Ahri is already preparing to shift our messaging as soon as the Court grants relief. Since our communications team first learned that Plaintiffs had filed a motion for a preliminary injunction, they have continued to follow-up for updates so that so we can start doing outreach. If the Court issues an order granting Plaintiffs relief, we plan to immediately contact Korean news media, issue press releases, and do social media to let our community know about the order and encourage the community to respond to the census.

I, Jenny Seon, declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and recollection.

Dated: Aug. 24, 2020 in Los Angeles, California

/s/ <u>JENNY SEON</u>
JENNY SEON

Exhibit 65

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

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20-CV-5770 (JMF)

STATE OF NEW YORK, ET AL., PLAINTIFFS

v.

DONALD J. TRUMP, IN HIS OFFICIAL CAPACITY
AS PRESIDENT OF THE UNITED STATES, ET AL.,
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20-CV-5781 (JMF)

NEW YORK IMMIGRATION COALITION, ET AL.,
PLAINTIFFS

v.

DONALD J. TRUMP, IN HIS OFFICIAL CAPACITY
AS PRESIDENT OF THE UNITED STATES, ET AL.,
DEFENDANTS

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**EXPERT REPLY DECLARATION OF
MATTHEW A. BARRETO, Ph.D.**

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I.   Overview

1.   I submitted a declaration in this case on August 7, 2020 ("Declaration").   I have read the expert disclosures by Dr. John M. Abowd, dated August 19, 2020 ("Abowd Decl.") and Albert E. Fontenot, Jr., dated August 19, 2020 ("Fontenot Decl.") as well as the Memorandum of Law in Support of Defendants' Motion to Dismiss and in Opposition to Plaintiffs' Motion for Partial Summary Judgment or Preliminary Injunction, dated

August 19, 2020 ("Defendants' Brief") and am prepared to offer rebuttal points on behalf of the Plaintiffs.

2.   Below, I address comments directed at, or related to my report from the Abowd Decl., Fontenot Decl., and Defendants' Brief.   Where there is overlap, I have made clear which document I am referring to and attempted to use paragraph and page numbers where appropriate.

II.   Abowd Declaration

3.   Dr. Abowd begins his expert opinion in paragraph 12 by noting 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 Presidential Memorandum ("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.

4.   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. Dr. Abowd does not account for this distinction. The Decennial Census is a singularly large survey instrument and, according to Mr. Fontenot (Fontenot Decl. ¶ 7), as of August 18, 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.

5. In paragraph 13 of his declaration, Dr. Abowd opines that the Census Bureau's own pilot study of the citizenship question in June-August 2019 ("2019 Census Test") did not return statistically significant evidence of reduced response rates due to the inclusion of a citizenship question on the questionnaire. However, this opinion is not entirely accurate. Dr. Abowd's opinion focuses solely on the overall response rate and fails to mention that the Census Bureau's 2019 Census Test 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"[1] 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."[2] 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

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[1] 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.

[2] 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*).

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.

6. Further, the 2019 Census Test only examined self-response rate—it did not investigate how inquiring into citizenship status affects the success of NRFU nor did the Test examine imputation. These are both items the Test could have studied if the Census Bureau wanted to fully understand the impact of linking the Census to citizenship issues, but it did not. As the 2019 Census Test report readily admits, the study was designed to understand staffing needs for the 2020 Census, not to scientifically evaluate the full and total response and non-response rates by race, ethnicity and immigration status.

7. The 2019 Census Test cited by Dr. Abowd cannot account for the more direct targeting of undocumented immigrants by the PM. The study Dr. Abowd cites cannot provide a complete picture of the immigrant response rate in the presence of an official Presidential policy statement targeting the removal of undocumented persons from the census count. While the citizenship status question would have been threatening (as reflected in the reduced participation reported in the 2019 Census Test), the PM is more explicit 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."[3] Indeed, they are correct, there has been

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[3] *2019 Census Test Report*, at 12.

widespread media attention to the PM which will reduce participation in immigrant communities.

