

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

CENTER FOR POPULAR DEMOCRACY
ACTION, *et al.*,

Plaintiffs,

v.

BUREAU OF THE CENSUS, *et al.*,

Defendants.

No. 19-cv-10917-AKH

**MEMORANDUM OF LAW IN OPPOSITION TO PLAINTIFFS' PRELIMINARY
INJUNCTION MOTION AND IN SUPPORT OF DEFENDANTS' PARTIAL
MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION**

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INTRODUCTION

In their preliminary injunction motion, Plaintiffs ask the Court to substitute its judgment for those of the career professionals who have been planning the 2020 Census for a decade and order the Census Bureau to waste nearly \$800 million of taxpayer money on non-solutions for potential problems that are moot, that may never materialize, and that the Census Bureau has the resources, expertise, and contingency planning to actually solve if they do. Plaintiffs' requests are based on the unfounded assumption that the only acceptable way to carry out each census is to replicate the previous census, but with an ever-expanding allocation of resources to do precisely the same tasks. The Census Bureau, wielding its considerable discretion, has instead spent a decade carefully implementing numerous design changes that will improve the 2020 Census over previous censuses. Plaintiffs' claims ignore these improvements, rendering their requested relief nonsensical, counterproductive, and impossible to implement before the Census begins.

Fundamentally, Plaintiffs get the 2020 Census design backwards. The 2020 Census has been designed precisely to *focus agency resources on harder-to-count areas and populations* by reducing unnecessary expenditures on counting those who will be easily counted. Moreover, beyond concentrating resources on harder-to-count areas, the 2020 Census design reserves a significant amount of funding in order to successfully count the population in the event of any unforeseen problem—be it natural disaster, terrorist attack, or even the census design not working as planned.

As established by declarations from long-term Census Bureau employees, the 2020 Census reflects the Bureau's considered choice to adopt substantial and noteworthy departures from prior censuses. Indeed, precisely because the Census Bureau is continually refining its work, one of the three items of relief that Plaintiffs request (as well as one of the claims that they do *not* seek

injunctive relief on) is moot. Plaintiffs' proposed relief would require spending money on actions that would not improve the accuracy of the count, and thus would actually undermine the decade-long efforts of thousands to ensure the best possible count of this country's people. Further, this continued litigation distracts the professionals in charge of seeing that work successfully completed.

On the merits, Plaintiffs seek to do precisely what the Administrative Procedure Act ("APA") prohibits: substitute their judgment for that of the experts in charge of the Census, and, well after the eleventh hour, have the Court radically restructure and oversee the implementation of the 2020 Census. Such an effort is beyond the scope of the APA and, even if Plaintiffs' claims are evaluated on the merits, Plaintiffs cannot establish arbitrary or capricious agency action. Plaintiffs fare no better under the Enumeration Clause. The Constitution does not require a perfect count, let alone any particular number of enumerators or physical offices. If there is any standard to apply in this area, it requires, at most, that the Census Bureau conduct an enumeration that bears a "reasonable relationship" to counting the population. The Bureau's diligent efforts far exceed that threshold.

Plaintiffs not only advance claims that are highly unlikely to succeed, but seek relief that would run profoundly contrary to the public interest and the balance of the equities. Granting injunctive relief that would throw the Census into turmoil mere weeks before the official Census start date (and well into the overall process). Doing so in order to avert the entirely speculative possibility of harm would be a severe misapplication of the preliminary injunction mechanism. That is particularly so where Plaintiffs, pointing to a document published more than a year ago, have belatedly launched a sweeping eleventh-hour attack on a complex operation years in the making.

Finally, certain of Plaintiffs' claims—at a minimum, those relating to the address canvassing phase—are also moot because they relate to completed phases of census operations or because the relief requested has already been provided for. The Court should accordingly dismiss these claims.

Accordingly, for the reasons set forth herein, the Court should deny Plaintiffs' motion for preliminary injunction, grant Defendants' prior motion to dismiss, and in the alternative grant Defendants' motion to dismiss as moot claims for which Plaintiffs do not seek injunctive relief or which have already been addressed by Defendants.

BACKGROUND

I. PROCEDURAL HISTORY

As the Government noted in its brief in support of its motion to dismiss (Dkt. No. 39) (“MTD Br.”), Plaintiffs' claims are virtually identical to those brought by the same attorneys in parallel litigation in the District of Maryland. *See* MTD Br. 6. Plaintiffs have now followed the course set out in Maryland by filing a virtually identical motion for a preliminary injunction, *compare* Dkt. No. 40 (“P.I. Br.”) *with* *Nat'l Ass'n for the Advancement of Colored People et al. v. Bureau of the Census et al.* (“NAACP”), Dkt. No. 169, No. 18 Civ. 891 (D. Md. Jan. 21, 2020), save that Plaintiffs here continue to pursue their APA claims, arguing a likelihood of success despite the fact that the District of Maryland and the Fourth Circuit have unanimously concluded that such claims are entirely without merit.

Plaintiffs' Complaint lays out five purportedly “arbitrary and irrational design choices”:

(a) plan to hire an unreasonably small number of enumerators; (b) drastic reduction in the number of Bureau field offices; (c) significant reduction in the Bureau's communications and partnership program, including the elimination of local, physical Questionnaire Assistance Centers; (d) decision to replace most In-Field Address Canvassing with In-Office Address Canvassing; and (e) decision to make only limited efforts to count inhabitants of units that appear vacant or nonexistent based on unreliable administrative records.

Dkt. No. 1 (“Compl.”) at ¶ 36.

Plaintiffs now, however, request the compelled federal expenditure of nearly \$800 million to obtain relief as to only the first three¹ of those “design choices,” asking the Court to

direct[] the Bureau to spend money already appropriated and currently held in accounts of Defendants to (1) increase outreach and communications to no less than 2010 Census levels as directed by Congress (expenditure of an additional \$127.8 million); (2) deploy a number of core enumerators whom Defendants are already hiring (but do not intend to use in the field) at no less than 2010 Census levels (expenditure of an additional \$597.2 million); and (3) increase the Bureau’s presence within Hard-to-Count communities by increasing the number of fixed Questionnaire Assistance Centers, field offices, and/or mobile questionnaire assistance units within those communities at levels commensurate to 2010 (expenditure of an additional \$45.6 million).

P.I. Br. at 33.

Plaintiffs no longer appear to request relief relating to the address canvassing program (design choice (d)) or the non-response follow up operations (design choice (e)). Yet because Plaintiffs’ challenged actions “expressly are tied to one another,” such that “[t]he sufficiency of the number of Enumerators inextricably is dependent on the other programs and decisions that the plaintiffs themselves identify,” *Nat’l Ass’n for the Advancement of Colored People v. Bureau of the Census*, 945 F.3d 183, 191 (4th Cir. 2019) (“*NAACP III*”), the Government addresses comprehensively the 2020 Census design features identified (and mischaracterized) by Plaintiffs.

II. CENSUS OPERATIONS

The 2020 Census has been exhaustively planned, and is well underway. The goal of the decennial census is to count each resident of the United States once, only once, and in the right place. Declaration of Deborah Stempowski (“Stempowski Decl.”) ¶ 3(a). The Census is a huge and difficult undertaking—approximately 330 million people living over 3.8 million square miles

¹ With respect to the second “design choice,” relating to Area Census Offices, Plaintiffs request the opening of additional field offices only as an alternative form of relief.

will be counted in just a few months—that takes a decade of planning. *Id.* ¶¶ 10, 67. The entire census operation is designed with the objective of achieving the goal of counting everyone, and this effort includes the specific aspects of the census design challenged in Plaintiffs’ Complaint. *Id.* ¶¶ 4, 6. In the Bureau’s attempts to achieve an accurate count, great efforts and the most resources are expended on those populations that are most difficult to count. *Id.* ¶ 9; Declaration of Benjamin Taylor (“Taylor Decl.”) ¶¶ 18-19; Declaration of Patrick Cantwell (“Cantwell Decl.”) ¶¶ 10, 34. In the 2020 Census, these efforts will be facilitated by incorporating a wealth of newly available technology that will make counting easier and more efficient, enabling additional resources to be focused on the hardest-to-count populations. Stempowski Decl. ¶¶ 9, 33, 46-49, 51; Taylor Decl. ¶¶ 18-19.

Address Canvassing: The Census Bureau is a recognized national leader in determining geographic area boundaries and addresses. Declaration of Deirdre Dalpiaz Bishop (“Bishop Decl.”) ¶¶ 8-11. The Census Bureau’s massive resources dedicated to geospatial information include most prominently the permanent Master Address File (“MAF”), which was developed beginning with the 2000 Census. *Id.* ¶¶ 22-23. In preparation for the 2020 Census, the Census Bureau has accepted over 100 million address records from government partners and used these to update the MAF from 2013 to 2019, including accepting 232,403 records from the City of New York for Kings County, NY, of which 100 percent matched to the MAF, and 133,467 records from Orange County, NY (including Newburgh), of which 99.98 percent matched to the MAF. *Id.* ¶ 28. The Census Bureau further implemented for the third decade the Local Update of Census Addresses Program, by which the Census Bureau accepted millions of additional addresses in 2018, including receiving 21,831 new and 13,503 corrected address records in Kings County, and 75 new and 3 corrected addresses in Newburgh. *Id.* ¶ 29. The Census Bureau also provided tribal,

state, and local governments the opportunity to submit addresses for new construction, beginning in March 2018 and continuing through Census Day, April 1, 2020; New York City and the State of New York have so far provided over 40,000 addresses within Kings County, while the City of Newburgh has declined to participate. *Id.* ¶ 30.

In addition to these operations, from 2015 to 2017, the Census Bureau conducted an in-office review of every census block in the nation (over 11 million blocks), comparing government and commercial satellite imagery from 2009 and the date of the review with housing unit counts from the MAF. *Id.* ¶¶ 34-35. Further review was then conducted from 2017 to 2019, which ultimately resulted in the identification of 12.1 percent of census blocks (encompassing 39,203,593 addresses) as requiring in-field review. *Id.* ¶¶ 36-37.

Building off of this intensive foundation, the Census Bureau launched the in-field address canvassing phase, visiting 35 percent of all census blocks in the nation (including 100 percent of those identified as requiring review) between August and October 2019. *Id.* ¶¶ 37-39. This process, now complete, has resulted in the most complete and accurate address list in the history of the Census Bureau. *Id.* ¶ 42.

Mailings and In-Field Follow-Up: Beginning in March 2020, this exhaustively compiled address list will be used to mail residents instructions to answer the 2020 Census through the internet, by mail, or over the phone. Stempowski Decl. ¶¶ 14-17. Based upon historical response rates, known levels of internet access and penetration, and demographics, residents predicted to have low online response rates will receive a full paper questionnaire on the first mailing, in addition to instructions for responding online or by phone. *Id.* ¶¶ 14-15. Follow-up mailing will ensue and every household will receive a full paper questionnaire on the fourth mailing if it has not otherwise responded to the Census. *Id.* ¶ 15.

If a household does not respond after five mailings to that address, the Bureau will analyze post office undeliverable information to determine whether that address is likely to be vacant or nonexistent. But the Bureau will not rely on those records alone to conclude that an address is vacant. *Id.* ¶ 26. Instead, it will send an enumerator—a Census Bureau employee—to confirm in-person that the address is in fact vacant or nonexistent. *Id.* ¶¶ 26-28. Enumerators are trained to assess whether the location is vacant or unoccupied and may also confirm with a “knowledgeable person”—*i.e.*, someone who knows about the address and the persons living there, such as a neighbor, rental agent, or building manager—as to whether an address is vacant or unoccupied. *Id.* ¶¶ 25-26. Even if both the postal records and the in-person inspection confirm the address is unoccupied, the Census Bureau will still send an additional mailing encouraging self-response. *Id.* ¶ 29. Critically, a single determination of a vacant or nonexistent housing unit will *not* suffice to remove the address from the Census Bureau’s enumeration; confirmation from a knowledgeable source will be required, and if no such knowledgeable source can be found *then* administrative records may be consulted to confirm that an apparently vacant or nonexistent housing unit is, in fact, vacant or nonexistent. *Id.* ¶¶ 26-29.

If the Census Bureau determines that the address is occupied, but no one is present after an in-person visit, the Census Bureau will review and cross-reference federal records, including tax and Medicare enrollment information, to determine whether the data are reliable enough to enumerate all residents of that location. *Id.* ¶¶ 28, 33, 64. If federal records are inadequate to verify residents at the address, the Census Bureau will send an enumerator to the housing unit *again*, up to *six* times, to conduct an in-person enumeration. *Id.* ¶¶ 18, 23, 65. If necessary, the hardest-to-count residences may receive more than six visits. *Id.* ¶ 18. If in-person enumerators cannot reach members of the household directly, they may also gather information about the

household—most crucially, the number of residents—from a “proxy,” such as a neighbor or landlord. *Id.* ¶ 32. This process is similar to that used in the 2010 Census, but in some respects is *more* labor-intensive—for the 2010 Census three of the default six follow-up attempts could be by phone, whereas for the 2020 Census all six attempts must be in person. *Id.* ¶ 23.

Imputation: Finally, even if the Census Bureau has not obtained the count of an occupied address through the five initial mailings, multiple in-person visits, a final non-response follow-up mailing, or a proxy interview, the housing unit will still not receive a count of zero. Instead, a number of residents will be imputed to that housing unit based on number of residents in a nearby housing unit with similar characteristics. Cantwell Decl. ¶¶ 12-15; Stempowski Decl. ¶¶ 19, 44.

Mobile Questionnaire Assistance: To further encourage responses, the Census Bureau has created an operation known as Mobile Questionnaire Assistance (“MQA”), for which it plans to spend \$110 to \$120 million. Stempowski Decl. ¶¶ 38, 41. In 2010, the Census Bureau operated physical Questionnaire Assistance Centers (“QACs”) that functioned as distribution sites for “Be Counted” forms, which were Census questionnaires that could be submitted without a Census ID. *Id.* ¶ 35. The QAC staff were not authorized to accept completed forms; rather they could only hand out the form, provide assistance if needed, and direct the respondent to a mail box. *Id.* However, because the 2020 Census is not using paper Be Counted forms, the need for QACs has been obviated for the 2020 Census. *Id.* ¶ 36. Further, the QACs proved not to be a cost-effective method to achieve non-ID self-responses in the 2010 Census, given that they identified an average of only about 20 persons from each of the approximately 39,000 locations. *Id.* ¶ 37.

In contrast, the MQA operation takes advantage of the Census Bureau’s new ability to take self-responses over the internet and in multiple languages. *Id.* ¶ 38. Over 4,000 staff hired across the country as Recruiting Assistants will be converted to working as MQA staff in March 2020,

and they will specifically target areas where respondents in hard-to-count or low response areas may be found. *Id.* In contrast to the QAC staff in 2010 (who could not even accept a response), the MQA staff will be highly mobile with the ability to visit multiple areas in a single day, thereby shifting Census's ability from merely attempting to motivate an eventual response to actually obtaining a secure, on-the-spot response. *Id.*

Enumerators: There are significant distinctions between the 2010 and 2020 Census operations that require a different approach to enumerator hiring. In 2010, enumerators relied heavily on the use of paper—questionnaires, maps, address listing pages, training materials, field manuals, time reports, and expense reports. Stempowski Decl. ¶ 46. Thus, large and numerous regional offices were needed to support the paper-based 2010 Census. *Id.* Enumerators met with their supervisors daily to exchange completed time and expense forms, receive new assignments and materials, and submit completed assignments which were then taken to the Local Census Office for check-in and processing. *Id.* In contrast, enumerators in the 2020 Census will use mobile devices to collect census responses, to receive their assignments, to submit time and expense information, and to plan their route between each location they have been assigned to visit. *Id.* ¶ 47. This process includes use of an advanced Field Operational Control System, which uses an optimizer to determine the most efficient set of cases to assign the enumerators and determines the most efficient routing of their field work. *Id.*

The Census Bureau plans to hire and deploy somewhere between 320,000 and 500,000 enumerators for the 2020 Census. *Id.* ¶ 50; *see also* Taylor Decl. ¶¶ 32-34. This range of enumerators is specifically designed to be just that: a range of enumerators, which allows the Census Bureau to adjust its deployment of enumerators as necessary after Census Day. Stempowski Decl. ¶¶ 52-53. The Bureau needs this flexibility because any number of unforeseen

disruptions are possible—from natural disasters, terrorist attacks, or an epidemic, to an unexpectedly large number of people failing to self-respond. *Id.* ¶ 58; Taylor Decl. ¶ 14. Should any need to adjust the number of enumerators arise after Census Day, the Bureau will be prepared to do so. Indeed, the Census Bureau has already prepared for a variety of contingencies, both expected and unexpected, and through this planning, the Bureau retains the ability to be flexible and devote resources where needed, rather than being hamstrung by deploying its resources up front without any indication of self-response rates. Stempowski Decl. ¶¶ 57-59; Taylor Decl. ¶¶ 20, 34.

Area Census Offices: For the 2020 Census, the Bureau determined the requisite number and location of Area Census Offices (“ACOs”) through a data-driven process based on the estimated number of enumerators needed for the 2020 Census. Stempowski Decl. ¶ 43. ACOs house the managers, staff, materials, and equipment (laptops, smartphones, tablets, etc.) needed to support the hundreds of thousands of Census Bureau employees conducting local census operations, including NRFU, group quarters, and other enumeration operations. *Id.* ¶ 45. ACOs are not open to the public—the public does not visit an ACO to be enumerated. *Id.* ¶ 44. Rather, regardless of the location of the nearest ACO, individuals will be counted either by self-responding (completing a form from any location of their choosing), through an in-person visit to their homes, through (in very rare cases) administrative records, or (in rarer cases) count imputation. *Id.* Thus, the amount of ACOs is not indicative of whether any person will or will not be counted. *Id.* ¶ 45.

ACOs are different than the Local Census Offices used for the 2010 Census. *Id.* ¶ 46. In 2010, the Bureau needed more offices with more space to support the paper-based 2010 Census. *Id.* Enumerators met with their supervisors on a daily basis to exchange completed time and

expense forms, receive new assignments and materials, and to submit completed assignments which were then taken to the Local Census Office for check-in and processing. *Id.*

In contrast, enumerators in the 2020 Census will use mobile devices to collect census responses, to receive their assignments, to submit time and expense information, and to plan their route between each location they have been assigned to visit. *Id.* ¶ 47. This includes an advanced Field Operational Control System, which uses an optimizer to determine the most efficient set of cases to assign the enumerators and determines the most efficient routing of their field work. *Id.* ¶ 47. The Census Bureau’s research and testing regarding technological advancements indicates that enumerators will be more productive and efficient than in the 2010 Census, which will likely mean fewer enumerators are required to complete the 2010 Census. *Id.* ¶¶ 48-49. It also means that enumerators do not need offices close enough to their residences to visit on a daily basis given that they will be relying primarily on their mobile devices to do their work. *Id.* ¶ 49.

Publicity and Partnerships: The Census Bureau has also been working to conduct an unprecedented Integrated Partnership and Communications campaign to communicate the importance of participating in the 2020 Census and encourage self-response from all people living in the United States, with a particular focus on increasing the participation of hard-to-count communities that have been historically undercounted. The Census Bureau has hired specialists years earlier than in the prior census; has more rigorously organized the partnership process; and has established over 8,000 Complete Count Committees,² including a New York state committee, 5 Complete Count Committees in Orange County, and a Complete Count Committee in Newburgh. Declaration of Burton Reist (“Reist Decl.”) ¶¶ 19-22. Learning from the lessons of the 2010

² Complete Count Committees unite government and community leaders who then play a pivotal role in establishing, organizing, and integrating census partners at the state, local, and tribal levels. Reist Decl. ¶ 21.

Census, the National Partnership Program has nearly doubled the number of “partnership specialists”—professional staff whose responsibility is to reach out and form partnerships with local communities and organizations to encourage self-response. *Id.* ¶¶ 6(b), 20. The Census Bureau has meanwhile eliminated the “partnership assistant” position; these positions, which were created in part in order to provide jobs with unplanned-for stimulus funds allocated as part of the American Recovery and Reinvestment Act, were determined to have little direct impact on the success of the partnership program, and have been further rendered obsolete by the shift away from the paper and pencil administrative activities performed during the 2010 Census. *Id.* ¶¶ 23-25.

The Integrated Partnership and Communications program will also feature important innovations on the communications side. For example, the program will include micro-targeted advertising and the ability to shift focus in real time to any areas or populations that appear to be responding at a lower rate. *Id.* ¶ 10. The Census Bureau plans to spend roughly \$583 million on the 2020 Census Integrated Communications Contract, or about \$128 million *more* in constant 2020 dollars than was spent for the 2010 Census. *Id.* ¶ 27. Adjusting for both population growth and inflation, the communications program will spend roughly 18% more per person for the 2020 Census than for the 2010 Census. *Id.*

A perfect census count has never been achieved. The endeavor is too challenging and too complex. But the Census Bureau tries every ten years to do the best possible count, incorporating lessons from its previous efforts, taking into account new technological capabilities and available information, and adapting to the changes that have taken place over a decade. *See, e.g.*, Cantwell Decl. ¶ 34 (“Over the decades, many researchers at the Census Bureau, including me, have devoted their life’s work trying to achieve a complete and accurate enumeration, and to reduce the

differential undercount.”). The 2020 Census has been carefully designed to do the best possible job—and the best job yet. *See, e.g.*, Stempowski Decl. ¶ 59.

LEGAL STANDARDS

When seeking to enjoin the actions of a private party and maintain the status quo, a preliminary injunction may be granted in the Second Circuit when “the movant [establishes] (1) either (a) a likelihood of success on the merits or (b) sufficiently serious questions going to the merits to make them a fair ground for litigation and a balance of hardships tipping decidedly in the movant’s favor, and (2) irreparable harm in the absence of the injunction.” *Kelly v. Honeywell Int’l, Inc.*, 933 F.3d 173, 183-84 (2d Cir. 2019) (internal quotations omitted).

However, the Second Circuit has “repeatedly stated that the serious-questions standard cannot be used to preliminarily enjoin governmental action.” *Trump v. Deutsche Bank AG*, 943 F.3d 627, 637 (2d Cir. 2019), *cert. granted*, 140 S. Ct. 660 (Dec. 13, 2019); *see also Citigroup Global Mkts., Inc. v. VCG Special Opportunities Master Fund Ltd.*, 598 F.3d 30, 35 n.4 (2d Cir. 2010) (“Where the moving party seeks to stay government action taken in the public interest pursuant to a statutory or regulatory scheme, the district court should not apply the less rigorous ‘serious questions’ standard and should not grant the injunction unless the moving party establishes, along with irreparable injury, a likelihood that he will succeed on the merits of his claim.” (brackets omitted) (quoting *Able v. United States*, 44 F.3d 128, 131 (2d Cir. 1995))).

Additionally, the Second Circuit has held that “a ‘mandatory’ preliminary injunction that ‘alters the status quo by commanding some positive act,’ as opposed to a ‘prohibitory’ injunction seeking only to maintain the status quo, ‘should issue only upon a clear showing that the moving party is entitled to the relief requested, or where extreme or very serious damage will result from a denial of preliminary relief.’” *Citigroup*, 598 F.3d at 35 n.4 (brackets omitted) (quoting *Tom*

Doherty Assocs., Inc. v. Saban Entm't, Inc. 60 F.3d 27, 34 (2d Cir. 1995)). Or, phrased slightly differently, a plaintiff seeking a mandatory injunction must show a “clear or substantial likelihood of success on the merits.” *NYCLU v. NYC Transit Auth.*, 684 F.3d 286, 294 (2d Cir. 2012).

Accordingly, whether Plaintiffs frame their relief as *prohibiting* the Census Bureau from reducing certain levels of staffing or expenditures from 2010 Census levels, or *mandating* that the Census Bureau hire additional enumerators and expend additional resources, the “fair grounds for litigation” standard urged by Plaintiffs is inapplicable. *See* P.I. Br. at 14-15.³ Plaintiffs must demonstrate both a clear likelihood of success on the merits and irreparable harm in the absence of the injunction.

Moreover, as Plaintiffs seek to enjoin a program of significant national importance, they should be required to meet the four-factor test set forth in *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7 (2008): “A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.” *Id.* at 20. Although the Second Circuit has held that the *Winter* standard is not mandatory in private injunction cases, *see Citigroup*, 598 F.3d at 38, the Second Circuit has suggested that courts considering an injunction against the government should “consider not only whether [plaintiffs] have met the governing likelihood-of-success standard but also whether they

³ Plaintiffs claim that *Carey v. Klutznick*, 637 F.2d 834 (2d Cir. 1980), employed the “fair ground for litigation” standard. That claim egregiously misreads *Carey*, which rejected the argument that the plaintiffs had succeeded only in showing a “fair ground for litigation.” *Id.* at 839. The Court explicitly found (and noted that the district court had found) that Plaintiffs had established a “likelihood of success on the merits.” *Id.*; *see also id.* (“[A]s we have already noted, the merits of this case provide more than a ‘fair ground for litigation.’”). In any event, even if *Carey* had employed the standard urged by Plaintiffs, it would have been long since superseded by the decades of controlling Supreme Court and Second Circuit law cited above.

have satisfied . . . a balance of hardships tipping decidedly in their favor, and the public interest favoring an injunction.” *Trump*, 943 F.3d at 641.

Defendants further move to dismiss certain portions of the Complaint as moot. “When a case becomes moot, the federal courts lack subject matter jurisdiction over the action.” *In re Kurtzman*, 194 F.3d 54, 58 (2d Cir. 1999) (internal quotation marks and brackets omitted). “As with other defects in subject matter jurisdiction, mootness may be raised at any stage of the litigation.” *Id.* The burden is on the plaintiff to prove jurisdiction, and the court may resolve disputed jurisdictional facts by reference to evidence outside the pleadings. *See, e.g., Dimodica v. U.S. Dep’t of Justice*, No. 05 Civ. 2165 (GEL)(FM), 2006 WL 89947, at *2 (Jan. 11, 2006).

ARGUMENT

I. PLAINTIFFS’ MOTION FOR A PRELIMINARY INJUNCTION SHOULD BE DENIED

A. Plaintiffs Are Unlikely to Succeed on the Merits

1. Plaintiffs Fail to State a Claim for Relief Under the APA

For the reasons set forth in Defendants’ motion to dismiss, Plaintiffs fail to state a valid claim—let alone establish a likelihood of success—under the APA. First, Plaintiffs fail to challenge a discrete agency action, instead mounting an impermissible programmatic attack on the conduct of the 2020 Census. *See* MTD Br. 13-17. Second, Plaintiffs seek to compel agency action without identifying any non-discretionary act that is required by law. *See* MTD Br. 17-20. Third, Plaintiffs fail to challenge a final agency action that determines rights or obligations. *See* MTD Br. 20-21.

For each of these reasons, Plaintiffs' APA claims should be dismissed, and Plaintiffs certainly cannot establish a likelihood of success on (or even a serious question going to) the merits.⁴

2. The Design and Conduct of the 2020 Census Is Not Arbitrary or Capricious⁵

Even if Plaintiffs did state a cognizable claim under the APA, they would still have to demonstrate a likelihood that they will succeed in proving that Defendants' challenged actions are "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." *County of Westchester v. U.S. Dep't of Housing and Urban Dev.*, 802 F.3d 413, 430 (2d Cir. 2015) (per curiam) (internal quotation marks and footnotes omitted). "Under this deferential standard of review, [a court] may not substitute [its] judgment for that of the agency. The scope of review under this standard is narrow because a court must be reluctant to reverse results supported by a weight of considered and carefully articulated expert opinion." *Id.* at 430-31 (internal quotation marks and footnotes omitted).

Plaintiffs fail to make this required showing with respect to *any* of the challenged aspects of the 2020 Census plan. Even if Plaintiffs' criticisms of the 2020 Census design were reasonable, their mere disagreement with the manner in which the Census Bureau has carefully planned to carry out the Census, with numerous tests, revisions, and improvements over the course of a decade, would not be adequate to meet their burden under the APA. And, Plaintiffs' criticisms are

⁴ Because Plaintiffs have not challenged a "final agency action," the Court may rely on the attached declarations from long-time Census Bureau employees to find that Plaintiffs' claims are unlikely to succeed on the merits. *See* 5 U.S.C. § 706.

⁵ The challenged actions discussed in this section are not arbitrary or capricious, and for the same reason they also bear "a reasonable relationship to the accomplishment of an actual enumeration of the population," and thus withstand Plaintiffs' constitutional challenge as well. *Wisconsin v. City of New York*, 517 U.S. 1, 20 (1996). *See infra* Part 3.

not reasonable. At base, Plaintiffs' case is grounded in the contention that, even though past censuses resulted in a differential undercount, the Census Bureau should not be permitted to innovate and should operate in exactly the same way as the censuses that produced prior undercounts. To advance this inherently dubious premise, Plaintiffs assert, based on unfounded speculation, that more spending, staffing, and offices are necessarily better, regardless of what the money is spent on and what functions the staff and offices actually fulfill. They also ignore key aspects of the 2020 Census design and presume that expenditures incurred in the 2010 Census dictate the required amount of expenditures to effectively implement the entirely different design of the 2020 Census. The approximate cost of the 2020 Census overall will be slightly higher than that of the 2010 Census. But because of the design changes, the allocation of certain costs will have changed. Plaintiffs appear to believe that spending more money on human brute force is preferable to spending on technological innovation. That difference of opinion does not merit doing away with the 2020 Census design, which is "supported by a weight of considered and carefully articulated expert opinion" and has been developed over the course of a decade. *County of Westchester*, 802 F.3d at 431 (internal quotation marks omitted).

a. The Census Bureau Has Made the Reasoned Decision to Expand the Partnership Program by Relying on a Greatly Increased Number of High-Impact Professional Staff as Compared to the 2010 Census

Plaintiffs are not entitled to injunctive relief regarding the Census Bureau's spending on its partnership program because there is simply no basis to find that the Bureau's spending decisions lack a reasonable basis, or are arbitrary or capricious. As an initial matter, Plaintiffs' requested relief for nearly \$128 million "to increase outreach and communications to no less than 2010 Census levels" is based on a faulty premise that the Bureau is spending approximately the same amount on advertising in 2020 as it did in 2010 adjusted for population growth and inflation, which

it simply is not. P.I. Br. at 5 (citing Doms Decl. ¶ 14). Plaintiffs’ calculations are based on the understanding that the Bureau’s current planned advertising spend is \$480 million. Doms Decl. ¶ 14. In fact, the Census Bureau is planning to spend at least \$583 million on advertising, over \$100 million more than Plaintiffs contend. Reist Decl. ¶¶ 27, 37; Taylor Decl. ¶ 36. Indeed, the amount spent on the advertising program for the 2020 Census represents an 18% increase in spending from 2010 adjusted for both inflation and population growth. Reist Decl. ¶ 27. And more money may be spent if necessary; specifically, the Census Bureau will increase outreach if certain populations or areas appear to be responding less than others, or less than anticipated. *See* Stempowski Decl. ¶ 59. Further, while the total spending on communications *and* partnerships may have decreased slightly when adjusted for population, the decrease is nowhere near the level assumed by the Plaintiffs’ analysis and, as discussed below, is justified given the Bureau’s reallocation of funding for partnership staff hiring.

Plaintiffs also argue the Bureau “cut . . . almost in half” the number of “partnership staff” since the 2010 Census. P.I. Br. at 5. However, their argument disregards the two different positions encompassed by the term “partnership staff,” and the different needs for the 2020 Census. In the 2010 Census, the Bureau hired approximately 2,000 administrative staff members called “partnership assistants” from a last-minute grant of stimulus funding. Reist Decl. ¶ 23. This role—which was new to the 2010 Census—did not add significant value to the goal of community outreach, and largely aided the effort by simply managing the large volume of paper that was a feature of the 2010 Census design. *Id.* ¶¶ 23-24. The Census Bureau determined that these positions would be even less worthwhile in 2020. *Id.* As a result of both the Census Bureau’s experience with the limited value of partnership assistants and the 2020 Census’s updated design to rely more on digital technology and reduce the need for managing large volumes of paper, the

decision was made to eliminate the partnership assistant role. *Id.* ¶ 24. That decision enabled the Census Bureau to nearly double the number of partnership specialists—the skilled professionals who do the substantive work central to the partnership program by actually forming and maintaining relationships with trusted partners. *Id.* ¶ 20, 25; Taylor Decl. ¶ 25. In other words, by eliminating an obsolete clerical job, the Census Bureau has been able to vastly expand the substance of the partnership program.

Further, Plaintiffs’ suggestion that the reduction in partnership assistants might affect the response rate of minority communities has no basis in fact. Rather, the decrease in partnership staffing since the 2010 Census is a direct result of eliminating the obsolete partnership assistant position, which, even during the 2010 Census, did not contribute significantly to the partnership contact rate. Reist Decl. ¶ 36. Any assumption that that each dollar spent on partnership programs has an equal impact in the number of partnerships is untrue for the same reason: a dollar spent on a partnership specialist is worth far more in terms of developing contacts and partnerships than a dollar spent on a partnership assistant. *Id.* Unlike partnership specialists, who make direct contact with partners, partnership assistants typically did not, and the Census Bureau reasonably concluded that the elimination of this position was unlikely to have any effect on the overall effectiveness of the partnership program. *Id.* As noted above, the 2020 Census will nearly double the number of professional partnership specialists as compared to the 2010 Census, which the Census Bureau anticipates will directly increase the number and quality of partnerships and should have a positive impact on the enumeration of hard to count and minority populations. *Id.* ¶ 20.⁶

⁶ Plaintiffs’ expert Dr. Doms advances the argument that the elimination of partnership assistants “raises the risk that partnership staff will be . . . less effective” because they are at “just 55% of the staffing level of 2010.” Doms Decl. ¶ 12. But he is surely aware of the distinction between partnership specialists and partnership assistants, as he had “direct, extensive experience . . . in the planning for the 2020 Census” while Under Secretary for Economic Affairs during the very years

Moreover, Plaintiffs' focus on partnership ignores the beneficial impact of the 2020 communications program. Not only is the Bureau's communications program spending more than in 2010, it will also be significantly more effective given the various innovations and direct targeting used in 2020. *See id.* ¶¶ 9-10. Specifically, the Bureau's media campaigns focus on various minority population groups, and 2020 is the first census to make a significant investment in digital advertising, spending time and resources targeting online sites including Facebook, Instagram, paid search engines, display ads, and programmatic advertising. *Id.* ¶ 10. The push to have a greater digital presence will allow the Census Bureau to reach a mobile audience, tailor messages, micro-target, and shift campaign ads and messages as needed. *Id.* Should a specific area of the country generate lower than expected responses, the Census Bureau can increase advertising outreach to that area. *Id.* Micro-targeting to specific regions allows the Census Bureau to tailor its messaging, including directing appropriate messages to hard-to-reach communities and those who distrust government, both of which have been traditionally undercounted. *Id.* Additionally, if the Census Bureau call centers detect a sizable number of calls or comments surrounding a specific concern, digital advertising will allow the Bureau to respond more directly. *Id.* The Bureau is also mounting a more robust traditional media campaign compared to prior censuses, and has hired an advertising firm to provide expertise on reaching out to various population groups regarding their responses, including the Black/African American, Hispanic/Latino, Asian, American Indian and Alaska Native, and Native Hawaiian and Other Pacific Islander populations. *Id.* ¶¶ 11-12.

in which the Census Bureau made many of the decisions he now criticizes. Doms Decl. ¶ 6; *see also* Bishop Decl. ¶¶ 44-49 (explaining Doms' support for the design decisions of the 2020 Census he now criticizes); Reist Decl. ¶¶ 39-40 (same); Taylor Decl. ¶ 21 (same). Either way, his conclusions about the effectiveness of 2020 Census partnership staff should not be credited.

Despite Plaintiffs' contentions, the partnership program is only part of the Integrated Partnership and Communications ("IPC") program, which is the part of the census operations designed to increase participation of hard-to-count communities. Plaintiffs' argument wholly ignores the other half of the IPC program, the Integrated Communications Contract. This is a \$583 million program, and it is expected to reach 99.9% of the population, with advertising specifically directed at each individual hard-to-count community, impressing on them the importance of participation in the census. Reist Decl. ¶¶ 9, 12, 28. In short, the Census Bureau's communications program is not only larger than ever before in terms of the actual amount spent and staffing devoted to outreach, as Plaintiffs concede, *see* Doms Decl. ¶ 14, it is also far more sophisticated than in past censuses. Reist Decl. ¶ 38. There is simply no reasonable basis to assume that changes to the communications program since the 2010 Census will result in any increase in a differential undercount, or any reason to suggest that the Bureau's decisions are arbitrary or capricious.

Nor, contrary to Plaintiffs' contentions, has the Census Bureau declined to spend a particular amount on the partnership program despite being "directed by Congress" to do so. P.I. Br. at 2, 11. When Congress appropriated a lump sum to the Bureau, it explicitly declined to direct any amount for advertising and outreach; indeed, the 2019 appropriations act states that "from amounts provided herein, funds *may* be used for promotion, outreach, and marketing activities," without mandating that any amount be so spent. Wishnie Decl. Ex. 21 (emphasis added). This is in marked contrast to the way funds are allocated in the same provision to the Department Office of Inspector General, allocating a specific amount of funds to that office for the specific purpose of investigating and auditing the Census Bureau. *See id.* Indeed, even the statement cited by Plaintiffs fails to support their claim: a single statement by a committee chairperson (as relied on by Plaintiffs) does not represent an "express Congressional instruction" to spend a certain amount

on outreach. P.I. Br. at 6. The statement merely notes that the total budgetary amount “supports no less than the level of effort for outreach and communications” in the 2010 Census should the Bureau choose to allocate the appropriation in that manner, and suggests no specific amount of funds for that purpose. Wishnie Decl. Ex. 3 at 10962. The Bureau’s plans heed that suggestion and reflect a level of effort on outreach and communications that is significantly greater for the 2020 Census than for the 2010 Census. *See* Reist Decl. ¶¶ 10, 19-22, 27-34, 36, 38.

Indeed, the ICP program is both expanded in scale and superior in quality to the 2010 Census. *See id.* Plaintiffs do not attack the 2010 Census’s equivalent program as arbitrary or capricious, and appear to request that it be replicated, so their claim should fail for that reason alone. Moreover, Defendants’ expenditure of over three quarters of a billion dollars on the ICP program to create over 1,000 different advertisements in 13 languages, expected to reach 99.9% of the country, and to hire 1,500 partnership specialists to establish and manage 300,000 partnerships, all in order to encourage self-response to the census, can hardly be seen as arbitrary or capricious. *See* Reist Decl. ¶¶ 12, 17, 20, 28; *see* Doms Decl. ¶¶ 13-14.

b. Plaintiffs Misunderstand the Planned Use and Number of Enumerators

The Census Bureau plans to spend whatever funds are necessary on as many enumerators are needed to complete non-response follow up (“NRFU”) operations, and it has the resources to do so. Stempowski Decl. ¶¶ 50-53; Taylor Decl. ¶¶ 19, 31-32, 34. Plaintiffs’ request—that this Court order the immediate spending of \$600 million to deploy a specific number of enumerators—would result in wasteful and unnecessary expenditure, and their arguments reflect fundamental misapprehensions of the Census Bureau’s plans and the cost of deploying enumerators.

To begin, the Census Bureau does not “plan to employ only 260,829” enumerators. P.I. Br. at 7. The Census Bureau plans to deploy the number of enumerators needed to complete the

NRFU workload, which it currently anticipates being between 320,000 and 500,000, consistent with the approximately 400,000 enumerators estimated in the 2019 Life Cycle Cost Estimate. Stempowski Decl. ¶¶ 50-53; Taylor Decl. ¶ 34. But the actual number of enumerators that will be deployed, and, critically, where they will be deployed, is as yet unknown. Stempowski Decl. ¶¶ 51-53. The primary factor driving the need for enumerators (and the resultant cost) is the NRFU workload. *Id.* ¶ 51. This will govern both the amount of work overall, and the geographic areas where that work is needed. Neither will be known until the self-response operation is well underway, because the enumerators' job is to follow up by visiting and counting the residents at those addresses where residents did *not* self-respond. *Id.* ¶¶ 51-53.