8.   Finally, the 2019 Census Test was conducted to analyze participation during the self-response period of the census, not during the NRFU period.   The PM was issued during the NRFU period of the 2020 Census, in which the deterrent effects of the PM are likely to be magnified compared to the self-response period.   The result is that the conclusions about response rates during the initial self-response period that Dr. Abowd relies upon are less relevant in understanding the effect of the PM at this juncture of the enumeration during NRFU. The Census Bureau writes of its 2019 Census Test: "The focus of this analysis is to understand how the citizenship question affects self-response rates *prior to* the NRFU operation.   As such, the results of this test are *limited* to the self-response timeframe prior to the start of NRFU.   The self-response rates discussed in this analysis do not try to mimic the final overall self-response of a census, which includes self-response received during NRFU and other field operations."[4]

9.   However, the single most important takeaway from the 2019 Census Test is what Dr. Abowd neglected to mention, i.e., the 2019 Census Test found that the citizenship question did result in statistically lower response rates for Latinos, Asians, non-English speakers and noncitizens.   The largest gap reported was in high-density Hispanic areas where the 2019 Census Test reported a drop-off of 1.1 percent which would reduce the Hispanic count by over 670,000 according to the Census Bureau's data.

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[4] *2019 Census Test Report*, at 12.

10. Original Table 12 from 2019 Census Test Report[5]

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.

11. 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.

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[5] Tables 12, 9, 8 all from: https://www2.census.gov/programs-surveys/decennial/2020/programmanagement/census-tests/2019/2019-census-test-report.pdf

12. 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.

13. Moreover, because the 2019 Census Test only examined self-response rate, it did not investigate the success of NRFU, nor did it examine imputation.[6] As the Census Bureau report readily admits, the pilot study was designed to understand staffing needs for the Census, not to scientifically evaluate the full and total response and non-response rate by race, ethnicity and immigration status.[7]

14. The PM is potentially even more disruptive than a citizenship question 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

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[6] According to the report, at p. x, "Note that this test did not include the Nonresponse Followup operation, so we are not able to measure the impact of a citizenship question for the completeness and accuracy of 2020 Census overall."

[7] *See* 2019 Census Test Report, at x, 30-31.

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 Non-Response Follow-Up ("NRFU") operations. The PM remains in effect while Census enumerators are in the field, visiting households for in-person interviews as well as ongoing 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 nongovernmental organizations, particularly in immigrant communities and communities of color, it would be 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.

15. As I note in my Declaration at page 4, paragraph 15 "there was widespread coverage, particularly within Spanish-language news media," of the July 21 PM, which is to be expected given such a major announcement by the President.[8] Despite extensive news coverage, the

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[8] 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-censoque-no-incluya-los-indocumentados-en-el-recuento-que-determina-el-tmna3823616.

Census has no plans to change its field outreach to reassure immigrants of their participation. According to Mr. Fontenot, at paragraph 12 of his declaration, the PM has had "no impact on the design of field operations for decennial census, or on the Census Bureau's commitment to count each person in their usual place of residence."

16. In paragraph 15 of his report, Dr. Abowd states that the Census Bureau was not currently prepared to assess how the PM would be implemented and coordinated with data teams at the Census Bureau. Dr. Abowd's statement is consistent with testimony from the Director of the Census Bureau that he was entirely unaware of the PM prior to its release.[9] The failure to notify the Census Bureau or test the effect of the PM on Census response rates, notwithstanding the PM's relationship to the 2020 Census, shows that the announcement of the PM on July 21, 2020, in the heart of the enumeration period, was not done in accordance with the Census Bureau's practices and may have been timed to contravene those practices. Dr. Abowd opines that it is impossible to predict the effects of the PM on apportionment at this time; however, he does not dispute that

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[9] Tara Bahrampour, House Democrats grill Census director on Trump order to exclude undocumented immigrants from apportionment, Wash. Post, July 29, 2020, https://www.washingtonpost.com/local/social-issues/house-democrats-grill-census-director-ontrump-order-to-exclude-undocumented-immigrants-from-apportionment/2020/07/29/9c7da852-d1e1-11ea-8c55-61e7fa5e82ab_story.html ("Bureau Director Steven Dillingham told the House Oversight Committee that he had no advance notice of President Trump's memorandum, which directs the Commerce Department to exclude undocumented immigrants from being counted next year when Congress reapportions a decade's division of House seats.").

the PM will have a chilling-effect on Latino and immigrant participation right now, during the response period and during NRFU.