Plaintiffs' misunderstanding of the Census's Bureau's plans for enumerators seems to be based on certain materials related to the 2019 Life Cycle Cost Estimate that refer to the Bureau anticipating a need for approximately 256,000 "core enumerators." Compl. ¶ 98. This term refers to the number of enumerators that Defendants predict—based on the projected workload, productivity, and schedule—will be required to complete the NRFU workload if its median assumptions hold. Taylor Decl. ¶ 34. In other words, this number does not limit or control the number of enumerators that the Census Bureau intends to hire or deploy; it is just a prediction of how many enumerators the Census Bureau expects to use in completing its work, assuming the middle of its range of assumptions is realized. *See* Wishnie Decl. Ex. 8 at 117.

Critically, this number of "core enumerators" exists only for planning purposes, and it is based solely on informed projections. Using this number to mandate hiring ignores the Census Bureau's contingency planning, which is based on a range of potential outcomes and allows the Bureau to hire and deploy whatever number of enumerators the workload ultimately calls for. Stempowski Decl. ¶¶ 51-53; Taylor Decl. ¶ 19. There can be no basis to suggest that that the

Census Bureau’s plan—reserving funds for and planning to hire whatever number of enumerators the job calls for—is arbitrary or capricious. Instead, Plaintiffs’ request that the Court order a specific expenditure and mandate a specific number of enumerators now, regardless of the scope and location of the workload, is unnecessary and would waste resources. Taylor Decl. ¶ 34.

c. The Number and Location of Field Offices Is Immaterial to Achieving an Accurate Enumeration

Plaintiffs next complain that the redesign of the 2020 Census resulted in the elimination of local offices relative to the 2010 Census. Plaintiffs wrongly imply that Area Census Offices (“ACOs”) are a form of “physical outreach” to the community, P.I. Br. at 23, but this is not true. Importantly, the number of ACOs will not affect whether or not any individual is counted in any way. Stempowski Decl. ¶ 44. Enumerators will travel to the people that must be counted, regardless of where any office is; no individual is more or less likely to be counted because their home is near or far from an ACO. *Id.* ¶ 44-45.

Plaintiffs’ attempt to draw an unfavorable comparison between the number of local offices established in the 2010 Census and the 2020 Census also fails because any such comparison implies that the function of these offices is the same in both censuses. It is not. As discussed, the 2010 Census relied primarily on paper forms, and enumerators traveling door-to-door needed offices nearby to retrieve blank forms and deposit completed forms every day. *Id.* ¶ 46. This paper-based operation required a large amount of localized office space. *Id.*

But the 2020 Census operations will no longer be conducted exclusively on paper. Enumerators will perform their work using iPhones, and households will be encouraged to respond online. Local offices no longer serve the same function, and the need for many hyperlocal spaces for the pickup, return, and storage of paper no longer exists. *Id.* ¶ 47-49. Whether there were 500,000 local offices (with each enumerator’s house being an “office”) or one national office, the

effect would be the same, and would be equally permissible under the APA or the Enumeration Clause. The number of census “offices” has no bearing on the count itself, and as such no particular number of census “offices” are either required by the constitution or even especially significant.

Two mistakes—Plaintiffs’ mistaken view that the number of ACOs has any bearing on “physical outreach” and their expert’s mistaken assumption that the Census Bureau has not allocated any funding for purposes of localized questionnaire assistance—apparently lead Plaintiffs to request \$46 million for some form of local presence in hard to count communities (including potentially by allocation of mobile questionnaire assistance units). P.I. Br. at 23; Doms Decl. ¶ 33. But the Census Bureau has already allocated between \$110 million and \$120 million for its mobile questionnaire assistance operation.⁷ Stempowski Decl. ¶ 41; Taylor Decl. ¶ 33. This decision to provide more than double the resources for mobile questionnaire assistance than Plaintiffs request effectively moots this aspect of their request (*see infra* at 40).

d. The 2020 Address Canvassing Effort Has Produced the Best Address List in the History of the Census

Plaintiffs next criticize the decision to reduce the percent of addresses verified in-field as opposed to using computer technology. At this point, the in-field address canvassing operations are complete and cannot be changed for the 2020 Census. Bishop Decl. ¶ 41. Plaintiffs do not seek to redo the address canvassing phase. As explained *infra* at 39, because Plaintiffs effectively seek an advisory opinion that the address canvassing phase *was* defective, their claim is moot.

⁷ Plaintiffs also criticize Defendants’ decision to eliminate brick-and-mortar questionnaire assistance centers, which, as discussed above, were a legacy of a census based on paper forms and which on average resulted in just 20 additional people counted per center. Stempowski Decl. ¶¶ 35-37. But Plaintiffs provide no reason to believe that perpetuating this inefficient use of resources would be superior to the new mobile questionnaire assistance program.

But Plaintiffs' concerns about the address canvassing effort are in any event unsupported. The effort of developing the address list used in the 2020 Census is based on a consistent evolution from the approach used in previous censuses, with the Census Bureau now harnessing exponential improvements in geospatial technology⁸ over the past decade, carefully vetted and tested methodologies, and continuous updating and cross-referencing of information to ensure accuracy. *See* Bishop Decl. ¶¶ 5-36. With the improvement of this technology and the active participation of local governments to improve the address list over the decade, many addresses no longer required fieldwork to validate, in contrast to earlier censuses when purchased address files and the absence of reliable geospatial technology required complete in-field verification. *Id.* ¶ 32; *see generally id.* ¶¶ 24-36. All addresses for the 2020 Census were checked by comparing the imaging from the time of the 2010 Census to more recent data, to determine on a block-by-block level whether any address had changed. *Id.* ¶¶ 32-36. Wherever there was *any* question about either the data quality or any change to the block, the Census Bureau performed in-field verification. *Id.* ¶ 35. This enabled the Census Bureau to limit in-field verification to the subset of addresses in which there was any question about the completeness, currency, or reliability of the data, and rely on the imagery as cross-referenced with data provided by local governments and others to confirm addresses where there were no discrepancies or questions.

This detailed, careful plan, in which different data sources are cross-checked and continuously updated, is precisely the sort of “result[] supported by a weight of considered and carefully articulated expert opinion” for which courts should be leery of “substitut[ing their] judgment for that of the agency.” *County of Westchester*, 802 F.3d at 430-31 (internal quotation

⁸ This technology is the kind of digital mapping information used in Google Maps, for example. The Census Bureau's geospatial database is among the most sophisticated on earth. *See generally* Bishop Decl. ¶¶ 5-17 (describing Census Bureau's Geographic Support program).

marks and footnotes omitted). Plaintiffs’ small number of minor criticisms, P.I. Br. at 24-25—themselves unsupported—do not suggest otherwise. Plaintiffs first rely on an Office of Inspector General (OIG) report noting some discrepancies between the results of in-field and in-office canvassing, *id.* at 25, but those statistics are misleading for several reasons. First, the figures include addresses that were classified by the in-office canvassing as needing to be verified in-field, so the statistics do not speak to the effectiveness of using only in-office canvassing. Bishop Decl. ¶ 51. Second, many of the purported errors do not reflect any issue with the address file that would prevent the households at issue from being contacted by the Census Bureau or enumerated. *Id.*

Plaintiffs further rely on Dr. Doms to suggest that minority households tend to be in areas requiring more in-field verification. P.I. Br. at 25 (citing Doms Decl. ¶ 44). But Dr. Doms’s arguments and the underlying data on which he relies in fact support the Census Bureau’s approach, which is to focus the in-field resources on areas that are difficult to canvass and conserve those resources by relying otherwise on in-office work. *See* Bishop Decl. ¶ 32 (“[T]he Census Bureau determined that a 100 percent in-field validation was redundant, wasteful, and would not improve quality.”); *id.* ¶¶ 33-39.

e. Every Address that Appears to Be Vacant Will Have a Census Employee Conduct an In-Person Visit to Confirm It Is Unoccupied

Finally, Plaintiffs’ contention that “unreliable” administrative records have been “arbitrarily” relied on to determine whether a housing unit is unoccupied is flatly wrong. P.I. Br. at 25. Administrative records will *never* be used on their own to classify a unit as vacant or unoccupied. Stempowski Decl. ¶¶ 25-32. Instead, an enumerator will visit each address that does not respond to the census after six total mailings or submit a response via the mobile assistance operation. *Id.* ¶ 22. If that visit does not result in a successful, in-person enumeration of the people in that location, the enumerator will make a determination about whether the unit is vacant or

unoccupied. *Id.* ¶ 25. Although in many cases it will be obvious that a unit is either uninhabited (*i.e.*, a vacant lot) or occupied, the Census Bureau will not simply take the enumerator’s word. *Id.* ¶¶ 25-26. Instead, they will cross-check the enumerator’s determination against postal service undeliverable lists and other administrative records. *Id.* ¶ 27. Only if there is concurrence between the undeliverable list, the enumerator, *and* other administrative records will an address be treated as vacant or unoccupied. *Id.* This is an eminently reasonable means to ensure that resources are deployed to count people at occupied locations while making certain that no one is mistakenly removed, without wasting resources on vacant properties. *Id.* And even those addresses deemed to be vacant will receive a final mailing as an additional check.⁹ *Id.* ¶ 29.

Plaintiffs attack this “reliance” on administrative records without appearing to understand what it consists of. And by contrast to the careful, multilayered process assembled over years by the Census Bureau, Plaintiffs rely on the entirely speculative and unsupported assertion by Dr. Doms that the use of administrative records “*could* increase the likelihood that occupied Non-White households get mistakenly classified as vacant,” Doms Decl. ¶ 46 (emphasis added), which he declines even to attempt to quantify, *id.* ¶ 49(g). *See generally* Cantwell Decl. ¶ 7 (explaining that Dr. Doms’s quantitative conclusions are largely lifted from the analysis by Dr. Hillygus in the Maryland litigation); Cantwell Decl. (explaining flaws in Dr. Hillygus’s analysis).

Plaintiffs may prefer to have Census Bureau employees returning time after time to vacant lots after an employee has verified that no residence exists, but the decision to rely upon one visit

⁹ Plaintiffs do not even argue that the use of administrative records outside the context of vacant housing could diminish the data quality or increase a differential undercount, with good reason. Plaintiffs’ suggestion that minority households would be less likely to have reliable administrative records, if accepted, implies that they would be more likely to receive additional visits by enumerators and be counted in person—a method Plaintiffs appear to view as superior. Stempowski Decl. ¶ 65.

to a vacant lot, *plus* the postal service undeliverable list, *plus* other administrative records, is not arbitrary or capricious.

f. Plaintiffs Cannot Demonstrate that the Bureau Has “Refused” to Spend Any Funds, Nor Is Plaintiffs’ Requested Relief Appropriate

In addition to Plaintiffs’ wholly unsubstantiated claims regarding the specifics of census operations, they make the equally baseless contention that the Census Bureau has “refused” to spend appropriated funds, P.I. Br. at 27-28. The Bureau has done no such thing.

The census is a vast undertaking that has undisputedly significant consequences for the nation. It is thus essential that the Census Bureau take care of its resources in order to ensure that the census is successfully completed on the timeline mandated by federal law. *See* 13 U.S.C. § 141(b). This requires retaining a reserve of contingency funding in order to cope with any issues that may arise.

Despite the hard work of thousands of Census Bureau employees over the last decade in designing, testing, and improving the plan for 2020 Census operations, it is always possible that unforeseen events could lead to unexpected outcomes. This could be due to a large-scale disaster, like a terrorist attack, environmental catastrophe, or epidemic, or could be the result of small deviations in human behavior that are impossible to predict perfectly. Either way, the Census Bureau has allocated a substantial sum that it intends to use to address whatever unexpected problems arise in the future. Taylor Decl. ¶¶ 17-20.

Plaintiffs’ motion—indeed, their entire case—comes down to their claims that (a) they know better than the thousands of Census Bureau employees who have spent an entire decade planning the largest census in American history, and (b) that money must be spent immediately on problems that Plaintiffs’ expert has hypothesized—problems that may never materialize and that will be observed and corrected if they ever do—instead of reserved to address whatever actual

problems arise during the course of conducting the census. Neither premise is valid. Congress expressly cited concerns about contingencies and risks when it allocated additional funds to the 2020 Census. *See* Wishnie Decl. Ex. 6 at H10962 (explanatory statement notes that nearly \$1 billion of that appropriation was expected to fund “contingency needs that may arise during the Census operation such as major disasters or other unforeseen risks realized” and “additional sensitivity risks” like “any reduction in self-response rates beyond the current projections of the Census Bureau”). The census is thus proceeding in an appropriate and reasonable manner, which is also consistent with the intent of Congress. *See* Taylor Decl. ¶ 13.

Nor is there any support in law for what Plaintiffs request—an order that the Census Bureau must spend a lump sum appropriation in a specific manner. Indeed, the Supreme Court has found to the contrary. *See Weyerhaeuser Co. v. U.S. Fish & Wildlife Serv.*, 139 S. Ct. 361, 370 (2018) (explaining that “allocation of funds from a lump sum appropriation” is the type of “agency decision[] that courts have traditionally regarded as unreviewable”); *accord Lincoln v. Vigil*, 508 U.S. 182, 192 (1993) (“The allocation of funds from a lump-sum appropriation is another administrative decision traditionally regarded as committed to agency discretion. After all, the very point of a lump-sum appropriation is to give an agency the capacity to adapt to changing circumstances and meet its statutory responsibilities in what it sees as the most effective or desirable way.”). It is indisputable that the appropriations Plaintiffs point to are precisely that sort of unreviewable lump sum appropriation. *Compare* Wishnie Decl. Ex. 31 (“*Provided*, that from amounts provided herein, funds **may** be used for promotion, outreach, and marketing purposes[.]” (bolding and underline added)) *with id.* (“*Provided further*, That within the amounts appropriated, \$3,556,000 **shall** be transferred to the “Office of Inspector General” account[.]” (bolding and underline added)).

Plaintiffs suggest that, notwithstanding this lump sum appropriation, various statements of individual representatives should be interpreted as constituting “Congressional commands.” P.I. Br. at 27-28. This argument runs contrary to “a fundamental principle of appropriations law”:

[W]here “Congress merely appropriates lump-sum amounts without statutorily restricting what can be done with those funds, a clear inference arises that it does not intend to impose legally binding restrictions, and indicia in committee reports and other legislative history as to how the funds should or are expected to be spent do not establish any legal requirements on” the agency.

Lincoln, 508 U.S. at 192 (quoting *LTV Aerospace Corp.*, 55 Comp. Gen. 307, 319 (1975)).

Plaintiffs’ cited cases, Pl. Br. at 28,¹⁰ pertain to entirely dissimilar situations where an agency has improperly conditioned grants to certain recipients based on proscribed factors, or has refused to spend funds on a congressionally mandated objective, and are thus inapposite. Here (1) there is a lump sum appropriation with *no* factors prescribed by Congress as to how the Census Bureau is to go about conducting the Census, *see* Wishnie Decl. Ex. 31, and (2) Defendants have *not* refused to spend appropriated funds, but have merely allocated a portion of it to contingency funding pursuant to their statutory discretion. The Census Bureau’s decision to do so is neither arbitrary nor capricious.

¹⁰ Citing *State of New York v. Dep’t of Justice*, 343 F. Supp. 3d 213, 238 (S.D.N.Y. 2018) (rejecting conditioning of grant money in contravention of “plain meaning of the statutory language” (internal quotation marks omitted)); *In re Aiken County*, 725 F.3d 255, 257, 261 n.1 (D.C. Cir. 2013) (striking down NRC’s complete refusal to consider application for nuclear waste storage at Yucca Mountain and stating that executive cannot unilaterally “spend less than the full amount appropriate by Congress *for a particular project or program*” while noting authority of agencies “to implement [policy] within statutory boundaries” (emphasis added)); *City & County of San Francisco v. Trump*, 897 F.3d 1225, 1232 (9th Cir. 2018) (rejecting conditioning of congressional appropriations in contravention of legislative intent); *Guadamuz v. Ash*, 368 F. Supp. 1233, 1244 (D.D.C. 1973) (rejecting unilateral termination of entire congressionally mandated program).

3. Plaintiffs Are Unlikely to Succeed on Their Enumeration Clause Claims

For the same reasons set forth above as to why the Census Bureau's challenged decision-making is not arbitrary or capricious, Plaintiffs fail to demonstrate a likelihood of success on their Enumeration Clause claims. Plaintiffs argue that the relevant standard here is that set forth in *Wisconsin v. City of New York*, 517 U.S. 1 (1996), namely, that the Secretary of Commerce's conduct of the census "need bear only a reasonable relationship to the accomplishment of an actual enumeration of the population."¹¹ *Id.* at 20. This extraordinarily deferential standard derives from the fact that "the Constitution vests Congress with virtually unlimited discretion" in conducting the census (which Congress has in turn vested in the Secretary of Commerce) and from the practical recognition that no matter what effort is made, a perfect enumeration is virtually impossible, if not wholly impossible. *Id.* at 19; *see id.* at 6 ("Although each [census in United States history] was designed with the goal of accomplishing an 'actual Enumeration' . . . no census is recognized as having been wholly successful . . ."). In other words, the Constitution does not require a specific manner of conducting the census, a specific number of employees for conducting the census, or that a specific number of dollars be spent on any census operation. At most, all that is required under the Constitution is that the Census Bureau attempt to count the population rather than estimate it statistically, and do so reasonably.

Plaintiffs rely on *Carey v. Klutznick*, 637 F.2d 834 (2d Cir. 1980), to suggest that a more exacting standard of scrutiny might apply. P.I. Br. at 17. But, as Defendants pointed out in their motion to dismiss, the Second Circuit in *Carey* erroneously relied upon the one person, one vote

¹¹ As Defendants noted in their motion to dismiss, it is not clear that there is *any* law to apply in adjudicating Enumeration Clause disputes such as this one. *See* MTD Br. at 23 n.9. But for purposes of this preliminary injunction motion, Defendants assume that the *Wisconsin* standard applies.

line of cases in suggesting a standard for evaluating the Enumeration Clause claims. *See* MTD Br. at 24 (noting *Carey*'s reliance on *Reynolds v. Sims*, 377 U.S. 533, 537 (1964), and *Wesberry v. Sanders*, 376 U.S. 1, 7-8 (1964)). The Supreme Court has since decisively rejected application of that standard to the Enumeration Clause, articulating instead the far more permissive *Wisconsin* standard of "a reasonable relationship to the accomplishment of an actual enumeration." *Id.* (citing *Wisconsin*, 517 U.S. at 16-19).

As discussed *supra*, Plaintiffs' various criticisms *at most* amount to stating that they would prefer that the Census Bureau operated the 2020 Census more like the 2010 Census, and allocated resources accordingly. That critique—which itself is based upon fundamental misunderstanding of census operations and design—does not remotely suffice to demonstrate that the Census Bureau's extensive address canvassing, partnership and communications programs, use of enumerators, deployment of mobile questionnaire assistance, or non-response follow up operations do not bear a reasonable relationship to the accomplishment of an actual enumeration.

B. An Injunction Would Be Against the Public Interest and the Balance of Equities Tips in Defendants' Favor

Here, both parties claim the goal of ensuring the most accurate count possible in the 2020 Census. But only Defendants have an actual plan for completing an accurate count by the deadline that has been imposed by law. Interfering with the Census's design at this late date and forcing the Census Bureau to misspend nearly \$800 million would significantly harm the public interest and the likelihood that the census will succeed.

First, derailing the plans for the 2020 Census on the eve of enumeration and forcing new and immediate changes to the design would disrupt the work of counting the population and consume the Census Bureau's time, preventing it from devoting itself to ensure an accurate count at this critical stage. Stempowski Decl. ¶¶ 58-59. The result of Plaintiffs' requested injunction, in

short, would be an increased risk of an inaccurate count—the very evil Plaintiffs claim they wish to avoid.

Second, mandating a change to the Census’s plans would expend a significant portion of the funding that has been reserved to resolve unforeseen crises when they arrive, depriving the Bureau of almost \$800 million to deal with future unforeseen events. If the Court enters Plaintiffs’ requested injunction, these funds will be squandered on pure speculation rather than reserved for potential specific, actualized concerns to be addressed in a tailored manner when those concerns arise. *See Taylor Decl.* ¶ 17-20; 33-36.

Third, directing the expenditure of these funds would be against the public interest because it would require an immense waste of taxpayer dollars. While the Census Bureau is committed to spending any amount necessary to ensure an accurate count of the population, it remains a public agency entrusted to prudently spend taxpayer dollars. *See Stempowski Decl.* ¶ 49; *Taylor Decl.* ¶ 19. If its job can be properly done without expending unnecessary amounts of the public’s money, its duty is to do the job in that manner. In contrast, Plaintiffs would have the Bureau spend taxpayer money for the sake of spending it, without any detailed plan for its use or any basis to indicate it would resolve any problem at all.

Finally, Plaintiffs’ entire case tacitly presumes that the Census Bureau can never innovate or take advantage of new technologies that will both improve the accuracy of the count *and* save money. Plaintiffs note that previous censuses—including the 2010 Census that they use as the appropriate spending benchmark—have resulted in a differential undercount. *See Declaration of Alexandra Church* ¶ 18 (“In the 2010 Census, Orange County was the fifth-most undercounted county in New York State. Newburgh’s census response rate—57 percent—was one of the lowest in Orange County.”). But Plaintiffs would still have the Bureau rely on outdated technologies and

expend resources required by those technologies—or at least expend the funds that were required to house and transport millions of pages of paper to now conduct a primarily digital census. *See* Taylor Decl. ¶¶ 32-36. The 2020 Census is designed to harness advances in technology to perform the best count in census history. Entering Plaintiffs’ proposed injunction would chill future efforts to innovate, as it would justify the fear that any change in census design, however carefully planned over the course of a decade and well-founded in research, could be upended at the last minute and jeopardize the count as a whole.

C. Plaintiffs Will Not Experience Irreparable Harm

In contrast to the harm that would be dealt to the 2020 Census if Plaintiffs prevail, *see* Taylor Decl. ¶¶ 17-20, 33-36, Plaintiffs will suffer no irreparable harm in the absence of an injunction. The Census Bureau will continually monitor self-response rates, enumerator productivity, and the remainder of the results to determine whether any additional resources are needed, either in any particular location or nationwide. Stempowski Decl. ¶ 57-59. If any initial assumption is found to be incorrect, or any need for resources is shown to have been underestimated, the Census Bureau will make efforts to address that problem if and when it arises—that is the very purpose of its extensive planning and reserve for contingency funding. *Id.* ¶¶ 57-59; Taylor Decl. ¶¶ 17-19.

The Bureau’s willingness to improve its plans and correct problems is demonstrated by its history to date, in which it has updated its plans repeatedly in response to its testing, research, and public feedback and discussion. For two examples, the Court need look no further than two of the areas Plaintiffs have addressed in this motion. First, since its final operational plan was published, the Bureau has developed a plan to spend around \$110 million on mobile questionnaire assistance—more than *double* the amount Plaintiffs request for questionnaire assistance, effectively mooted a portion of their requested relief (*see infra* at 40). Second, the Bureau recently

allocated additional spending to the communications campaign, bringing its total planned spending on “outreach and communications,” P.I. Br. at 33, to \$103 million more than Plaintiffs calculated in bringing their motion—the vast majority of the \$128 million Plaintiffs ask for. Taylor Decl. ¶ 36. These developments corroborate the Census Bureau’s explanation that it is not averse to spending money when warranted, and will do so as events develop. *See* Stempowski Decl. ¶¶ 57-59; Taylor Decl. ¶ 19.

Moreover, Plaintiffs’ proposed injunction does not make sense on its face and will not remedy any undercount, and thus granting the motion will not put Plaintiffs in any better position than denying it. Setting aside the moot issue of questionnaire assistance centers, Plaintiffs seek \$597 million to deploy in-the-field enumerators who will already be hired. But Plaintiffs fundamentally misunderstand the cost—and effect—of deploying additional enumerators. Deploying additional enumerators who will already be hired and trained *does not* increase cost or require additional expenditure, assuming a fixed amount of work. Because enumerators are paid by the hour, a workload that takes 10 person-hours at a rate of \$10/hour will always cost \$100, whether two people do it or 10 people do it. The only difference is how long it will take and how much that cost is allocated to each individual (in the example above, five hours and \$50 each in the first case and one hour and \$10 each in the second). The only reason to deploy more enumerators would be either (a) that the enumerators have an unexpectedly low productivity rate or (b) that the workload is larger than anticipated. Stempowski Decl. ¶ 51. The Census Bureau will be monitoring the results in real time to determine whether these conditions do or do not occur. *Id.* ¶¶ 51-52. In either case, the Census Bureau is ready to resolve any issue that arises and allocate workloads and resources accordingly. *Id.* ¶¶ 58-59.

Plaintiffs’ proposed injunction seeking expenditures of \$128 million for outreach and communications fares no better. Plaintiffs’ only substantive complaint regarding the design of the Integrated Communications and Partnership Program appears to be that they would prefer more staff be hired. *See* P.I. Br. at 5; Compl. ¶¶ 102-111. Their request rests on the false premise that all staff are fungible, and that a greater number of staff is necessarily better, regardless of the role that staff plays or whether there is any need for that role under the present census design. *See* Reist Decl. ¶¶ 23-26. But hiring unnecessary bodies would be poor stewardship of taxpayer dollars with no benefit to creating an accurate Census. *Id.* ¶ 25. Although the 2020 Census design does indeed require fewer “partnership staff” than the 2010 Census, that is because both experience and new technology made clear that the unskilled administrative role of “partnership assistant” used in the 2010 Census would not be useful in light of the 2020 Census’s greater reliance on computing technology instead of paper. *See supra* at 17. While that obsolete position has been eliminated, the size of the substantive professional staff doing the core substantive work of the program—partnership specialists—has nearly doubled. Reist Decl. ¶ 20. To rectify this nonexistent problem, Plaintiffs ask the Court to order \$128 million in additional “outreach and communications,” seemingly not recognizing that the Census Bureau already intends to spend over \$100 million more on communications than Plaintiffs assume. Reist Decl. ¶¶ 27, 37; Taylor Decl. ¶ 36. Contrary to Plaintiffs’ assertions, any decline in partnership program effectiveness (which is highly unlikely) *will* be counteracted by a sizeable increase in communications spending and efficacy. *See* Doms Decl. ¶ 14 (using incorrect data to describe communications program as “barely tread[ing] water”).

Finally, Plaintiffs’ long delay in bringing this litigation should weigh heavily against the grant of a preliminary injunction. Plaintiffs identify the relevant operational plan as version 4.0, which was published in December 2018. *See* SDNYCENSUS_000577. Plaintiffs’ counsel filed

a complaint in the District of Maryland on April 1, 2019, that previewed—nearly verbatim—the complaint in this litigation. Yet Plaintiffs did not file the instant Complaint until November 26, 2019. *See generally* MTD Br. at 6. As the Second Circuit has held, such a delay “may, standing alone, preclude the granting of preliminary injunctive relief, because the failure to act sooner undercuts the sense of urgency that ordinarily accompanies a motion for preliminary relief and suggests that there is, in fact, no irreparable injury.” *Tough Traveler, Ltd. v. Outbound Prods.*, 60 F.3d 964, 968 (2d Cir. 1995) (internal quotations marks, citations, and ellipsis omitted) (reversing grant of preliminary injunction due to nine-month delay in commencing lawsuit); *see also Gidatex, S.r.L. v. Campaniello Imports, Ltd.*, 13 F. Supp. 2d 417, 419 (S.D.N.Y. 1998) (“Courts have not imposed rigid deadlines by which a request for preliminary injunctive relief must be made: In some circumstances, even a relatively brief delay may be too long.” (citing *Citibank, N.A. v. Citytrust*, 756 F.3d 273, 276-77 (2d Cir. 1985) (ten-week delay precluded preliminary relief))); *Silverman v. Local 3*, 634 F. Supp. 671, 673 (S.D.N.Y. 1986) (three-month delay “seriously, indeed fatally, undermines the Board’s position that an injunction is necessary to protect against harm to the public”). If the purported defects with the Census are as critically important and time sensitive as Plaintiffs make them out to be, it is difficult to understand why Plaintiffs waited so long bring this suit.

In sum, Plaintiffs ask the Court to order massively disruptive relief, at the eleventh hour, in order to fix problems that do not exist or have already been budgeted to be addressed as they actually arise. This is not the type of irreparable harm preliminary injunctions are designed to redress.

II. PLAINTIFFS' CLAIMS RELATING TO ADDRESS CANVASSING AND QUESTIONNAIRE ASSISTANCE SHOULD BE DISMISSED AS MOOT

“The mootness doctrine, which is mandated by the ‘case or controversy’ requirement in Article III of the United States Constitution, requires that federal courts may not adjudicate matters that no longer present an actual dispute between parties. Thus, when the issues presented are no longer live or the parties lack a legally cognizable interest in the outcome, a case is moot and the federal court is divested of jurisdiction over it.” *Catanzano v. Wing*, 277 F.3d 99, 107 (2d Cir. 2001) (internal quotation marks and citations omitted). Mootness can occur in a variety of circumstances, but “[t]he central question nonetheless is constant—whether decision of a once living dispute continues to be justified by a sufficient prospect that the decision will have an impact on the parties.” Wright & Miller, 13C Fed. Prac. & Proc. Juris. § 3533. Based on the limited scope of Plaintiffs’ requested injunctive relief, it has become clear that two of their claims are moot.

A. Plaintiffs’ Address Canvassing Claim Is Moot

One way in which mootness can occur is when a challenged action has already taken place and cannot effectively be retaken. *Cf.* Wright & Miller § 3533.3.1 (“Mootness may rest on an explicit or implicit determination that the remedies that might have some actual effect come at too high a cost. Thus relief may be denied because of the apparent costs even though it would be possible to require that an election be set aside and held again” (citing *Watkins v. Mabus*, 502 U.S. 954 (1991))).

As discussed in the Bishop and Stempowski Declarations, the extensive address canvassing operations leading up to the 2020 Census have been effectively completed, and could not reasonably be redone. Bishop Decl. ¶ 41; Stempowski Decl. ¶ 11. Plaintiffs appear to recognize this fact, as they do not seek any injunctive relief relating to address canvassing. *See* P.I. Br. at

33. Plaintiffs' apparent abandonment of their relief may present a further reason to deem this claim moot. *See Maher v. Hyde*, 272 F.3d 83, 87 (1st Cir. 2001) (where plaintiff has withdrawn claim relating to one of two properties at issue, the appeal relating to that property "is necessarily moot"). In the absence of any live controversy over the address canvassing phase, "[a] federal court is without power to decide moot questions or to give advisory opinions which cannot affect the rights of the litigants in the case before it." *St. Pierre v. United States*, 319 U.S. 41, 42 (1943). Because the Court could do little more than render an advisory opinion on the adequacy of the already-completed address canvassing operations, Plaintiffs' claims relating to address canvassing should be dismissed as moot.

B. Plaintiffs' Claim Relating to Increasing the Bureau's Presence Within Hard-to-Count Communities Is Moot

A case may also become moot where the Defendant has taken steps that accomplish the relief sought (*e.g.*, ceased the allegedly illegal conduct), there is no reasonable expectation that the alleged violation will recur, and interim relief or events have completely eradicated the effects of the alleged violation. *See Los Angeles County v. Davis*, 440 U.S. 625, 631 (1979). Here, Plaintiffs seek in part "immediate injunctive relief directing the Bureau to spend money already appropriated and currently held in accounts of Defendants to . . . (3) increase the Bureau's presence within Hard-to-Count communities by increasing the number of fixed Questionnaire Assistance Centers, field offices, *and/or mobile questionnaire assistance units* within those communities at levels commensurate to 2010 (expenditure of an additional \$45.6 million)." P.I. Br. at 33 (emphasis added). While Plaintiffs suggest (without evidence) that mobile questionnaire assistance is less effective than fixed QACs, their request for relief specifically states that the expenditure of \$45.6 million on "mobile questionnaire assistance units" would satisfy their claim for relief. *Id.* As noted, the Census Bureau has already put forward a detailed plan to spend \$110 million to \$120

million on mobile questionnaire assistance. Stempowski Decl. ¶¶ 38, 41; *see generally* 2020 Census Program Memorandum Series: 2019.28 (Decision to add Mobile Questionnaire Assistance as a Suboperation of Internet Self Response Operation) (Dec. 16, 2019), https://www2.census.gov/programs-surveys/decennial/2020/program-management/memo-series/2020-memo-2019_28.pdf. This commitment moots Plaintiffs' demand for an order compelling the expenditure of \$45.6 million for these activities.

Plaintiffs' request for an additional \$45.6 million on such operations was based on the assumption that the present allocation was *zero* dollars. *See* Doms Decl. ¶ 15 (identifying proposed 2020 spending as \$0, as compared to adjusted 2010 spending of \$45.6 million). However, the relief sought—expenditure of a total of \$45.6 million in physical outreach—has already been budgeted more than twice over. Thus, as Plaintiffs cannot identify any reasonable grounds to believe that the relief they seek will not in fact be provided, this claim for relief should be dismissed as moot.

CONCLUSION

For the reasons set forth above, Plaintiffs' preliminary injunction motion should be denied, Defendants' prior motion to dismiss should be granted, and Plaintiffs' address canvassing and mobile questionnaire assistance claims should be additionally dismissed as moot.

Dated: February 21, 2020
New York, New York

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I, Lucas Issacharoff, an Assistant United States Attorney for the Southern District of New York, hereby certify that on February 21, 2020, I caused a copy of the foregoing Memorandum of Law in Opposition to Plaintiffs' Preliminary Injunction Motion and In Support of Defendants' Partial Motion to Dismiss for Lack of Subject Matter Jurisdiction to be served by ECF upon all counsel of record.

Dated: February 21, 2020
New York, New York

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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

CENTER FOR POPULAR DEMOCRACY
ACTION, *et al.*,

Plaintiffs,

v.

BUREAU OF THE CENSUS, *et al.*,

Defendants.

Case No. 19 Civ. 10917 (AKH)

DECLARATION OF DEBORAH STEMPOWSKI

I, Deborah Stempowski, make the following Declaration pursuant to 28 U.S.C. § 1746, and state under penalty of perjury that the following is true and correct to the best of my knowledge and belief:

1. I currently serve as the Assistant Director for Decennial Census Programs, Operations and Schedule Management. I have served in that capacity since September 2019. Previously, I served as the Chief of the Decennial Census Management Division; I served in that capacity from May 2016 to September 2019. I have an undergraduate degree in Economics from Penn State University and a Masters in Financial Management from the University of Maryland, University College. I have been employed by the U.S. Census Bureau since 1991, starting as a GS-7 Survey Statistician and serving in positions of increasing responsibility over the past 28 years. I have been a member of the Senior Executive Service since 2012.

2. As the Assistant Director for Decennial Census Programs, Operations and Schedule Management, I am responsible for the successful execution of the decennial census and the American Community Survey. Success relies on effective executive management of the

operational design, implementation, and execution of the decennial census that meets the objectives of conducting a census of population and housing and disseminating the results to the President, the States, and the American people. This includes overall responsibility for the budget, schedule, and scope at both the portfolio and project levels, and monitoring the readiness and implementation of the 35 operations that make up the decennial census. I am knowledgeable and well informed about 2020 Census operations, and I make this declaration based upon my personal knowledge and/or upon information supplied to me in the course of my official duties.

I. Executive Summary

3. In this declaration, I address the following subjects and draw the following conclusions:

- a. I explain that the overarching goal and purpose of the 2020 Census design, the end toward which I and my colleagues at the Census Bureau have worked over the past decade, is to count *everyone* in the country once, only once, and in the right place, *including those in hard to count populations*. Substantial Census Bureau effort and resources are directed to counting the hardest to count populations, and numerous plans and programs have been instituted for this specific purpose.
- b. I outline the overall process by which the 2020 Census is being conducted and the numerous steps taken to ensure as accurate an enumeration as possible, and explain that operations are currently underway and cannot be changed to a significant degree without putting the success of the 2020 Census at risk.
- c. I explain the limited use that will be made of administrative records as part of the Nonresponse Followup Operation (NRFU), during which every household in the United States that does not self-respond will be visited in-person at least once.

- d. I explain the planned use of Mobile Questionnaire Assistance, which involves more than twice the level of funding that I understand Plaintiffs have requested for questionnaire assistance, and I explain that the number of Area Census Offices is a function of planned workloads and is not determinative of whether any individual is or is not counted.
- e. I explain the Census Bureau's planed level of enumerator hiring, which is on track and will be at a level sufficient to complete all reasonably anticipated NRFU workloads.
- f. I explain the extensive testing in which the Census Bureau engaged in designing the 2020 Census, including the operations I understand Plaintiffs to be challenging.
- g. I explain the extensive risk planning undertaken by the Census Bureau and the manner in which the Census Bureau's leadership is constantly monitoring and tweaking the details of operations in real time to make the enumeration successful.
- h. I respond to the declaration of Dr. Doms submitted by Plaintiffs, in particular the speculative and unsupported nature of his criticisms of the planned use of administrative records, hiring levels, and field infrastructure.
- i. I explain the immense burden that defending this litigation places on Census Bureau personnel at the busiest at this most important time in the decade for the Census Bureau, and how this burden puts the success of the 2020 Census at risk.

II. **Overarching Goals of the Census and the Design of the 2020 Census**

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

5. An accurate count of the population is influenced by societal, demographic, and technological trends. The Census Bureau's mandate is to count everyone living in the United States. This includes the 50 states, the District of Columbia, and the territories of Puerto Rico, American Samoa, Commonwealth of the Northern Mariana Islands, Guam, and U.S. Virgin Islands. To that end, significant funds, efforts, and resources are expended in capturing an accurate enumeration of the population including those who are hard to count. In particular, the 2020 Census operational design considers population groups that have historically been hard to count, as well as population groups that may emerge as hard to count – providing an opportunity for all to be enumerated.

6. The 2020 Census operational design is based on efficient, effective, and proven techniques. In formulating this design, the Census Bureau has tailored specific operations to reach and enumerate all persons, allocating the resources needed to enumerate hard-to-count populations. Almost every major 2020 operation contains components designed to reach hard to count populations—from stakeholder engagement, to content and forms design, to address frame completion activities, to field infrastructure, to offering multiple modes for self-response, to operations designed specifically for the enumeration of population groups that have been historically hard to count, to the NRFU operation that enumerates households that did not self-respond to the census. The best explanation of the many integrated operations designed to reach

these populations is set forth in Appendix B to Version 4.0 of the 2020 Census Operation Plan.

See <https://www2.census.gov/programs-surveys/decennial/2020/program-management/planning-docs/2020-oper-plan4.pdf>. Examples include:

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

7. Resources are allocated to ensure as complete and accurate a count as possible.

Research and testing, in addition to the Census Bureau’s collective knowledge and experiences, has resulted in an effective approach to reach all population groups. There is no one-size-fits-all method to enumerate the population—especially population groups that are harder to count.

8. Significant changes from the 2010 Census design to the 2020 Census design make comparison of costs and workloads difficult. For example, a significant effort and expense in the 2020 Census went into developing the IT-related systems and infrastructure support for the 2020 Census, including the use of Enterprise systems and applications (meaning systems or applications used by the entire Census Bureau such as the Census Human Resources Information

System), Decennial-specific systems, applications and interfaces (such as the Decennial Response Processing System which is a system unique to the 2020 Census for processing decennial census responses), Field IT systems and interfaces (such as the Field Operational Control System used to control, monitor, and track the field work for each decennial census field data collection operation), mobile computing, and cloud computing. The 2020 Census IT solutions, systems, and interfaces were designed to improve upon approaches used in the 2010 Census, and to move away from a reliance on the use of paper. With the decreased reliance on paper, the physical footprint required for staff, supplies, equipment, etc., is significantly less when compared to that of the 2010 Census.

9. The innovations driving the operational design of the 2020 Census centered around efforts to avoid cost increases that are unnecessary to maintain data quality. The general goal of the design was to conduct the 2020 Census at an overall cost per housing unit that does not exceed the constant dollar cost per housing unit of the 2010 Census so long as any changes did not reduce the quality of the count. With increased operational efficiencies, resources are focused on a complete and accurate count of the population, including individuals who are harder to count.