17. 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 and does 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 *may have affected respondent behavior during this test*. There was media coverage on the citizenship question both before and after the Supreme Court decision was made public on June 27, 2019. *Public opinion on the topic may have influenced response behavior for this test*. 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."[10]

18. In paragraph 16 of his declaration, Dr. Abowd reiterates his concerns about the impact of COVID-19. I have responded to this above, however, it bears reiter-

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[10] *2019 Census Test Report*, at 12 (emphasis added).

ating that there is no evidence that the significant challenge of conducting the Census during the pandemic subsumes entirely the negative effect on response rates of the PM or any other phenomena. Dr. Abowd does not address decades of published research, including Census Bureau studies, that find reduced participation by immigrant communities in the face of new threats, which the PM represents.

19. In paragraph 17 of his declaration, Dr. Abowd opines that a randomized trial would be the best way to assess the effects of removing threats to immigration status on response rates. First, in our 2018 study—for which Dr. Abowd does not dispute the substantive results—we did rely on randomization and experimental survey research to assess the effect of including or excluding a citizenship question.[11] Survey respondents were randomized and one-half were given a condition in which they were told a citizenship question would in fact be included on the census; while the second-half of respondents was randomly assigned to a condition in which they were told the citizenship question would not be included. This follows the exact same principle of randomized control trials that Dr. Abowd recommends. In that 2018 study, as described in paragraph 68 on page 11 of my Declaration, we observed a large and statistically significant increase in response rate in the condition without the citizenship question. In particular, Latino respondents who had previously indicated a desire to not respond, registered a 41.2 point increase in

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[11] Barreto, Matt 2018. "Expert Report of Matthew A. Barreto, Ph.D" in *State of New York v. U.S. Dep't of Commerce* (Sept. 7, 2018).

response rate once the citizenship question was removed. While the sample size of our 2018 study is not as large as the 2019 Census Test, the results of our 2018 study are significant and the patterns are consistent with the Census Bureau's own research from their 2019 pilot study.

20. Dr. Abowd has offered no such randomized trial study to demonstrate that the PM will *not* cause response rates to decline. Instead, the only randomized control trial that Dr. Abowd cites shows the opposite, i.e., A) media coverage of census citizenship issues can affect response rates; and B) the citizenship question significantly reduced immigrant and Latino response rates. Indeed, in my August 7 Declaration, I cite 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). Without exception, every single research study finds that when a new threat emerges, immigrants, especially the most vulnerable, will withdraw and reduce civic participation. I am aware of no rigorous published social science research that finds increased threat has no debilitating effect.

21. In paragraph 18 of his declaration, Dr. Abowd explains that later in the NRFU process, enumerators

may seek to get a simple total person count of a household, and not full characteristics of each household member, and suggests that during such interactions, households do not have the same incentives to avoid responding or misrepresenting the number of people in the household. However, Dr. Abowd's opinion misses three key points. First, 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 be not 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."

22. Second, 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. Finally, Dr. Abowd predicates an opinion on the assumption that NRFU will be full and complete as originally planned and not impacted by the PM; however, Dr. Abowd's point is speculative, and based on no empirical evidence that NRFU will reach the required level of completeness.

23. In paragraphs 19 and 20 of his declaration, Dr. Abowd discusses imputation and opines that COVID-19 pandemic will make it very difficult to predict which neighborhoods will need more, or less imputation. However, the unpredictability reinforces the point about imputation being prone to problems when there is a low or unequal response rate to the Census. 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 nonresponse 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.

III. Fontenot Declaration

24. Albert E. Fontenot, Jr. is Associate Director for Decennial Census Programs and primarily offered information about operations in his report. Mr. Fontenot did not directly respond to any of the claims or evidence in my Declaration. However, some of Mr. Fontenot's points support the conclusion that the PM introduces a new variable into the equation which the Census Bureau is not taking into account.

25. In paragraph 5 of his declaration, Mr. Fontenot describes the current plans for the Census in the final critical weeks of field data collection. He states that the Census Bureau will send more enumerators into the field during the remaining response period; however, in paragraph 12, he states that the PM "has had no impact on the design of field operations for decennial census." Thus, Mr. Fontenot indicates that the Census Bureau will not be adding any new training related to discussing

concerns in the immigrant community related to the PM. In prior census research, Census Bureau ethnographer de la Puente has explained that it is important to a successful enumeration to understand immigrant community concerns about responding to the census, and to equip Census enumerators with information to reassure vulnerable populations that their participation is safe. In this case, the PM creates a new reason for concern in immigrant communities, yet Mr. Fontenot makes clear that the Census Bureau has made no changes to their outreach to account for the PM and its effects. The decision not to make any changes to field operations to address the PM is a major shortcoming, and not consistent with best practices recommended by their own internal published research.

26. In paragraph 7 of his declaration, Mr. Fontenot states that the initial phase of the Census returned a 64 percent self-response rate. To date, the initial NRFU increased response rate to 71 percent of all households. These data indicate that among the 36 percent of households that did not respond, 7 percent did respond to NRFU (64+7=71) and that 29 percent of households have not responded to NRFU to date. These results indicate a very low response rate during initial NRFU of 19.4 percent (7 / 36 = 19.4). While COVID-19 is again cited as a difficulty, the introduction of the new PM adds even more difficulty, particularly in immigrant communities. There is no indication in Mr. Fontenot's declaration that the Census Bureau is prepared to improve their outreach to vulnerable populations in response to the PM.

27. In paragraph 8 of his declaration, Mr. Fontenot states that the Census Bureau will increase the number

of employees and work hours to increase field operations, in light of a shortened calendar period. However, increasing the presence of federal Census enumerators into high density non-citizen communities actually runs the risk of further reducing participation in the face of fear and threat. In my Declaration, I outline clear findings from published social science research reporting that increased perceptions of monitoring leads to reduced participation among immigrants (Berk and Schur 2001; Cruz-Nichols, LeBrón and Pedraza 2018; Kissam 2019; Asad 2020). The PM sends a clear signal of monitoring because it states it is using government administrative records to locate and identify where undocumented immigrants live, and to merge those records with Census data to exclude undocumented immigrants from the final count for purposes of apportionment. While increased enumerators might have helped in an environment without the PM, the new PM changes things by sending a new signal of threat to immigrant communities.

28. In paragraph 10 of his declaration, Mr. Fontenot states that the Census Bureau will keep personally-identifying information confidential. However, when immigrants have concerns over immigration enforcement, even providing those assurances does not help. Extensive social science research documents that immigrants will attempt to conceal their identity, even misidentify their race on government forms when they have concerns that it could be connected to immigration enforcement (Rodriguez and Hagan 2004). What matters is how immigrant communities perceive the threatening environment, not that Mr. Fontenot understands that the law requires the Census Bureau to keep respondent information confidential—he is not the target of the PM.

The PM has deteriorated the trust that Census workers and the Census Bureau's partners—the organizations relied upon to be trusted messengers to immigrant communities and communities of color—have built up since the 2019 Supreme Court ruling which blocked the inclusion of a citizenship question from the 2020 Census questionnaire.

29. In paragraph 35 of my Declaration, I identified reports from the non-governmental organizations who are working in partnership with the Census Bureau to act as trusted messengers for census outreach in the immigrant community which stated that the new PM changes the landscape for encouraging census response for the worse:

> 35. 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. Vargas stated on Twitter: *"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 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"

Given that NALEO has been aligned with the Census Bureau in terms of the importance of encouraging census response by immigrants and Latinos, Mr. Vargas' comment indicates that the PM is actively undermining the Census Bureau's collaborative outreach efforts with its trusted messengers.

30. However, Mr. Fontenot makes clear that the Census Bureau has made no attempt to change its approach and incorporate new training, or new outreach to alleviate fears in the immigrant community as a result of the PM. The overwhelming finding in the published research is that new threats result in new withdrawal and the Census Bureau is not prepared for that.

IV. Defendants' Brief

31. Finally, while the Defendants make reference to the points above by Dr. Abowd and Mr. Fontenot, there are additional criticisms they raise—unsupported by any evidence of their own—which I will address in this section.