III. Current Status and Schedule of 2020 Census Operations

10. The purpose of the 2020 Census is to conduct a census of population and housing by counting individuals living in the 50 states, the District of Columbia, and the territories of Puerto Rico, American Samoa, Commonwealth of the Northern Mariana Islands, Guam, and U.S. Virgin Islands, and recording their place of residence as of April 1, 2020, which is referred to as Census Day. Planning for the 2020 decennial census began a decade ago. The planning, research, design, development, and execution of a decennial census is a massive undertaking. The 2020 decennial census consists of 35 operations utilizing 52 separate systems. Monitoring the status and progress of the 2020 Census—the operations and systems—is managed in large part via an Integrated Master Activity Schedule, which consists of over 27,000 separate lines. Thousands of staff at Census headquarters and across the country support the development and execution of the 2020 census operational design, systems, and procedures. In addition, the conduct of the 2020 Census requires the hiring and management of hundreds of thousands of field staff across the country to manage operations and perform the fundamental tasks of collecting data in support of the decennial census.

11. The 2020 Census is well under way. We successfully completed our first major field data collection operation, In-Field Address Canvassing, on schedule in October 2019. The Address Canvassing operation (composed of both an in-office and an in-field component) ensured that the Census Bureau's address list and maps are as exact as possible, which is vital to the underlying structure to be used for an accurate enumeration of the population. The In-Field Address Canvassing operation was managed out of 39 Area Census Offices (ACOs) across the nation. The Census Bureau hired over 3,600 census field supervisors and over 32,000 listers to update and quality-check over 50 million addresses in over 1.1 million geographic areas.

Address Canvassing is one of the early operations in a set of highly integrated operations and activities that result in the production and delivery of apportionment counts and redistricting data. If the Census Bureau was required to redo Address Canvassing, it would cause a delay to the remainder of work to be done. This delay would jeopardize the statutorily mandated December 2020 delivery of the apportionment counts to the President. *See* 13 U.S.C. § 141(b). As of the signing of this declaration we are roughly a month from the start of general data collection operations.

12. The first enumeration of the 2020 Census occurred on January 21, 2020, in Toksook Bay, Alaska. Field staff are now conducting the in-person enumeration of the residents in approximately 221 remote Alaska villages prior to the thaw, when residents disperse to hunt, fish, and pursue warm-weather employment.

13. In an effort to ensure the most efficient process to enumerate households, every block in the United States is assigned to one specific type of enumeration area (TEA). The TEA reflects the methodology used to enumerate the households within the block. There are two TEAs where self-response is the primary enumeration methodology: TEA 1 (Self-Response) and TEA 6 (Update Leave).

14. TEA 1 uses a stratified self-response contact strategy to inform and invite the public to respond to the census, and to remind nonresponding housing units to respond. Invitations, reminders, and questionnaires will be mailed over the course of approximately six weeks. These mailings are divided into two panels, Internet First and Internet Choice. Internet First emphasizes online response as the primary self-response option. Mailings to the Internet First panel begin with an invitation letter that alerts the housing unit to the beginning of the 2020

Census and provides the Census ID¹, URL for the online questionnaire, and information for responding by phone.

15. Internet Choice is targeted to areas of the nation that are least likely to respond online. Historical response rates from other Census Bureau surveys, internet access and penetration, and demographics are used to determine those areas least likely to respond online. Mailings to the Internet Choice panel begin with an invitation letter that alerts the housing unit to the beginning of the 2020 Census and provides the Census ID and URL for the online questionnaire, information for responding by phone, and also a paper questionnaire. Housing units in Internet Choice areas have the *choice* to respond on paper beginning with the initial contact. All nonresponding housing units, regardless of panel, receive a paper questionnaire after the initial mailing and two separate reminder mailings.

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

17. The self-response period begins in mid-March. During the self-response period, the Census Bureau will deploy staff across the country to assist people in completing their

¹ A Census ID is a unique identifier assigned to each address in a decennial census; the Census ID is used to track whether an address has self-responded or to track the address through nonresponse data collection and, ultimately through response processing and data tabulation.

decennial census response. The staff are part of a mobile questionnaire assistance response effort deployed to areas that have a low self-response rate.

18. Approximately six weeks after Census Day, the Census Bureau will begin its NRFU operation. From approximately mid-May through late July, 2020, the Census Bureau will deploy hundreds of thousands of enumerators across the nation to visit addresses for which a self-response has not been received. Each case in the NRFU workload is subject to a set number of in-person attempt days (multiple attempts during the same day are considered a single attempt day). The default number of attempts for NRFU cases is six. Select cases may be subject to additional contact attempts near the end of NRFU. Additional details on NRFU are provided below and can be found at <https://census.gov/programs-surveys/decennial-census/2020-census/planning-management/planning-docs/NRFU-detailed-op-plan.html>.

19. From August 1 through November 30, 2020, we will process the responses that we collected, resulting in the production of the Census Unedited File. Producing the Census Unedited File involves coding write-in responses, updating the address and geospatial databases, determining housing unit status (occupied, vacant, or non-existent), establishing a single enumeration record for an address when multiple returns are received, applying count imputation, and determining the final housing unit population count. The Census Unedited File is used to produce the apportionment counts, which must be created, reviewed, cleared and delivered to the President by December 31, 2020.

20. While we produce the apportionment counts, we also begin further processing of the Census Unedited File to produce characteristic information about the households we counted, including implementing statistical procedures to account for missing or inconsistent information. The result of this processing is Census Edited File. When the Census Edited File is complete, we

implement differential privacy protections to ensure that the release of tabulated statistics does not reveal information on individual respondents. The release of these data for redistricting begins in mid-February, 2021 and runs through March 31, 2021, as required by law.

IV. Use of Administrative Records in the Nonresponse Followup (NRFU) Operation

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

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

23. The 2020 Census NRFU operation is similar to the 2010 Census NRFU operation, but improved. In both the 2010 Census and the 2020 Census, cases in the NRFU workload are subject to six contact attempts. In both the 2010 and 2020 NRFU, the first contact attempt is an in-person attempt. In the 2010 Census, these six contact attempts could be conducted as three in-person attempts and three attempts by telephone. By comparison, each contact attempt in the 2020 Census NRFU will be an in-person contact attempt.

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

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

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

27. If a knowledgeable person cannot be found to confirm the status of vacant or non-existent, use of administrative records may provide the confirmation of the enumerator's assessment. The Census Bureau does not rely on a single administrative records source to determine an address is vacant or non-existent. Rather, multiple sources are necessary to provide the confidence and corroboration before administrative records are considered for use. For example, the Census Bureau is confident that an address is vacant or non-existent when the U.S. Postal Service indicates that Census Bureau attempts to deliver 2020 Census mailings were undeliverable, and there are other sources (*i.e.*, other administrative records) indicating the absence of people at an address. When used in combination with an enumerator's assessment of vacant or non-existent, corroborated administrative records provide the second confirmation that a nonresponding address is vacant or non-existent. In these instances, the status of the

nonresponding address is indicated as vacant or non-existent and no additional in-person contact attempts will be made. Nor should there be: having confirmed through administrative records and an in-person visit that no person resides at a given address, it would be wasteful to follow up with further in-person visits to count its residents, because it is evident there are none.

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

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

30. For all addresses, if the enumerator is unable to make contact with someone, s/he will leave a Notice of Visit at the address. A Notice of Visit provides information for the residents on how to self-respond to the decennial census. If a self-response is received, the address is considered enumerated and no further in-person contact attempts by a census enumerator will be made.

31. Administrative records usage for corroboration of vacancy and non-existent status and for the purposes of enumeration is limited to those nonresponding addresses where the Census Bureau has confidence in the use of administrative records. In such cases, multiple sources of information (including the assessment of an individual who has made an in-person contact attempt in the field) will be used to determine the approach to and enumeration of the housing unit.

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

33. Contrary to Plaintiffs' assertions, the Census Bureau has no reason to believe that its plans to use administrative records during NRFU will increase a differential undercount. The NRFU contact strategy was informed by and evolved as a result of each intercensal field test (i.e., the extensive testing conducted after the 2010 Census in preparation for the 2020 Census). Final adjustments to the contact strategy were made following the 2018 End to End Census Test. We tested this change rigorously and it is a careful and targeted change; our testing indicates no reason to believe this change will harm data quality or increase any differential undercount. Use of administrative records, when and where feasible, allows the Census Bureau to resolve cases in an efficient and effective manner. In fact, with this approach, in-person contact attempts can be

focused on those households that are not represented well by administrative records – in general, the harder to count of the nonresponding households.

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

V. Mobile Questionnaire Assistance Centers

35. In the 2010 Census, Questionnaire Assistance Centers (“QACs”) functioned as distribution sites for “Be Counted” forms, which were Census questionnaires that could be submitted without a Census ID. The QAC staff were not authorized to accept completed forms, rather they could only hand out the form, provide assistance if needed, and direct the respondent to a mail box. The Census Bureau did not plan to repeat the QAC operation in the 2020 Census because the operation didn’t make sense in light of the new design.

36. Specifically, for the 2020 Census, from the very earliest planning, we assumed reliance on response through the internet, rather than on paper Be Counted forms, and that internet responses would allow responses without a Census ID, which we call Non-ID responses. Non-ID response makes it easy for people to respond anytime, anywhere, without the need for their unique Census ID. Non-ID response allows a respondent to provide their decennial census response data via the internet or by phone. By collecting a respondent’s address as part of the decennial response data and then matching that address to the Census Bureau’s address inventory, the Census Bureau will associate the response to the appropriate Census ID. With no paper Be Counted forms, there was simply no need for QACs as implemented in the 2010 Census.

37. It is also important to note that the QACs in the 2010 Census were not a cost-effective method to achieve non-ID self-responses. In the 2010 Census, about 760,000 persons were added to the final population counts from Be Counted forms nationwide – an average of only about 20 persons from each of the approximately 39,000 locations (30,000 QACs and 9,000 Be Counted).

38. Congress requested that the Census Bureau explore alternatives to revive QACs. The Census Bureau responded in April 2019 with a proposal to create a new Mobile Response Initiative. We received favorable feedback on the Mobile Response Initiative proposal, and Congress has since allocated additional funding for it. We call this new operation MQA, or Mobile Questionnaire Assistance. The proposal takes advantage of the new ability to take self-responses over the internet and in multiple languages. Over 4,000 staff hired across the country as Recruiting Assistants, rather than being let go in March 2020, will be converted to working as MQA staff. They will take their tablets to places where respondents in hard-to-count or low response areas may congregate, such as markets, festivals, events, church services and the like. Rather than waiting for respondents to visit a QAC, this staff will be highly mobile with the ability to visit multiple areas in a single day. The strategy moves from motivating a response to actually obtaining a secure, on-the-spot response. The MQA operation is simply a better solution than the old QAC model from the 2010 Census.

39. As I explained above, taking a decennial census is a massive endeavor. The 2020 Census has over 27,000 separate lines in the Integrated Master Activity Schedule and 52 separate systems. The 52 systems make up the IT infrastructure required to support the execution of the 2020 Census. Encompassed within these systems are capabilities including, but not limited to: an online job application for field staff, the Internet Response application, control systems used

to manage the 2020 Census through creation of the mail workload, tracking of responses, identification of nonresponding housing units, application of administrative records, and processing and tabulation of response data. We are now engaged in data collection operations and it is far too late to change the census operational design. Late changes—even actions that may seem minor or straightforward to an observer lacking an operational understanding of conducting the United States decennial census—will imperil the success of the 2020 Census. In particular, it is many years too late to make substantive changes such as opening physical Questionnaire Assistance Centers—or to change the strategy for using administrative records in NRFU, discussed above.

40. Additionally, we are long past the time when the Census Bureau could open physical QACs, even if we believed this was a good idea, which we do not. Field enumeration has begun and self-response will begin in less than a month. There is not time to identify and lease locations, a process that requires years rather than months or weeks.

41. We plan to expend from \$110 to \$120 million on the Mobile Response Initiative. It is my understanding that Plaintiffs believed that our plans did not include funding for any such initiative. And it is also my understanding that our anticipated expenditure on this initiative is more than double the amount Plaintiffs have requested be spent on increased ground operations. Accordingly, I believe this request has been resolved by the Census Bureau's current plans.

VI. Area Census Offices

42. Similarly, we are far past the date we could open additional Area Census Offices (ACOs), even if we believed it was a good idea. This is a process, that takes years, not months, and being forced to open additional ACOs would certainly delay the census. The federal

contracting process for acquiring leased space is complex because it involves other agencies and significant time periods for necessary reviews.

43. We determined the needed number and location of ACOs through a data-driven process based on the estimated number of enumerators needed for the 2020 Census. The Census Bureau projected the workload and determined the number of enumerators needed to conduct the NRFU operation for the 2020 Census. We used several data sources to estimate the number of enumerators needed per area, such as response rate projections based on the 2010 Census, the estimated NRFU workload, and the locations of group quarters.²

44. ACOs, like the Local Census Offices used in the 2010 Census, are not open to the public—the public does not visit an ACO to be enumerated. As described above, regardless of the location of the nearest ACO, individuals will be counted either by self-responding (completing a form from any location of their choosing), through an in-person visit to their homes, in the rarest case where neither is possible, through administrative records, or when all else fails through count imputation.

45. ACOs house the managers, staff, materials, and equipment (laptops, smartphones, tablets, etc.) needed to support the hundreds of thousands of Census Bureau employees conducting local census operations, including NRFU, group quarters, and other enumeration operations. The fact that there are fewer ACOs planned for the 2020 Census than there were

² ACO locations were chosen based on the following broad criteria: (1) Each state must have at least one ACO; (2) Indian reservations and military bases (regardless of county, state, or regional boundaries) will be managed by only one ACO; (3) ACO areas of responsibility will not cross state or regional boundaries (with noted exceptions above); (4) ACO areas of responsibility will align with county boundaries (except for counties with multiple ACOs); (5) each ACO area of responsibility will contain at least one major city; and ACO areas of responsibility must consider the transportation network and impassable geographical features and water bodies.

Local Census Offices used in the 2010 Census thus has no real bearing on whether any person will or will not be counted.

46. It is also incorrect to treat 2020's ACOs as equivalent to 2010's Local Census Offices. The difference in number is directly tied to the difference in function based on the changed design of the 2020 Census. The 2010 Census relied heavily on the use of paper – paper in the form of questionnaires, maps, address listing pages, training materials, field manuals, time and expense reports, etc. Larger offices with more space were needed to support the paper-based 2010 Census. Enumerators met with their supervisors on a daily basis to exchange completed time and expense forms, receive new assignments and materials, and to submit completed assignments which were then taken to the Local Census Office for check-in and processing.

47. In contrast, enumerators in the 2020 Census will use mobile devices to collect census responses, to receive their assignments, to submit time and expense information, and to plan their route between each location they have been assigned to visit. This includes an advanced Field Operational Control System, which uses an optimizer to determine the most efficient set of cases to assign the enumerators and determines the most efficient routing of their field work. For example, the optimizer will assign cases to enumerators whose home addresses are closest to the addresses that require an in-person interview. The optimizer will also route enumerators to their assigned cases in an order that takes into consideration the best time to contact a particular household.

48. Each evening, enumerators will enter their work availability into the field data collection application to indicate the hours they are able to work for the following five days. The optimizer will, in overnight processing, analyze the enumerators' availability and the other critical information regarding the case, enumerators' home locations, their hours of availability,

and best times to contact the case. Based on the optimizer's analysis, the enumerators are assigned nonresponding cases to work. When enumerators log into their iPhones in the morning, their assignments will be loaded onto their devices to enable their work for the day. The cases will be sorted in the optimal order to ensure the enumerators travel to their cases and conduct interview attempts in the most efficient manner possible.

49. Our research and testing indicates that this improvement will make enumerators far more productive and efficient, which will likely require fewer enumerators than were required to complete the 2010 Census. But it also means that they do not need offices close enough to their residences to visit on a daily basis. Accordingly, having fewer field offices than 2010 will not negatively affect NRFU operations. The location of ACOs was driven by the criteria mentioned above. Our decisions were based on operational needs and effective and efficient use of taxpayer dollars.

VII. Enumerator Hiring

50. The Census Bureau expects to hire between 320,000 and 500,000 field staff to conduct field operations in 2020. The majority of these field staff will work in the NRFU operation and we are actively recruiting to achieve this goal.

51. Our hiring plans are a function of the anticipated self-response rate, expected enumerator productivity, the duration of the operations, and how many hours per week enumerators are willing and able to work. To complete the NRFU data collection between mid-May and the end of July, we estimate that we will need to hire 320,000 field staff based on a 60.5% self-response rate, productivity of 1.55 cases/hour, and work availability of 20.5 hours/week. Under the most extreme negative assumptions (e.g., pairing achieving only a 55% self-response rate with productivity of only 1.25 cases per hour), we could need almost 500,000

field staff. Although we will not know the exact magnitude or location of the NRFU workload until early May, based on current recruitment rates, we expect to be able to hire as enumerators as will be needed, perhaps as many as 500,000.

52. In the unlikely event we do not achieve even a 55% self-response rate, the Census Bureau has contingency strategies available. The Census Bureau's recruiting strategy is designed to provide an ample pool of resources from which it can pull, providing flexibility needed to expand beyond the estimated number of enumerators needed. In addition, while our standard procedure is to hire enumerators to work in the geographic areas where they live, should we experience a greater than anticipated workload in any specific area, we could move enumerators to work in areas of greater need. In the 2010 Census NRFU operation, 98% of the NRFU workload was completed within seven weeks, and as the work was completed, staff were released. In 2020, if we experience similar completion rates, staff could be retained and moved to work in areas of need. Additionally, we have the ability to authorize overtime for enumerators, or in drastic situations even a potential ability to extend the duration for completing NRFU. All enumerators that are hired and successfully meet the training requirements will be deployed to conduct 2020 Census field work.

53. In short, it is inappropriate for the Census Bureau to be ordered to hire a specific number of enumerators, particularly in advance of knowing what the required workload will actually be and where in the country that workload will be heaviest. We have a well thought out plan to conduct NRFU, based on a decade of preparation and testing, and we are confident in our ability to hire the needed workforce.

VIII. **Research and Testing of the 2020 Census Design**

54. As noted above, the 2020 Census is a highly complex operation with many interconnected components, many of which are designed specifically to enumerate hard-to-count populations. Given the immense effort required to conduct the census, the importance of the results, and the decade of work by thousands of people that goes into planning and conducting the decennial census, the Census Bureau expends a significant amount of effort to evaluate its planning and design to ensure that its operations will be effective in coming as close as possible to a complete count of everyone living in the United States.

55. The operational design of the 2020 Census has been subjected to repeated and rigorous testing. Testing and design of the 2020 Census was an iterative process. With the results of each set of tests, we revised our plans and assumptions as necessary.

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

- a. **2013 Census Test.** The 2013 Census Test explored methods for using administrative records and third-party data to reduce the NRFU workload. Key objectives of the 2013 Census Test included:
 - i. Evaluate the use of administrative records and third-party data to identify vacant housing units and remove them from the NRFU workload;
 - ii. Evaluate the use of administrative records and third-party data to enumerate nonresponding occupied housing units to reduce the NRFU workload;

- iii. Test an adaptive design approach for cases not enumerated with administrative records and third-party data; and
 - iv. Test methods for reducing the number of enumeration contact attempts as compared with the 2010 Census.
- b. **2014 Census Test.** The 2014 Census Test built upon the results from the 2013 Census Test specific to administrative records and third-party data usage to reduce the NRFU workload. Key objectives of the 2014 Census Test included:
- i. Testing various self-response modes, including the Internet, telephone, and paper, and response without a preassigned census identifier;
 - ii. Testing the use of mobile devices for NRFU enumeration in the field;
 - iii. Continuing to evaluate the use of administrative records and third-party data to remove cases (vacant and nonresponding occupied housing units) from the NRFU workload;
 - iv. Testing the effectiveness of applying adaptive design methodologies in managing the way field enumerators are assigned their work; and
 - v. Examining reactions to the alternate contacts, response options, administrative record use, and privacy or confidentiality concerns (including how the Census Bureau might address these concerns through micro- or macro-messaging) through focus groups.
- c. **2014 Human-in-the-Loop Simulation Experiment (SIMEX).** Key findings included:
- i. Determination that the field management structure could be streamlined and the supervisor-to-enumerator ratios increased;

- ii. Messaging and alerts within the operational control system provided real-time and consistent communication; and
 - iii. Smartphones were usable by all people—even those with little technology experience were able to adjust and adapt.
- d. **2015 Optimizing Self-Response Test.** The objectives of this test included:
- i. Determining use of digital and target advertising, promotion, and outreach to engage and motivate respondents;
 - ii. Offering an opportunity to respond without a Census ID (Non-ID Processing) and determine operational feasibility and potential workloads around real-time Non-ID Processing; and
 - iii. Determining self-response and Internet response rates.
- e. **2015 Census Test.** The 2015 Census Test explored reengineering of the roles, responsibilities, and infrastructure for conducting field data collection. IT also tested the feasibility of fully utilizing the advantages of planned automation and available real-time data to transform the efficiency and effectiveness of data collection operations. The test continued to explore the use of administrative records and third-party data to reduce the NRFU workload. Key objectives included:
- i. Continue testing of fully utilized field operations management system that leverages planned automation and available real-time data, as well as data households have already provided to the government, to transform the efficiency and effectiveness of data collection operations;

- ii. Begin examining how regional offices can remotely manage local office operations in an automated environment, the extent to which enumerator and manager interactions can occur without daily face-to-face meetings, and revised field staffing ratios;
 - iii. Reduce NRFU workload and increase productivity with the use of administrative records and third-party data, field reengineering, and adaptive design; and
 - iv. Explore reactions to the NRFU contact methods, administrative records and third-party data use, and privacy or confidentiality concerns.
- f. **2016 Census Test.** The 2016 Census Test tested different supervisor-to-enumerator staffing ratios and incremental improvements and updates to the field data collection software that guided an enumerator through interviews. The 2016 Census Test also allowed the continued evaluation of the use of administrative records to reduce the NRFU workload. Key NRFU objectives included:
- i. Refining the reengineered field operations;
 - ii. Refining the field management staffing structure;
 - iii. Testing enhancements to the Operational Control System and field data collection application; and
 - iv. Testing scalability of Internet and Non-ID Processing during self-response using enterprise solutions.