32. On pages 12-13 of their brief, Defendants claim that the extensive evidence and published studies which I rely upon in part to conclude that the PM will create a chilling effect on census participation are not specific to the PM. Designing, testing, conducting and analyzing a randomized control field trial on the effect of the PM on census participation within a month of the PM's publication is an insurmountable task. However, the expansive social science literature, much of which are my

own studies and published research, addresses conditions remarkably similar to the PM and is specific to new instances of perceived threat. Tellingly, while demanding an impossible type of new research, neither Defendants, nor Dr. Abowd, nor Mr. Fontenot, cite any studies indicating that the PM will not negatively impact participation. 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. Based on the extensive research I have conducted, I am confident that the research reviewed in my Declaration, which all points to increased perceived threat and withdrawal or decline in participation in immigrant communities, is applicable to the PM.

33. On page 13, Defendants state that I did not consider the results of the 2019 Census Test on the citizenship question. As I reviewed above in paragraphs 5-13 above, findings concerning participation by subgroup in the 2019 Census Test show clear evidence of reduced participation in Latino and immigrant communities.

34. On page 16, Defendants state that my analysis of media coverage of the PM is misguided because "the media, and the community activists they feature, are independent actors," and not part of the Census Bureau. However, 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 partnerships for the U.S. Census Bureau wrote on a census.gov website[12] that the Census 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 has described Spanish-language media and Latino community groups as "national partners during the 2020 Census." Defendants' cognitive dissonance is astounding; stating on the one hand that Spanish-language media and community groups are the "trusted voices" whose cooperation is integral to their field operations to encourage census participation, and then also claiming that those groups are independent actors with no connection to the Census who are simply fearmongering in their concerns about the PM. As recently as March 2020, the Census Bureau continued to partner with Spanish-language media to promote information about the Census. They are not "independent actors" as Defendants suggest. In fact, the Census Bureau continues to feature its partnership with Univision on its web site.[13]

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[12] 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.

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

35. Additionally, with respect to the organizations that Defendants derisively call "community activists," 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*, Dr. 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."[14]

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 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 communities with low response rates and that having the so-called *trusted voices* is critical to getting an accurate final count.[15]   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

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

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

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 paragraph 23 above and paragraph 35 of my August 7 declaration. 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."

36. I reserve the right to amend or supplement my opinions if additional information or materials become available. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on Aug. 25, 2020 in Los Angeles, CA.

/s/   Matthew A. Barreto
      MATTHEW A. BARRETO

References

Abrego, L. J. (2011). Legal consciousness of undocumented Latinos: Fear and stigma as barriers to claims-making for first-and 1.5-generation immigrants. *Law & Society Review*, *45*(2), 337-370.

Amuedo-Dorantes, C., & Arenas-Arroyo, E. (2019). Immigration enforcement, police trust, and domestic violence. *Unpublished manuscript. Retreived on October*, *28*, 2019.

Arbona, C., Olvera, N., Rodrigues, N., Hagan, J., Linares, A., & Wiesner, M. (2010). Acculturative stress among documented and undocumented Latino immigrants in the United States. Hispanic Journal of Behavioral Sciences, 32 (3), 362-384. doi: 10.1177/0739986310373210

Asad, Asad L. (2020). "On the Radar: System Embeddedness and Latin American Immigrants' Perceived Risk of Deportation". In: Law & Society Review 54.1. Publisher: Wiley Online Library, pp. 133–167

Berk, Marc L., and Claudia L. Schur. 2001. "The Effect of Fear on Access to Care among Undocumented Latino Immigrants." *Journal of immigrant health* 3(3): 151-156.

Cruz Nichols, Vanessa, Alana MW LeBrón, and Francisco I. Pedraza. 2018. "Spillover Effects: Immigrant Policing and Government Skepticism in Matters of Health for Latinos." *Public Administration Review* 78(3): 432–443.

De La Puente, Manuel. 1995. "Using Ethnography to Explain Why People Are Missed or Erroneously In-

cluded 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.

Desai, Sarah, Jessica Houston Su, and Robert M. Adelman (2019). "Legacies of Marginalization: System Avoidance among the Adult Children of Unauthorized Immigrants in the United States". In: International Migration Review. Publisher: SAGE Publications Sage CA: Los Angeles, CA, p. 0197918319885640.

Dreby, Joanna (2015). Everyday illegal: When policies undermine immigrant families. University of California Press.

García, A. S. (2019). *Legal passing: Navigating undocumented life and local immigration law*. University of California Press.

Kissam, Edward. 2017. "Differential Undercount of Mexican Immigrant Families in the US Census." *Statistical Journal of the IAOS* 33(3): 797-816.