Objectives related to self-response included:

- i. Testing provision of language support to Limited English Proficient populations through partnerships and bilingual questionnaires;

- ii. Testing the ability to reach demographically diverse populations;
- iii. Testing deployment of non-English data collection instruments and contact strategies; and
- iv. Refining Real-Time Non-ID processing methods, including respondent validation.

g. **2018 End-to-End Census Test.** The 2018 End-to-End Census Test focused on the system and operational integration needed to support the NRFU operation. Nearly all 2020 system solutions supporting the NRFU operation were deployed. The test also allowed continued evaluation of the NRFU contact strategy. The objectives of this test included:

- i. Testing and validating 2020 Census operations, procedures, systems, and field infrastructure together to ensure proper integration and conformance with functional and nonfunctional requirements.

h. **Address Canvassing Test (conducted in the fall of 2016).** The Address Canvassing Test examined the effectiveness of the In-Office Address Canvassing through the results of the In-Field Address Canvassing. The objectives of the test included:

- i. Implementing all In-Office Address Canvassing processes;
- ii. Evaluating the effectiveness of online training for field staff;
- iii. Measuring the effectiveness of In-Office Address Canvassing through In-Field Address Canvassing; and
- iv. Integrating multiple information technology applications to create one seamless operational data collection, control, and management system.

IX. Risk Planning and Contingency Operations

57. Plaintiffs also appear to misunderstand the nature of the Census Bureau's planning documentation, appearing to suggest that the operational plans and budget estimates are fixed. This is not the case. The Census Operational Plan went through four public releases between October 2015 and December 2018, as testing was completed and plans were revised. Similarly, the Life Cycle Cost Estimate, which is the Census Bureau's official estimate of the cost of carrying out the operational plan, has gone through two versions between 2017 and 2019. But even after the publication of the "final" versions of these documents, leading into the implementation phase of the census, our plans and anticipated spending may change as events develop on the ground.

58. In particular, experience with conducting the census over many decades has demonstrated that an operation of this scale never goes exactly as planned. Assumptions that were supported by testing may not play out in the census environment, certain populations or areas may prove easier than anticipated to count while others may prove harder, some operations may end up requiring more effort than anticipated while others require less, and on occasion truly unpredictable risks like natural disasters can occur that totally transform how a count must be conducted in certain areas.

59. As a result of these risks, the Census Bureau does not commit all of its funding to specific operations in advance, nor do our initial expected plans—including the number of people expected to do any particular job—reflect our only or final planning efforts. For some potential circumstances, we have designed specific plans in advance for potential unexpected but conceivable outcomes. For others, we simply reserve funds without designing plans in advance, because we cannot foresee with sufficient certainty what they will be.

When census operations are underway, Census Bureau leadership is constantly monitoring the operations and results of the count in real time. If particular populations or areas appear to be responding less than others—or less than anticipated—we will increase our outreach, be it through advertising, partnership, mobile questionnaire assistance, or any combination of the three, depending on the need that materializes. Similarly, if the NRFU workload turns out to be larger than anticipated, we can at that point deploy more enumerators if it becomes necessary to do so. The same is true for any problem that arises—the Census Bureau is committed to conducting the best count possible, and will do whatever it can on a real-time basis to fulfill that goal.

X. Response to Dr. Doms

60. In the course of preparing this declaration, I have reviewed the portions of the Declaration of Dr. Mark Doms submitted in connection with Plaintiffs' Motion for Preliminary Injunction that pertain to the issues of NRFU operations and field operations.

61. For the reasons stated above, Dr. Doms' concerns regarding the size of the enumerator workforce and number of field offices are unfounded. The Census Bureau is ready to hire the number of individuals needed for the potential range of reasonably likely workload volumes. Dr. Doms chose to focus only on self-response and failed to consider the expected productivity gains in relation to the 2010 Census in expressing his concern about the estimated number of enumerators that the Census Bureau will need. Even if the self-response rate is lower than expected, the Census Bureau is on track to hire as many enumerators as will be needed, having anticipated a full range of potential scenarios in planning. Dr. Doms mistakenly treats estimates made for planning purposes as if they were a fixed goal, rather than a rough prediction within a range of anticipated uncertainty.

62. Dr. Doms also mistakenly treats the number of field offices as meaningful for the success and quality of the enumeration, when in fact the number of needed ACOs is a simple function of anticipated workloads and productivity. The number of offices used for the 2010 Census is not determinative of the number needed for the 2020 Census, given the substantial number of design changes between the two censuses, including the move from a paper-based system to a primarily digital one. Any suggestion that the demographics of the county in which an ACO is located determine the effectiveness of the count in that area is inaccurate for similar reasons. Enumerators will go to the addresses of all non-responding units; the location of the enumerators is relevant, the location of the offices is not.

63. Similarly, Dr. Doms' conclusions about the 2010 Census Questionnaire Assistance Centers ignores the illogic of bringing back physical locations for the distribution of paper Be Counted forms, as there are no more paper Be Counted forms. Dr. Doms cites no support for his claim that the 2020 Census mobile questionnaire assistance centers are "unlikely to be effective." ¶ 35. Congress has expressly indicated its desire that the Census Bureau conduct this operation and his statements about its effectiveness are simply speculation.

64. Finally, Dr. Doms' statements about the use of administrative records potentially increasing a differential undercount are also conjecture. As noted above, multiple sources of information will be used to confirm any decision based on administrative records, and the Census Bureau will make at least one in-person visit to every address that does not self-respond. Further, Dr. Doms' concern that minority populations may be less well-represented in administrative records would still not mean that use of administrative records makes those populations more likely to be uncouneted; it simply means that those populations are more likely

to be enumerated through multiple in-persons visits than through the use of administrative records.

XI. This Litigation Burdens the Census Bureau and Puts the Census at Risk

65. As I have previously stated in a declaration dated December 18, 2019 in a challenge to 2020 Census operations in the Southern District of New York, *Center for Popular Democracy et al. v. Bureau of the Census et al.*, 19-cv-10917, it would be burdensome for the Census Bureau to have to engage in a substantive defense of this lawsuit. In that declaration, I stated that I typically worked over 50 hours per week on Monday – Friday, and often additional hours on the weekend. Those numbers have only increased, given that we have begun field data collection and are posed to begin self-response operations. I know from personal knowledge (phone calls, emails, etc.) that other members of the decennial leadership team are working similar hours. Daily production status meetings began in July 2019 and are held each weekday. Key operational staff review and discuss events, check system statuses, and review output. I chair a meeting with senior decennial leadership where we review key operational information and address issues escalated to senior leadership. The remainder of the time is spent conducting smaller meetings to address future operations and their readiness for production, monitoring budget, as well as providing senior-level oversight for the 2020 Census. My day also includes significant time preparing updates for oversight from the Department of Commerce, GAO, OIG, the Census Bureau’s advisory committees, and both Chambers of Congress.

66. We have identified individuals (including myself) who have been asked to perform work related to this lawsuit, and all are essential to maintaining operations during this time. To require Census staff members to shift their focus from Census work to assist in defense of this lawsuit on an ongoing basis could jeopardize the ability of the Census Bureau to carry out

the 2020 Census in accordance with its statutorily mandated deadline of December 2020 and would impose an immense burden on the Census Bureau at the busiest and most important period of the decade for its work.

67. This burden creates a significant risk to accurate and timely completion of the census because, as noted above, census operations are continually monitored and updated to address unforeseen issues and allocate resources as necessary to solve problems on a daily basis. Each person hour expended by a senior official at the Census Bureau participating in the defense of this litigation is an hour that person is unavailable to work on the task of counting over 330 million people in 50 states, the District of Columbia and five territories. It is my professional, informed opinion that 2020 Census operations would be imperiled were key members of the Census Bureau leadership team to be forced to drop their operational responsibilities to provide litigation support in this lawsuit.

Executed on this 20th of February 2020.



Deborah Stempowski
Assistant Director for Decennial Census Programs,
Operations and Schedule Management
Bureau of the Census

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

CENTER FOR POPULAR DEMOCRACY
ACTION, *et al.*,

Plaintiffs,

v.

Case No. 19 Civ. 10917 (AKH)

BUREAU OF THE CENSUS, *et al.*,

Defendants.

DECLARATION OF BENJAMIN K. TAYLOR

I, Benjamin K. Taylor, 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 Chief of the Decennial Budget Office of the Census Bureau. I have served in this capacity since November 2017. Prior to assuming those duties, I was the special assistant to the Associate Director for Decennial Census Programs at the Census Bureau from 2016, in which I served in a lead advisory role on all matters of budget, strategy, and policy. I also work in a close informal advisory role with the Census Bureau's Budget Director and Chief Financial Officer.

2. From 2008 to 2016, I was employed by the Office of Management and Budget (OMB) in multiple senior analyst/examiner roles. At OMB from 2013 to 2016, I served as the senior program examiner assigned to all oversight, advisory, and strategic responsibilities for the U.S. Census Bureau, Bureau of Economic Analysis, and Small Business Administration loan programs on behalf of the Administration. The particular focuses were on the President's budget requests, cost estimates and modeling of key programs, and the appropriations process. The first five years of my OMB tenure were spent as a fiscal economist in the Budget Analysis Branch, including as the lead economist the final

three years. In this capacity, I was responsible for modeling the Federal budget, Administration's economic forecast, and demographic baseline over a 75 year time horizon as well as the near term and long term interactions between the economy and the budget. I earned a Bachelor of Arts in economics from the University of Michigan in 2006 and a Master of Public Policy from the University of Michigan in 2008.

3. In connection with my job responsibilities I am thoroughly familiar with this litigation brought by Plaintiffs, as well as the government's efforts to defend Census Bureau and the U.S. Department of Commerce. The following statements are based upon my personal knowledge or on information supplied to me in the course of my official responsibilities.

I. Executive Summary

4. In this declaration:

- a. I explain the process by which the official cost estimate of the 2020 Census was constructed, consistent with, and more conservative than, the GAO guidelines for cost estimation, based on an initial estimate of the expected cost to carry out each program in 50% of simulated scenarios, and then adjusted upward to account for the risk that conditions would make it cost more. This method is far more sophisticated and accurate than just adjusting upward based on inflation or other factors from the costs of the prior census, because it accounts for the actual (different) plans that will be used in this census. The overall cost estimate for the entire lifecycle of the 2020 Census is \$15.6 billion, which represents enough funding to successfully complete the 2020 Census in virtually all possible risk simulations.
- b. I explain that Congress has appropriated funding in-line with the current cost estimate and indicated its expectation that the Census Bureau reserve approximately \$2

billion of its presently available appropriations as “contingency funds,” i.e. reserves to spend in case events do not operate as expected. It did not allocate these funds to any specific programs, which is appropriate because the exact needs of the programs over the next few months are not yet known and will not be known until operations are further underway. Congress also indicated its intent that a portion of the funds it appropriated in excess of the President’s budget request for FY 2020 be spent on mobile questionnaire assistance efforts. The Census Bureau’s current plans honor both these preferences of Congress.

c. I explain how Dr. Doms’ declaration oversimplifies and leaves out some key aspects in the analysis of the 2020 Census and 2010 Census in such a manner as to render its conclusions unreliable. In particular, Dr. Doms (a) inappropriately disregards design differences between the 2010 Census and the 2020 Census, making his assumption that the amount of funding from the 2010 Census should be a baseline for funding the 2020 Census unreasonable; (b) inappropriately disregards the difference in value of the contributions of Partnership Specialists, professional staff who perform the significant work of the Partnership Program, and Partnership Assistants, who were clerical staff; and (c) fails to account for the productivity gains that were a driving purpose in the new design of the 2020 Census.

d. I explain that Plaintiffs requested relief is inappropriate because the Census Bureau already intends to spend as much as, or more than, the totals Plaintiffs request to be spend on advertising and mobile assistance centers, making their requests unnecessary. Their request that nearly \$600 million be spent on enumerators is inappropriate because at the moment the need for enumerator-hours is not yet known

because it will depend on the volume and distribution of those people who do not self-respond to the 2020 Census in the coming months and the Census Bureau will maintain enough enumerators to do whatever amount of work that is necessary when that volume and distribution of work are known. Directing a certain amount of spending before the exact workload is known would simply be wasteful and could make actual mitigation more difficult later.

II. Census Cost Estimations

5. As Chief of the Decennial Budget Office, I am responsible for the official cost estimate for the 2020 Census. The office finalized the most recent official cost estimate for the 2020 Census, known as the 2020 Census Life Cycle Cost Estimate (LCCE) Version 2.0, on June 10, 2019, and an executive summary of that estimate is publicly available at https://www2.census.gov/programs-surveys/decennial/2020/program-management/planning-docs/life-cycle-cost-estimate_v2.pdf. The Government Accountability Office (GAO) reviewed the updated estimate and determined as of January 2020 that it substantially or fully met GAO's standards and best practices for a reliable cost estimate in terms of credibility, accuracy, completeness, and documentation quality. It is rare for civilian agencies to be so designated, and we are proud that the Census Bureau has achieved this status.

6. The 2020 Census LCCE takes the form of a layered, bottoms-up estimate. This means that each element of programmatic scope required for the 2020 Census is estimated based on the most updated and sophisticated information and then aggregated, rather than taking buckets of cost elements from the previous decennial census and applying a simple inflation or other growth factor to past data. In other words, the 2020 LCCE was based on the anticipated costs of each operation in the 2020 Census as actually planned; it was not based on applying inflation or another growth factor to the actual costs from the 2010 Census, which was conducted based on a different plan. This is a more sophisticated and

accurate methodology, and allows for a refined estimation of individual cost elements that may not have a straightforward relationship to the past cost of a similar element.

7. The layering refers to how the cost estimation is aggregated and how risk is introduced. The first and smallest component of the cost estimate is the point estimate. The point estimate represents the amount of money that would be necessary to conduct the 2020 Census if the set of expected (or mid-point assumptions) were realized. This is estimated at a 50% confidence level, meaning that in half of simulations that randomly vary the set of assumptions in a given range of uncertainty, the point estimate was enough funding to conduct the 2020 Census. The 2020 Census point estimate in the 2019 version of the LCCE was \$12.7 billion. The cost-driving assumptions include the following major variables: nationwide self-response rate at the start of nonresponse followup (NRFU); average number of cases completed per hour by field staff; and pay rates necessary to recruit and hire the necessary field staff in each locality in the country.

8. GAO advises in its best practices that the point estimate be conducted at the 50% confidence level and then risk-adjusted at the 80% confidence level. This latter is the funding level at which 80% of simulations that randomly vary the set of assumptions in a given range of uncertainty still yield sufficient funding to complete the 2020 Census. The 2019 version of the LCCE added just over \$300 million in contingency funds to accommodate this risk adjustment to the 80% confidence level. However, the Census Bureau chose to take risk adjustment a step further beyond varying cost driving parameters, since many risks being tracked and managed by the 2020 Census program would not, if realized, manifest cost solely through field parameters such as the response rate. For example, a significant IT security incident could impact the self-response rate, but the full impact could also include significant IT, outreach, and other mitigation costs. To this end, all known lifecycle risks to the 2020 Census have been maintained and managed in the portfolio Risk Register, which includes thorough

probability analysis and cost impact if realized. The 2019 LCCE reflects an additional \$1.1 billion in contingency to allow mitigation of realized risks captured in the 2020 Census Risk Register.

Collectively, the risk-adjusted point estimate for the LCCE is \$14.1 billion, which represents well beyond the 80% confidence level.

9. The Census Bureau then further added \$300 million to the risk-adjusted point estimate to account for deviation in certain cost assumptions—pay rates for enumerators and the self-response rate—outside the ranges of variation estimated in the risk adjustment. Finally, \$1.2 billion was added to account for the costs associated with unknown and unforeseeable risks or an unforeseeable realization of known risks and/or deviations in cost assumptions. Collectively, the overall 2020 Census LCCE is \$15.6 billion and this figure represents enough funding to successfully complete the 2020 Census in virtually all possible risk simulations.

10. The purpose of a cost estimate is to lay out a range of possible costs for the 2020 Census. The actual cost will be determined by the exact risks realized and the actually realized cost assumptions. The actual amounts requested and appropriated for the 2020 Census were decisions made by differing entities (such as the Administration; and/or Congress) based on the cost ranges presented within the 2020 Census LCCE, and they are indicative of the level of risk protection desired by these different entities for the 2020 Census.

III. Current Appropriations for the 2020 Census

11. As of this writing, the Census Bureau has been appropriated in aggregate just under \$14.0 billion to use for both the 2020 Census operations and contingency for fiscal years 2012 through 2020. This is \$1.3 billion more than the \$12.7 billion risk-adjusted point estimate through FY 2020 in the 2019 version of the 2020 Census Lifecycle Cost Estimate. Further, this is \$4.4 billion greater in appropriated dollars than the \$9.6 billion actually expended from fiscal years 2002 to 2010 for the 2010 Census.

12. The \$14 billion total appropriated by Congress to date also represents 99.4% of the total Lifecycle Cost Estimate through FY 2020, which as I mentioned above includes a level of contingency funds sufficient to cover the full range of expected operational outcomes with near certainty.

13. Congress has indicated that at least two thirds of the \$1.3 billion of funding above the budget request should be utilized as contingency funding to address any significant risks realized in the conduct of the 2020 Census that exhausts the nearly \$1.1 billion in unused contingency funds already included in the \$12.7 billion risk-adjusted point estimate through FY 2020. In other words, while the contingency funds that covered the 80 percent confidence level as well as covering the 2020 Census Risk Register were already included in the budgeted amounts for FY 2020, Congress also appropriated a level consistent with a point in the LCCE range that exercised even more caution by providing more than \$900 million in additional contingency for unknown risks and significant deviations in cost assumptions.

14. Combined, there remains approximately \$2 billion in contingency funds that have been appropriated, but which we have not yet needed to use. The 2020 Census maintains a rigorous program Risk Register and individual project risk registers, covering a wide range of risks to 2020 Census operations occurring on schedule, at the highest degree of quality, the most significant of which with detailed mitigation and contingency plans. As stated above, contingency funding covering the expected mitigation of these risks is included in the risk-adjusted point estimate. This contingency funding included in the \$12.7 billion estimate also includes natural deviations in cost-driving assumptions, such as the self-response rate and the productivity rate. The additional contingency funding of at least \$900 million appropriated beyond the risk-adjusted point estimate is designated to go above and beyond this standard to cover unforeseen risks being realized (for example, a natural disaster or terrorist attack) and

more extreme deviations in cost-driving assumptions, for example, a decrease of more than 5% in the self-response rate.

15. Congress has indicated that part of the remaining approximately 33 percent of funds appropriated beyond the risk-adjusted point estimate through FY 2020 in the 2019 Lifecycle Cost should be allocated to fund the Mobile Questionnaire Assistance operation beginning in March of 2020. The Census Bureau expects that this operation will cost between \$100 million and \$120 million during FY 2020 to bolster self-response in hard-to-count communities.

16. The remainder of these funds—approximately \$350 million—will be deployed as needed and as determined by 2020 Census program management to optimize 2020 Census operations. Approximately \$70 million of that total was recently allocated to the Integrated Communications Contract (including advertising and partnerships), to further ensure an optimized media campaign for each targeted demographic area with a focus on reaching the hard-to-count. The total of over \$580 million for the Integrated Communications Contract will further exceed the inflation-adjusted totals from the 2010 Census (now at least \$135 million higher), and I understand this spending level will achieve a level of saturation and penetration even further beyond that of the 2010 Census campaign than was previously expected.

17. While operations for the 2020 Census are on time, within budget, and in some cases underway or completed, a significant portion of the risks facing the program will occur in a short time period during self-response and NRFU from March through July 2020. While the 2020 Census program management maintains a high degree of confidence that \$2 billion or more in contingency will not be required to complete a high quality 2020 Census on schedule, scenarios involving multiple significant risks being realized could theoretically require most or all of this funding in order to ensure the complete 2020 Census count is delivered within the statutory deadline later in the year. As noted above, Congress

has appropriated well more than the risk-adjusted point estimate of \$14.1 billion. But this still slightly less than the full \$15.6 billion figure representing enough funding to complete the 2020 Census in virtually *all* possible risk simulations. So the Census Bureau is in no position to squander contingency funds before understanding the NRFU workload.

18. Having this reserve appropriated and readily available to mitigate actual risks realized during the 2020 Census peak operations is one of the most important guarantors of a complete, accurate, on-time 2020 Census. Operationally speaking, this could mean maintaining a higher number of enumerators than expected or retaining some enumerators for longer durations, and is why we over-recruit and over-train relative to the point estimate assumptions in the LCCE. This could also include responding to an area impacted by a major natural disaster with alternate, more costly field procedures, or an integrated response to a significant data breach at the Census Bureau or another high profile institution. In an extreme scenario, it could mean a combination of these or other mitigations. Regardless, having this funding mechanism paired with operational flexibility will provide the Census Bureau with the optimum ability to complete a high quality 2020 Census regardless of which, if any, operational risks are realized.

19. Finally, it should be underscored that none of the above risks being realized change the mission of the 2020 Census: to count everyone living in the United States once, only once, and in the right place. We plan to exhaust resources under any combination of outcomes necessary to fulfill that mission. In all scenarios, the focus of our resources will include the hard-to-count. Our plan is based on attempting to enumerate the most willing and able to respond in our most efficient and cost effective manner, thereby freeing the majority of our resources for usage toward a bevy of in-person techniques specifically tailored to reach hard-to-count communities.

20. It is my opinion that at this point in time relative to 2020 Census peak operations, any diversion of these contingency funds to preemptively and speculatively address specific unrealized operational risks would be short-sighted, and hinder the flexible and nimble risk mitigation that must be allowed to occur to keep the 2020 Census on track.

IV. Funding for Selected Operations in the 2020 Census as Compared to the 2010 Census

21. In the course of preparing this declaration, I have reviewed the Declaration of Dr. Mark Doms submitted in connection with Plaintiffs' Motion for Preliminary Injunction. I interacted with Dr. Doms in his role overseeing the Census Bureau as Under Secretary over two years while I was managing the Census Bureau portfolio at OMB. I am personally familiar with the role Dr. Doms played in the redesigned operations for the 2020 Census as they were presented in the 2015 Operational Plan, which is very similar to the design that prevails today, and the associated cost estimate for that design which was over \$3 billion less than the 2020 Census cost estimate today. Dr. Doms' declaration does not address his position in crafting this redesign of the program at a significantly lower cost estimate than today's cost estimate, making his declaration misleading.

22. In addition, Dr. Doms' declaration oversimplifies and leaves out some key aspects in the analysis of the 2020 Census and 2010 Census that render its conclusions erroneous.

23. As an initial matter, the 2020 Census and the 2010 Census had significant differences in the way they were designed, both in the areas discussed by Dr. Doms and elsewhere. As a result of these design differences, the amount of funding required for each particular operation in the 2010 Census provides an overly simplistic baseline for the funding of the parallel operation in the 2020 Census. In overseeing the cost estimate for the 2020 Census, the Decennial Budget Office based the estimate on what the expected costs would be of the design being used for the 2020 Census itself, not on the actual costs of the 2010 census. To have done so would have been inconsistent with accepted cost-

estimation practices because it would have been over-simplistic and ignore updated operational requirements, procedures, and expectations. I understand from cost estimation experts on my team, at DOC, and at GAO that a decennial census is both highly unique, complex, and rare, making direct comparisons across decades without accounting for the multitudinous ways in which the technological and social environment around a census have changed a poor approach for a cost estimate of the highest degree of reliability.

24. In Dr. Doms' statement, he refers to several costs from the 2010 Census that have been inflated with the GDP deflator and population growth over ten years, in order to compare them with the proposed levels for the 2020 Census. But in several areas of communications and outreach, there are missing elements that put forward an incomplete record. In the discussion of community partnerships, for example, Dr. Doms refers to 2,000 partnership assistants. The vast majority of these positions were funded very late in the 2010 Census as a part of the American Recovery and Reinvestment Act of 2009, which was primarily a jobs stimulus. In fact, this represented around \$109 million of the \$283 million spent on community partnerships for the 2010 Census; this is about \$140 million of the \$343 million adjusted for inflation and population growth. The program as planned for the 2010 Census up until that point is far lower than the 2020 Census even adjusted for those growth rates.

25. This late infusion of funds went to partnership assistants, which were clerk-like positions mostly dealing with the realities of a paper-based Census. As opposed to partnership specialists—who create a multiplicative impact on the number of census partners—partnership assistants were an overhead cost. In the 2020 Census decade, we have doubled the number of professional partnership specialist positions that can be expected to have a multiplicative impact on the number of partners, while also relying on this decade's automation and new office structure to render much of the partnership assistants' duties obsolete. From a cost and programmatic standpoint, we have taken some of the funds

that were invested in partnership assistants and reinvested them earlier in the process into partnership specialists.

26. Further, Dr. Doms' declaration notes that the 2019 LCCE did not include funding for the Questionnaire Assistance Centers (or equivalent), while noting that the 2010 Census spent \$35.6 million on similar activities. This ignores the Census Bureau's 2019 reporting and proposal to Congress for the Mobile Questionnaire Assistance operation that would best support the 2020 Census efforts to enumerate the hard-to-count, and the Congressional approval and appropriation of this initiative within the FY 2020 Continuing Resolution and final appropriation bill. These provisions called for expenditures of not less than \$90 million on these efforts, and the Census Bureau's plans are over \$100 million and could exceed \$120 million under certain circumstances. These totals are triple what was spent in the 2010 Census on an operation that was less well-tailored to encourage self-response in hard-to-count communities.

27. Dr. Doms' declaration also notes that point estimates for the cost of NRFU and In-Field Address Canvassing in the 2020 Census are lower than the 2010 Census actual costs despite a greater projected caseload for each operation than the previous decade. This results from significantly improved field efficiency demonstrated throughout the decade in field test after field test, capped by the experiences in the 2018 End-to-End Census Test, which tested the systems and other automated procedures undergirding the redesigned field operations in the 2020 Census. It is not reasonable to directly compare these redesigned and fully automated field operations to the prior decade where everything was manual, paper-based, and decentralized.

28. So much of the time and cost in the field from the 2010 Census and for many decades prior was dedicated to laborious administrative activities related to the daily creation and distribution of paper case lists, paper maps, paper timesheets, and paper response forms between field supervisors and

their teams of listers or enumerators. Duplicative enumeration was common, as there was no way to automatically remove cases from the door-to-door caseload where a mail response had been received. There was no live case optimization for best time of day to visit a household. There was no route optimization. Additionally, these tremendous amounts of paper needed to be transported many and sometimes hundreds of miles to the Local Census Offices for manually processing, coding, and sometimes repacking and shipping to additional central processing destinations.

29. Much of Dr. Doms' critique of opening fewer offices this decade ignores that offices can be smaller and more spread out because they have shifted from operating largely as daily, administrative paper processing facilities to functioning as high-tech operational hubs. Dr. Doms' declaration simply ignores this refinement in the flow and efficiency of the fabric of census-taking as well as the underlying test data showing that every field hour worked on the 2020 Census is far more productive than a field hour worked in the 2010 Census. Dr. Doms' declaration therefore displays a fundamental misunderstanding not only of the designs of the 2020 Census and 2010 Census but of census-taking in general.

30. In addition to leaving out the massive gains in productivity (an important goal of modernizing the 2020 Census), Dr. Doms' declaration also leaves out how the Census Bureau has remained openly cautious in its planning for the 2020 Census operational costs. One of the primary differences between the cost estimates for this design (endorsed by Dr. Doms earlier in the decade) and the significantly higher cost estimates for this design laid out in 2017 and 2019 is the introduction of a significant and unprecedented level of contingency funding for the 2020 Census.

31. With actually appropriations designated for contingency of just over \$2 billion (nearly 15 percent of the total appropriations) to date, the Census Bureau is poised to respond to nearly any possible risk that we face. Should address canvassing productivity have fallen below the tested levels.

the Census Bureau had tens of millions in contingency at the ready to extend tours of duty or even the entire operation. Nationwide productivity was ultimately even higher than the tested levels, despite a focus on the very hardest and most complex blocks to canvass this decade, so this funding was not needed for deployment. Likewise, should something natural or unnatural cause a higher NRFU caseload than we have estimated in the point estimate of the cost of NRFU, or cause less productive enumerators than we have tested, we have hundreds of millions if not billions of dollars at the ready to extend tours of duty, increase pay rates, increase hours worked per week, and/or increase the number of weeks of the operation's duration.

32. For example, even if the self-response rate for the 2020 Census fell to 50 percent (10.5 percentage points, or nearly 15 million housing units, lower than expected and 13.5 percentage points lower than the 2010 Census) and the enumerator productivity fell to 2010 levels consistent with paper-based procedures, the cost of completing NRFU would rise by approximately \$625 million or just one third of the available contingency, and the operation could still be completed in 10 weeks with 500,000 enumerators. The Census Bureau is on track to recruit enough applicants to field up to 500,000 enumerators, and has three times as much funding as the additional amount that would be necessary to field this many enumerators for all of NRFU. There is no doubt in my mind that the Census Bureau is prepared for all reasonable eventualities during 2020 Census peak operations.

V. Costs Related to Plaintiffs' Requested Relief

33. It is my understanding that in their motion for a preliminary injunction, Plaintiffs have asked the court to require the Census Bureau to immediately expend an additional \$770 million that has been reserved for contingency funding on several specific operations. As explained above, I believe that would be a mistake. But there are additional reasons why Plaintiffs' specific requests would be inappropriate. First, as noted above, the Census Bureau has currently allocated up to \$120 million to

fund mobile questionnaire assistance centers, which is more than twice the amount Plaintiffs have requested for this purpose. Therefore, there is no need to require defendants to expend any additional funds on this operation.

34. More significantly, Plaintiffs' request that almost \$600 million be spent to deploy enumerators that the Census Bureau already plans to hire and train reflects a fundamental misunderstanding of the cost and effect of deploying those additional enumerators. Plaintiffs' reference to approximately 250,000 "core enumerators" represents the number of enumerators that the Census Bureau predicts—based on the projected workload, productivity, and schedule—will be required to complete the NRFU workload if its median assumptions hold. But, as explained, the Census Bureau is recruiting, hiring, and training up to 500,000 enumerators to be maintained in the field if and for as long as needed. There is no reason to exhaust these resources up front when their necessity could prove fully moot depending on the final self-response rate and field productivity rates. If these enumerators are not needed to work, expending these contingency funds will not be required.

35. Finally, Plaintiffs request for \$128 million "to increase outreach and communications," *see* Plaintiffs' Motion for Preliminary Injunction at 2–3, is unclear to me. If Plaintiffs request the money to be spent on field partnerships, the request is impractical this close to Census Day, and unnecessary. As stated above, the community partnership program is stronger now as it is more efficient and its resources focused on multiplicative impactors rather than administrative overhead, as it did last decade. We have double these high value resources and will have significantly more partners than in the 2010 Census. These facts are undeniable.

36. To the extent Plaintiffs simply request an additional \$128 million to be spent on some form of outreach, including advertising, the Census Bureau has already increased its planned expenditures on the Integrated Partnership and Communications Program by almost the full amount

Plaintiffs request. Dr. Doms writes that the Census Bureau plans to spend \$480 million on advertising, when the current plan is to spend \$585 million¹ on advertising, \$105 million more than Dr. Doms' declaration claims. This \$585 million is also approximately \$138 million more than the \$448 million Dr. Doms' declaration calculates as the inflation-adjusted advertising expenditure for 2010—more than the \$128 million increase Plaintiffs request. Either way, there is no need to require the Census Bureau to expend any additional funds on this operation.

Executed on this 20th day of February, 2020.



Benjamin K. Taylor
Chief, Decennial Budget Office
Bureau of the Census

¹ In a version of this declaration filed on February 11, 2020 in the substantively-similar case *NAACP v. Bureau of the Census*, No. 8-18-cv-891-PWG (D. Md.), I noted that the then-current plan was to spend \$583 million. Since that declaration was filed, the plan was increased to 585 million, and may continue to increase as deemed appropriate going forward.

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

CENTER FOR POPULAR DEMOCRACY
ACTION, *et al.*,

Plaintiffs,

v.

BUREAU OF THE CENSUS, *et al.*,

Defendants.

No. 19 Civ. 10917 (AKH)

DECLARATION OF PATRICK J. CANTWELL

I, Patrick J. Cantwell, 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 Chief of the Decennial Statistical Studies Division (DSSD) at the United States Census Bureau. I have served in this capacity since August 11, 2013. I began my career at the Census Bureau in January, 1988. I was detailed to DSSD from 1998 to 2001 to work on the 2000 Census, and I returned to DSSD in January, 2009 as the Assistant Division Chief for Sampling and Estimation.

2. The following statements are based on my personal knowledge and information supplied to me in the course of my professional duties.

3. My responsibilities as Chief of the DSSD are to manage and oversee the Division's work on the design and implementation of the Decennial Census and the American Community Survey, including research on, developing improvements to, and implementation of those programs. Among other things, the DSSD prepares models and estimates, such as statistical predictions, in order to inform the development of census operations and design, including response projections. Another important

responsibility of DSSD is to evaluate the coverage, accuracy, and efficiency of the decennial census, mainly through the conduct of the Post-Enumeration Survey and the census program of experiments, evaluations, and assessments.

4. The DSSD currently has 97 employees, all but six of whom are mathematical statisticians. The remaining employees include two survey statisticians, three administrative assistants, and an IT support employee.

5. I received an A.B. in mathematics from Harvard University, and an M.S. and Ph.D. in statistics from the University of Connecticut. My work has been published in various places, including the *Journal of Official Statistics*, *Survey Methodology*, *The American Statistician*, the *Encyclopedia of Survey Research Methods*, and others. I have been on the editorial boards of the *Journal of Official Statistics* for more than 25 years, and *Survey Methodology* for more than 15 years. I have been a member of the American Statistical Association for 44 years.

6. In addition to working in research and management on three decennial censuses and two economic censuses, I have led research and implementation of statistical and operational methods for several of the U.S. Government's major demographic and economic surveys.

7. I have reviewed the declaration of Dr. Mark Doms in this legal action, as well as the declarations of Dr. Doms and Dr. Sunshine Hillygus in the litigation *NAACP et al. v. Bureau of the Census et al.*, No. 8:18-cv-00891-PWG (D. Md.). Based upon my review of these declarations, I conclude that Dr. Doms's conclusions expressed in Paragraph 49 of his declaration in this litigation are unsupported by his declaration, but rather are copied nearly verbatim from Paragraph 50 of Dr. Hillygus's declaration in the *NAACP* litigation. See 8:18-cv-00891-PWG Dkt. No. 169-2 (D. Md. Jan. 21, 2020), attached here as Exhibit A.

8. Accordingly, I address certain points below relating to Dr. Hillygus's declaration in the *NAACP* litigation. I am acquainted with Dr. Sunshine Hillygus from her work on the Census Scientific Advisory Committee. In the *NAACP* legal action, I find her overall argument and some of the specifics of her declaration to be without merit, particularly those assertions relating to coverage and undercounts in the census.

I. Executive Summary

9. In this declaration, I address a number of points made by Dr. Hillygus in her declaration with which I disagree, several of which affect the conclusions expressed at Paragraph 50 of Dr. Hillygus's declaration and Paragraph 49 of Dr. Doms's declaration in this litigation. Specifically:

- a. I disagree with a number of her conclusions. Dr. Hillygus draws overly simplified projections about a potential differential undercount in the 2020 Census, based on unreliable studies and misleading presentations of data.
- b. Dr. Hillygus's conclusions related to the controversy over inclusion of a citizenship question conflict with both the empirical results of the 2019 Census Test and evidence from census after census showing that mid-decade census tests realize lower self-response rates than the census itself. These results, as well as a significant amount of other data, research, and testing, have informed the range of assumptions used in our planning for the 2020 Census.
- c. Dr. Hillygus improperly suggests that self-response rates and undercounts can be used interchangeably, when they are different phenomena and the former does not reliably predict the latter.

II. While the differential net undercount is of great concern to the Census Bureau, Dr. Hillygus's and Dr. Doms's conclusions about it are overly simplified

10. The Census Bureau conducts various operations during and after the census, including a post-enumeration survey (PES), to estimate census coverage and accuracy. We are viewed as the authoritative source about coverage in the decennial census, and have published undercount rates for

various censuses [on our website](#). These undercount rates are broken down for various important demographic groups, including by race, Hispanic origin, sex, and some age groups. We conduct these efforts and make the results publicly available because we believe it is important to critique our work. As the nation's premier statistical agency, we must review our methods, be transparent about data quality, and use results to improve future operations. Many staff at the Census Bureau, including me, have spent their careers identifying and improving the differential undercount. Dr. Hillygus and Dr. Doms, no doubt, share the Census Bureau's desire to minimize the differential undercount. But some assertions in their declarations are overly simplified or based on assumptions that, to my knowledge, cannot be verified.

11. Dr. Hillygus begins by citing our published undercount rates selectively. For example, she notes on pages 2-3, footnote 3, "the net undercount rate for Black males age 30-49 in 2010 was 10%, with an omission rate of 16.7%. And the net undercount is also worse for young minority children—6.3% for Black children age 0-4 and 7.5% for Hispanic children age 0-4." But Dr. Hillygus's sentence is misleading, as she is citing numbers from different data sources. The numbers she cites for Black males 30-49 (10% and 16.7%) come from the 2010 PES. However, the PES estimates of net undercounts for Black and Hispanic children 0-4 in the 2010 Census are 3.42% and 2.19%, respectively, not 6.3% and 7.5%. The Census Bureau does not dispute the existence of a differential undercount—we are the primary researchers in this area—but it is important to cite documented results accurately.

12. I similarly dispute Dr. Hillygus's reliance (p. 3) on a recent report by the Urban Institute that found that "*even if the 2020 Census performs exactly as the 2010 Census*, the differential undercount of racial and ethnic minorities will worsen simply based on changes in the composition of the population ... Black individuals will be undercounted by 2.43% ... and Hispanic individuals ... by 2.01%." The Urban Institute analysis is based on unproven and unreliable assumptions, and should not

be taken as a serious expectation. First, if we always define a specific demographic group (e.g., Hispanics) as “hard to count,” even as it grows through immigration, we ignore the fact that people who have been in the United States for one or many generations may well behave differently than recent immigrants. Second, factors other than race and Hispanic origin play an important role in propensity to be under- or overcounted, as one can see from the Census Bureau’s PES results. Even though the percentage of the population that is Hispanic has grown over the censuses of 1990, 2000, and 2010, their estimated net undercount rates have not grown steadily larger: 4.99% in 1990 (with a standard error of 0.82), 0.71% in 2000 (0.44), and 1.54% in 2010 (0.33%). (While the decrease from 1990 to 2000 is statistically significant, the increase from 2000 to 2010 is not.)