Kissam, Edward et al. (2019). "San Joaquin Valley Latino Immigrants: Implications of Survey Findings for Census 2020". In: San Joaquin Valley Health Fund.

Menjívar, C. (2011). The power of the law: Central Americans' legality and everyday life in Phoenix, Arizona. *Latino Studies*, *9*(4), 377-395

Michelson, Melissa R., and Jessica L. Lavariega Monforti. 2018. "Back in the Shadows, Back in the Streets." *PS, Political Science & Politics* 51(2): 282

Montoya, Martin. 1992. "Ethnographic Evaluation of the Behavioral Causes of Undercount: Woodburn, Oregon." Ethnographic Evaluation of the 1990 Decennial Census Report #25. Prepared under Joint Statistical Agreement 90-06 with the University of Oregon. Bureau of the Census, Washington D.C.

O'Hare, William, Yeris Mayol-Garcia, Elizabeth Wildsmith, and Alicia Torres. 2016. "The Invisible Ones: How Latino Children Are Left Out of Our Nation's Census Count."

Pedraza, Francisco I., and Maricruz Ariana Osorio. 2017. "Courted and Deported: The Salience of Immigration Issues and Avoidance of Police, Health Care, and Education Services among Latinos." *Aztlan: A Journal of Chicano Studies* 42(2): 249-266.

Rodriguez, N., & Hagan, J. M. (2004). Fractured families and communities: Effects of immigration reform in Texas, Mexico, and El Salvador. *Latino Studies*, *2*(3), 328-351.

Stepick, Alex. 1992. "Ethnographic Evaluation of the 1990 Decennial Census Report Series." Ethnographic Evaluation of the 1990 Decennial Census Report #8. Prepared under Joint Statistical Agreement #90-08 with Florida International University. Bureau of the Census, Washington D.C.

Terry, Rodney L. et al. 2017. "Exploring Inconsistent Counts of Racial/Ethnic Minorities in a 2010 Census Ethnographic Evaluation." *Bulletin of Sociological Methodology/Bulletin de Méthodologie Sociologique* 135(1): 32-49.

Vargas, Edward D. (2015). "Immigration enforcement and mixed-status families: the effects of risk of deportation on Medicaid use". In: Children and youth services review 57. Publisher: Elsevier, pp. 83-89.

Velasco, Alfredo. 1992. "Ethnographic Evaluation of the Behavioral Causes of Undercount In The Community of Sherman Heights, San Diego, California." Ethnographic Evaluation of the 1990 Decennial Census Report #22. Prepared under Joint Statistical Agreement 89-42 with the Chicano Federation of San Diego County. Bureau of the Census, Washington, D.C.

Yoshikawa, Hirokazu (2011). Immigrants raising citizens: Undocumented parents and their children. Russell Sage Foundation.

Szkupinski Quiroga, S., Medina, D. M., & Glick, J. (2014). In the belly of the beast: Effects of anti-immigration policy on Latino community members. *American Behavioral Scientist*, *58*(13), 1723-1742

Watson, Tara (2014). "Inside the refrigerator: Immigration enforcement and chilling effects in Medicaid participation". In: American Economic Journal: Economic Policy 6.3, pp. 313–38.

Exhibit 66

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

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20-CV-5770 (JMF)

STATE OF NEW YORK, ET AL., PLAINTIFFS

v.

DONALD J. TRUMP, IN HIS OFFICIAL CAPACITY
AS PRESIDENT OF THE UNITED STATES, ET AL.,
DEFENDANTS

———————

20-CV-5781 (JMF)

NEW YORK IMMIGRATION COALITION, ET AL.,
PLAINTIFFS

v.

DONALD J. TRUMP, IN HIS OFFICIAL CAPACITY
AS PRESIDENT OF THE UNITED STATES, ET AL.,
DEFENDANTS

———————

**EXPERT REPLY DECLARATION OF MR. JOHN
THOMPSON**

———————

I. Introduction

1. On July 21, 2020, President Trump issued a
    Memorandum for the Secretary of Commerce on
    *Excluding Illegal Aliens from the Apportion-
    ment Base Following the 2020 Census* (in the re-
    mainder of my statement, I will use the term
    "Memorandum" to refer to this document).

2. I prepared and executed a declaration for this case on August 6, 2020 ("Declaration").[1] In my Declaration, I stated: "It is my opinion that the effects of the Memorandum on the current macro environment are likely to be as great if not greater than the addition of a citizenship question. Therefore, immigrants and the families of immigrants will be reluctant to participate in the Nonresponse Followup ("NRFU") and many will not be enumerated.   It is also likely, in my opinion, that this reluctance to participate will extend to other hard-to-count populations as well. The issuance of the Memorandum has significantly increased the risk of larger total and differential undercounts, relative to previous censuses."

3. The Census Bureau conducted the 2019 Census Test, a nationally representative randomized experiment designed to study the potential impact on self-response of including a citizenship question on the 2020 Census questionnaire.[2]   This was a well-designed randomized control test that compared the effects of adding a citizenship question to the 2020 Census questionnaire.   I have carefully read the final report for this test, and the results are consistent with and, in fact, bolster the opinion that I expressed in my Declaration.

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[1] *See State of New York, et al. v. Trump*, et al., 20-CV-5770 (JMF), and *New York Immigration Coalition, et al. v. Trump, et al.*, 20-CV-5781 (JMF), Doc. 57.

[2] US Census Bureau, *2019 Census Test, Final Report*, December 30, 2019.

4. Because the test found that there was no statistically significant difference in overall self-response rates between households that received a questionnaire with the citizenship question and those that received a questionnaire without the citizenship question, the Census Bureau concluded that the addition of a citizenship question would not have affected staffing needs for NRFU. However, the Census Bureau, by design, did not investigate what effect the inclusion of the citizenship question would have on increasing undercounts of immigrant and hard-to-count communities. Furthermore, as I will discuss below, adequately staffing NRFU is not sufficient to obtain a complete and accurate enumeration of the traditionally hard-to-count populations.[3]

5. Importantly, the 2019 Census Test contained additional findings that I believe are relevant to understanding the likelihood that the Memorandum will negatively impact response rates, and the potential for the Memorandum to significantly increase the risk of larger and total undercounts relative to previous censuses.

6. In particular, the 2019 Census Test found that 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

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[3] It should be noted that if the Census Bureau fails to meet its hiring goals for NRFU, then undercounts would most likely follow.

the citizenship question. These differences were observed for the following:

- Mail respondents.

- Tracts designated to receive bilingual materials.

- Tracts with greater than 4.9 percent noncitizens.

- Tracts with greater than 49.1 percent Hispanic residents.

- Tracts with between 5.0-20.0 percent Asian residents.

- Housing units within the Los Angeles Regional Census Center and New York Regional Census Center boundaries.

7. In addition, the proportion of those who identified as Hispanic (and were listed as the first person on the questionnaire) was statistically significantly lower for the treatment with the citizenship question.

8. These results indicate that the citizenship question would have seriously affected the propensity of many of the hard-to-count communities to self-respond to the 2020 Census. As I discussed in my Declaration, it would follow that they would also be less likely to participate in NRFU resulting in undercounts of immigrants and the families of immigrants, as well as all of the traditionally hard-to-count communities. Accordingly, there would be a significant risk that these undercounts would be larger than were observed in previous censuses.

9. In conclusion, the 2019 test further demonstrates that the addition of a citizenship question to the 2020 Census questionnaire would lower self-response for populations at risk of being undercounted. This bolsters my opinion that the Memorandum will have a similar, if not greater, effect on the macro environment in which the 2020 Census is being conducted, particularly for NRFU.

10. The Census Bureau must do a lot more than simply hire enough enumerators to meet their staffing goals for NRFU in order to achieve a fair and accurate count of all populations and areas. They and their partners[4] must create the kind of macro environment that convinces the traditionally hard-to-count populations to fully participate in the 2020 Census, and importantly to accurately respond in NRFU.

11. The Memorandum is a major barrier preventing the Census Bureau and its partners from creating such a macro environment. Furthermore, it is my opinion, that a timely ruling from a court enjoining the Memorandum would greatly help the Census Bureau and its trusted partners in

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[4] In my original Declaration, I discussed the Census Bureau's partnership program. These partners include advocacy organizations, local governments, religious leaders, and many other community organizations. The Census Bureau recruits these partners to help deliver messages to the communities that they work with about the importance of responding to the census and the confidentiality of these responses. A critical component of the message from trusted voices is that the Census Bureau does not share any identifiable information with any outside entities including law or immigration enforcement.

their efforts to convince hard-to-count popula-
tions, such as immigrant populations, that they
can trust the Census Bureau and should respond
to the census.

12. As explained in my Declaration, the role of
trusted partners was developed during my ten-
ure at the Census Bureau before the 2000 Cen-
sus, and used to great effect in both the 2000 and
2010 Censuses to help reach hard-to-count pop-
ulations. The Memorandum is limiting what
has previously proven to be a very effective pro-
gram to help increase census responses because
it undermines the message that the Census Bu-
reau is trustworthy and is not seeking to single
out immigrants or individuals without legal sta-
tus.

13. A court order enjoining the Memorandum would
mitigate the damage because it would allow
trusted partners to better explain during their
outreach that all individuals will in fact be counted
for apportionment, and bolster the advocacy that
these partners do within their communities
about the trustworthiness of the Census Bureau
—supporting the point that the Census Bureau
is not singling out immigrants and individuals
who do not have legal status. Messaging refuting
the proposal in the Memorandum would help im-
prove the effectiveness of efforts by the Census
Bureau and its trusted partners to convince in-
dividuals to respond to the 2020 Census during
NRFU.   And it would help the Census Bureau
better carry out its mission to conduct a fair and
accurate enumeration in the 2020 Census.

Executed on Aug. 24, 2020 at Bend, Oregon.

I declare under penalty of perjury that the foregoing is true and correct.

/s/ <u>JOHN THOMPSON</u>
JOHN THOMPSON

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

———————

20-CV-5770 (RCW) (PWH) (JMF)

STATE OF NEW YORK, ET AL., PLAINTIFFS

v.

DONALD J. TRUMP, IN HIS OFFICIAL CAPACITY
AS PRESIDENT OF THE UNITED STATES, ET AL.,
DEFENDANTS

———————

ORDER

———————

Before: RICHARD C. WESLEY, United States Circuit
Judge, PETER W. HALL, United States Circuit Judge,
JESSE M. FURMAN, United States District Judge

At the oral argument scheduled for **September 3,
2020** at **10:00 a.m.**, the parties should be prepared to ad-
dress the following topics and questions:

- Standing, specifically the components of trace-
  ability and redressability.   The parties should
  be sure to differentiate between the two theo-
  ries of harm that Plaintiffs allege—the "appor-
  tionment harm" and the "Census count harm,"
  see ECF No. 150, at 29—and whether or how
  each harm relates to, and would be redressable
  by, the requested relief.

- More specifically, assuming Plaintiffs are cor-
  rect that the Presidential Memorandum has a
  chilling effect on Census participation, whether
  and how would the requested relief redress
  that injury?   How effective must a remedy be

to meet the redressability requirement? To the extent that the NGO Plaintiffs have diverted, or will divert, resources to address the Presidential Memorandum, would the requested relief redress that harm?

- Additionally, to the extent that the NGO Plaintiffs have diverted, or will divert, resources to address the Presidential Memorandum, in light of *Clapper v. Amnesty International USA*, 568 U.S. 398 (2013), must those expenditures be made in response to injuries that are *themselves* sufficiently imminent and impending to satisfy Article III to constitute cognizable injury?

- Ripeness, both constitutional and prudential, and particularly with respect to the apportionment harm.

- If the Court agrees with Plaintiffs on both the threshold issues of jurisdiction and justiciability and the merits of their statutory or constitutional claims, should it enter a preliminary injunction or grant summary judgment? Does Plaintiffs' showing of harm bear on that question and, if so, how?

- If the Court rules in Plaintiffs' favor, can it grant effective relief without granting relief against the President himself?

Each side should anticipate having 20-30 minutes for its oral argument. Only one lawyer from each side will be permitted to speak on a given issue.

SO ORDERED.

Dated: Aug. 31, 2020
        New York, New York

_____/s/_____
RICHARD C. WESLEY
United States Circuit Judge

_____/s/_____
PETER W. HALL
United States Circuit Judge

_____/s/_____
JESSE M. FURMAN
United States District Judge