13. Dr. Hillygus states on page 7 that “the imputation procedure used by the Census Bureau will fail to mitigate a differential self-response rate because it estimates the household size of uncounted households based on households who responded, which will underrepresent minority households.” I disagree, and don’t believe that the imputation procedures we use will have much effect on the undercount rates, for two reasons: (1) the nearest-neighbor imputation procedures we employ, and (2) the extremely low rate of count imputation.

14. The Census Bureau’s count imputation procedure is used for all addresses or households that are “unresolved” at the end of all data collection. The number of unresolved cases in the census has historically been very small. Among other situations, count imputation determines a count in households for which the count is unknown. This situation is a subset of all unresolved cases.

15. First, the Census Bureau plans to apply a “nearest-neighbor” *count imputation* procedure in the 2020 Census, using information from a household next door or nearby. Compared to 2010, the procedure employed in 2020 will use a donor that tends to be much closer to the household with missing data. Further, the *characteristic imputation* procedure—which assigns characteristics (race, Hispanic

origin, sex, etc.) that are missing—uses a hierarchy of possible actions, each of which tries to use information from within the household, from the household's administrative records (when available), or from nearby housing units. Because people of similar demographics often live in neighborhoods together, the imputed counts and missing characteristics of people in minority households will tend to reflect those of similar demographics and situations.

16. Second, but more important, it should be noted that, in the last five censuses (1970, 1980, 1990, 2000, and 2010), after all data collection has been completed, the number of people included in the census via count imputation has *always been less than half of one percent* (0.50%). Thus, the disposition of these cases through count imputation should have very little effect, if any, on the estimated differential undercount.

III. It is unclear what effect, if any, the controversy about the citizenship question will have on response rates and, subsequently, the net undercount in the 2020 Census

17. Dr. Hillygus's (and thus Dr. Doms's) conclusion about the proposed addition of a citizenship question are not supported by empirical evidence from the 2019 Census Test. The U.S. Census Bureau conducted the 2019 Census Test this past summer to study the operational effects on self-response of including a citizenship question on the 2020 Census questionnaire. The test was a nationally representative randomized field experiment designed to inform hiring levels for the Nonresponse Follow-Up (NRFU) operation, which collects responses from households that do not self-respond, as well as to offer insight for the integrated partnership and communication campaign.

18. The major finding of the test was that there was no statistically significant difference in self-response rates between forms with and forms without a citizenship question. While we observed statistically significant differences in some areas and for some subgroups, these differences were small. For example, for those receiving a form with the citizenship question, response was 1.1% lower for census tracts with more than 49.1% Hispanic residents, and 0.8% lower for tracts with between 5.0%

and 20.0% Asian residents. Although the 2020 Census will not include a citizenship question, these test results indicate that the inclusion of a citizenship question would not have affected hiring for the NRFU operation.¹

19. The 2019 Census Test did not definitively answer the question of whether the public controversy about the inclusion of the citizenship question will affect overall self-response. But looking at data from 2018 and 2019, we have not seen lingering ill effects regarding self-response rates in the American Community Survey. However, Dr. Hillygus's assertion that the 2019 test results displayed low self-response (and because of the citizenship controversy) does not hold up. The self-response rates observed in the 2019 Census Test, 51.5 percent and 52.0 percent for the two panels, were similar to other mid-decade tests, including the 2018 Census Test, which had a 52.3 percent self-response rate. History indicates that self-response rates in a census will be higher than that experienced in intercensal tests. Because the 2020 Census will take advantage of an extensive advertising and media campaign to boost self-response, we expect that, consistent with our observations from past censuses, self-response rates will be higher than those associated with the 2019 Census Test and other mid-decade census tests.

20. Dr. Hillygus draws her conclusions based in part on a survey experiment conducted by Dr. Matt Barreto. She notes that it concludes that if a citizenship question would be included on the census form, the Census Bureau would experience "an eleven-point drop in the percentage of foreign-born respondents who said they would complete the census, a six-point drop among Latinos, and a two point drop for the overall sample." Of course, there will be no citizenship question on the 2020 Census,

¹ Poehler, E., Barth, D., Longsine, L., Heimel, S., and Mills, G. (2019). "2019 Census Test Report." Washington, D.C.: U.S. Census Bureau. Retrieved on February 3, 2020 from <https://www.census.gov/programs-surveys/decennial-census/2020-census/research-testing/testing-activities/2019-census-test/2019-census-test-report.html>.

rendering this speculative conclusion irrelevant to a prediction of any response rate to the 2020 Census as it will actually be conducted.

21. It should also be noted that three federal judges gave Dr. Barreto's survey "limited weight" after trial due to various deficiencies in his survey design and methodology. See *Kravitz v. U.S. Dep't of Commerce*, 366 F. Supp. 3d 681, 720 (D. Md. 2019) (Hazel, J.); *California v. Ross*, 358 F. Supp. 3d 965, 985 (N.D. Cal. 2019) (Seeborg, J.); *New York v. U.S. Dep't of Commerce*, 351 F. Supp. 3d 502, 581 n.36 (S.D.N.Y.) (Furman, J.), *aff'd in part, rev'd on the grounds and remanded sub nom. Dep't of Commerce v. New York*, 139 S. Ct. 2551 (2019).

22. It is my professional opinion that the results of Dr. Barreto's survey should not be taken seriously as an indicator of what might happen in the 2020 Census. First, Dr. Barreto's survey contacted his sample households only by telephone. But in the 2020 Census and our mid-decade tests, we contact households by mail, and allow them to respond on-line, by mail, or by telephone. The mode differences in both inviting and accepting responses can lead to very different types of people responding. Second, Dr. Barreto's survey asked only about respondents' *intention* to self-respond; it did not measure actual behavior in the field. Third, Dr. Barreto's survey instrument did not reflect what the Census Bureau will include on its census form, or what a respondent would see. To the contrary, Dr. Barreto's survey instrument provided leading information about citizenship *before* asking survey respondents their opinion (see, for example, his questions 2 and 3). Fourth, Dr. Barreto's survey realized only a 28.1% response rate, far below what would be acceptable for Census Bureau tests. Finally, Dr. Barreto's survey asked only *respondents* a question about participation a second time on the same questionnaire in place of eliciting more information from the nonrespondents. *This is in stark contrast to NRFU, which is designed to contact people who have not yet responded weeks after the mailed self-response invitation.*

23. In summary, most of the projections of self-response—and, as a consequence, undercount rates—that Dr. Hillygus and Dr. Doms present, and those found in the reports Dr. Hillygus cites, depend on faulty assumptions and survey methodology that would be difficult (if not impossible) to validate.

24. The 2019 Census Test, even without an advertising and media campaign, *comes as close as anything can* to what the 2020 Census environment will be like. It was a nationally representative randomized field experiment. It was sent by the Census Bureau, and used the questionnaire, mailing materials, format, and schedule of cohort mailings that we will use in several weeks in the 2020 Census. The results from the 2019 Census Test indicated no statistically significant difference in self-response rates between forms with and forms without a citizenship question, and only small differences (1.1% and 0.8%, respectively) in areas with larger Hispanic and Asian populations. Even if the impact of a citizenship question were somehow relevant to this case, the Court should credit the Census Bureau's 2019 Census Test results over the speculation found in Dr. Hillygus's and Dr. Doms's declarations.

IV. Self-response rates and undercounts are different phenomena and should not be used interchangeably

25. Unlike Dr. Hillygus's and Dr. Doms's speculative statements, the 2020 Census self-response projections reflected in the Census Bureau's life-cycle cost estimate (LCCE) are robust and reflect years of research and testing. The LCCE projections provide response rates by date and the portion of responses within each self-response mode—internet, mail, and telephone. Various factors went into the projections, including self-response rates from prior censuses, differential self-response rates by mode (including internet) from the American Community Survey, general trends of response to surveys conducted by the Federal Government, considerations on the integrated partnership and communications campaign, and other demographic and socio-economic data.

26. Given inherent uncertainty and variability on response behavior, the Census Bureau constructed a range around its self-response rate projections. These ranges are reflected in our

budgeting and planning. As explained further in Ben Taylor's Declaration, our national-level self-response rate projection at the start of NRFU is 60.5% with a range of 55.5% to 65.5%.

27. The Census Bureau has, of course, observed a differential in self-response between White and Non-White populations in our censuses and surveys for many years. In the 2010 Census, for example, White householders had the highest mail return rate at 79.3%; all other racial groups were lower. Analyses also show the results for other demographics (age, Hispanic origin, tenure, household size).² There are sizeable differences across some of these other demographics as well. We have observed differences in the various census tests since 2010.

28. Dr. Hillygus states that "researchers inside and outside the Census Bureau use self-response rates (historically, mail return rates) as a proxy for the risk of being missed in the census." This statement is overly general, unsupported, and generally not true. It is my professional opinion that data from post-enumeration surveys more accurately measure the net undercount and omissions in the census, and that data from the PES or demographic analysis should be used for this purpose rather than response or return rates. My view is consistent with the way the Census Bureau typically addresses these questions.

29. Dr. Hillygus states that "All of the factors that affect the willingness of a household to self-respond also impact their willingness to respond and to respond honestly to a census enumerator." I am not aware of data from the Census Bureau or other sources that support this assertion. As a counterexample, consider someone who is very willing to participate in the census, but simply ignores his or her mail and advertisements. This person may in fact be less likely to self-respond, but may be

² Letourneau, E. (2012). "2010 Mail Response/Return Rates Assessment Report." 2010 Census Planning Memorandum Series No. 198. Retrieved from U.S. Census Bureau website: https://census.gov/content/dam/Census/library/publications/2012/dec/2010_cpex_198.pdf.

happy to cooperate with an enumerator. We cannot simply generalize from self-response to enumerator response, as the conditions and procedures are so different.

30. Finally, on page 7 of her Declaration, Dr. Hillygus states that “the available evidence shows a statistical relationship between self-response rates and undercounts,” and “analyses of the 1990 Census find correlation between the mail non-return rate and the net undercount of .41 and between the mail non-return rate and the omissions of .71.” These statements about correlation should not be taken to imply that lower self-response rates necessarily cause greater net undercount. Basic statistical principle holds that a statistical relationship between two events does not necessarily imply cause and effect. That is, although we can measure a statistical relationship (as through linear correlation, as used by Dr. Hillygus) between A and B, without other probative evidence, we cannot necessarily conclude that A implies B, or that B implies A. Assuming so violates basic statistical principles.

31. Although there may well be a correlation between two events A and B, it is possible that each event is driven (caused) by a third event, C. For example, consider people who change residence around the time of the census (event C)—whether moving in or out of university housing; starting or ending a job; because of a family event such as marriage, a birth or death, a child entering first grade, etc. For these “movers,” it could be that their response or return rate in the census is lower (event A) due to the change of address, the preoccupation with the move, or any other reason(s). Based on analysis of data from the American Community Survey and the 2010 PES³, we have evidence that areas with a higher percent of movers in 2010 were undercounted at higher rates in the 2010 Census (event B). It may have been that a household’s mobility around census time (event C) increased their propensity

³ Keller, A. and Fox, T. (2014), “Using Data From the American Community Survey to Better Understand Coverage Measurement Results in the 2010 Census,” in JSM Proceedings, Survey Research Methods Section, American Stat. Assoc., Boston, MA, August 2-7, 2014. Alexandria, VA. 2019-2033. Retrieved from http://www.asasrms.org/Proceedings/y2014/files/312005_88544.pdf.

not to respond *and* their propensity to be missed in the census. But we cannot conclude that the lower response (event A) caused the higher undercount (event B) or vice versa—even though the two may be correlated due to the mobility of these people.

32. Looking at available data, we see that return rates⁴ for African Americans increased from 59.7% in the 2000 Census to 65.4% in the 2010 Census⁵. *Despite an increase in the return rate of more than 5%, the net undercount rate for African Americans did not go down*, but rather changed from 1.84% (with a standard error of 0.43) to 2.07% (0.53). (This increase is not statistically significant.) Despite a minor increase in return rates for Hispanics, from 64.5% in 2000 to 65.2% in 2010, the net undercount for Hispanics changed from 0.71% (with a standard error of 0.44) to 1.54% (0.33). (Again, not statistically significant.) These results simply demonstrate that self-response rates, while perhaps correlated with net undercount rates, are not good predictors of the latter. In summary, even if the Census Bureau were to experience a lower self-response rate than projected in the 2020 Census—overall or for specific demographic groups—that does not necessarily imply that either the overall undercount rate or any differential undercount rates will increase.

33. Although Dr. Doms does not include the basis of his assumed causal relationship between self-response rates and undercounts, the same defects undermine his conclusions.

V. The Census Bureau planned the 2020 Census—as with prior censuses—to minimize census error, including the differential undercount

34. The Census Bureau is committed to maximizing self-response rates and minimizing coverage error and differential undercount across all demographic and socio-economic groups in the

⁴ We look at “return rates” when analyzing the response from demographic groups because return rates don’t include vacant housing units in the denominator; “response rates” do. For vacant units, there are no people, and thus no designation of race, ethnicity, age, sex, etc.

⁵ I am not aware of comparable data from the census of 1990 or prior decades.

2020 Census, especially for traditionally hard-to-count populations. Over the decades, many researchers at the Census Bureau, including me, have devoted their life's work trying to achieve a complete and accurate enumeration, and to reduce the differential undercount.

Executed on this 21 th day of February, 2020.



Patrick J. Cantwell
Chief, Decennial Statistical Studies Division
Bureau of the Census

EXHIBIT A

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

NAACP, *et al.*,

Plaintiffs,

v.

BUREAU OF THE CENSUS, *et al.*,

Defendants.

Case No. 8:18-cv-00891-PWG

**EXPERT DECLARATION OF SUNSHINE HILLYGUS IN SUPPORT OF PLAINTIFFS'
MOTION FOR A PRELIMINARY INJUNCTION**

I, D. Sunshine Hillygus, of Durham, NC, declare:

1. I am submitting this declaration in support of Plaintiffs' Motion for a Preliminary Injunction.
2. In my opinion, the Census Bureau has privileged cost-savings over the accuracy and completeness of the Census to such an extent that the 2020 Census will unreasonably exacerbate the undercount of racial and ethnic minorities compared to the Non-Hispanic White population. As a result, the differential undercount of Black individuals is likely to worsen by at least two percentage points unless immediate action is taken.

BACKGROUND

3. I am a Tenured Professor of Political Science at Duke University. At Duke, I teach undergraduate and graduate level courses on the topics of public opinion, civic engagement, political communication, and survey methodology.
4. I earned a Ph.D. in political science from Stanford University in 2003. From 2003-2009, I was a faculty member at Harvard University in the Department of Government. In 2009, I joined the faculty at Duke University as an associate professor and was promoted to full professor in 2015.
5. I have more than 20 years of experience in survey design, implementation, and analysis. Of relevance to this report, I have published research on the topics of census participation, public opinion, communication campaigns, survey methodology, survey non-response, and data quality. This work has been funded by the National Science

Foundation and published in respected academic journals including *Public Opinion Quarterly*, *Journal of Survey Statistics and Methodology*, *Statistical Science*, *Political Analysis*, and *Annals of Applied Statistics*. I am co-author of *The Hard Count: The Political and Social Challenges of Census Mobilization* (2006, Russell Sage Foundation).

6. My other experience of relevance includes serving as associate principal investigator of the American National Election Study, on the editorial boards of several academic journals, and as director of the Initiative on Survey Methodology at Duke University. I was also founding director of the Program on Survey Research at Harvard University.
7. From 2012-2018, I served as a member of the Census Scientific Advisory Committee (CSAC), a committee that advises the director of the Census Bureau on the uses of scientific developments in statistical data collection, survey methodology, geospatial and statistical analysis, econometrics, cognitive psychology, business operations and computer science as they pertain to the full range of Census Bureau programs and activities, including census tests, policies and operations.

CENSUS BACKGROUND AND HISTORICAL DIFFERENTIAL UNDERCOUNT

8. The Census mission is to “count everyone once, only once, and in the right place.”¹ Yet, post-enumeration coverage assessments have historically found a disproportionate undercount of some population subgroups, including racial and ethnic minorities. Given the unequal geographic distribution of these groups, this undercount can have implications for the allocation of political representation and government funding.
9. The differential undercount of Black populations and other hard-to-count (HTC) communities will have a tangible fiscal impact on the geographic distribution of federal domestic assistance. In addition to potentially losing political representation in Congress, the differential undercount could affect the slice of the pie that certain communities receive of federal programs.²
10. Critically, even if the overall accuracy of the census is high, there can still be subpopulations that are undercounted. This can happen when some segments of the population are *undercounted* at the same time other segments of the population are *overcounted*. The difference between population groups is called the *differential undercount*. For example, in 2010, the differential undercount compared to non-Hispanic White individuals was 2.9% for Black individuals and 2.38% for Hispanic individuals.³

¹ In the language of the Census Bureau Quality Standards, the decennial count needs to be “objective”—accurate, as well as unbiased or complete. U.S. Census Bureau Statistical Quality Standards (July 2013).

² Congressional Research Service, R44115, *A Primer on WIC: The Special Supplemental Nutrition Program for Women, Infants, and Children* (Apr. 2017), <https://crsreports.congress.gov/product/pdf/R/R44115>.

³ It is also worth noting that the undercount of some subgroups of racial and ethnic minorities is even worse. For example, the net undercount rate for Black males age 30-49 in 2010 was 10%, with an omissions rate

11. The impact of the undercount of HTC groups varies greatly across states, reflecting the relative proportion of these groups in the respective state populations. A differential undercount of Black individuals, for example, would cause states with a high proportion of Black individuals to lose federal funds under these three funding programs and many others. For example, this could impact Prince George’s County, as it has large Black and Hispanic populations. Thus, if a differential undercount occurs in the 2020 Census and if current allocation formulas and funding levels remain similar over time, such a differential undercount would cause many of these same states to lose money from the same programs at the same order of magnitude.

2020 CENSUS CHALLENGES REGARDING UNDERCOUNT

12. Since the very beginning stages of planning for the 2020 count, the Census Bureau has acknowledged that it would be more challenging to conduct an accurate and complete census compared to 2010.⁴
13. Given the following factors, there has been a clear need for increased efforts to accurately count racial and ethnic minorities
 - a. The U.S. population is increasingly diverse—geographically, culturally, and linguistically—and households are more complex than ever before. As such, a greater share of the population will fall into “hard to count” categories in 2020 compared to 2010. This means it will take more effort and funding to achieve the same level of accuracy as in 2010. A recent estimation by the Urban Institute concluded that *even if the 2020 Census performs exactly as the 2010 Census*, the differential undercount of racial and ethnic minorities will worsen simply based on changes in the composition of the population; they estimate that Black individuals will be undercounted by 2.43% (with a differential undercount of 3.17%) and Hispanic individuals being undercounted by 2.01% (with differential undercount of 2.75%).⁵
 - b. The public is less trusting of government, less willing to share personal information, and has decreased confidence in the security and confidentiality of government data collections. There is extensive evidence showing that this

of 16.7%. And the net undercount is also worse for young minority children—6.3% for Black children age 0-4 and 7.5% for Hispanic children age 0-4. See William P. O’Hare, *Differential Undercounts in the U.S. Census Who is Missed*, 53 (2019).

⁴ For example, a 2010 report on lessons learned from the 2010 decennial for the 2020 count, the GAO observes that “a complete and accurate census is becoming an increasingly daunting task, in part because of the national’s population is growing larger, more diverse, and more reluctant to participate in the enumeration.” U.S. Government Accountability Office, *Key Efforts to Include Hard-to-Count Populations Went Generally as Planned; Improvements Could Make the Efforts More Effective for Next Census*, GAO-11-45 (December 14, 2010), <https://www.gao.gov/products/GAO-11-45>.

⁵ Diana Elliott et. al., *Assessing Miscounts in the 2020 Census*, Urban Institute (2019), https://www.urban.org/sites/default/files/publication/100324/assessing_miscounts_in_the_2020_census.pdf. This is the projected undercount based on their low-risk scenario.

distrust in government is more pronounced among racial and ethnic minorities and will thus result in a larger differential self-response rate between White individuals and Non-White individuals in 2020. First, within the attitudinal data, we see that trust in government is at an all-time low under the current administration and is lower among Black individuals than White individuals.⁶

- c. Attitudes about privacy and confidentiality, which the Census Bureau recognizes as a strong predictor of census self-response, show similar gaps between Non-Whites and Whites.⁷ In the 2020 Census Barriers, Attitudes, and Motivators Study (CBAMS) national survey, the Census Bureau found that Non-White individuals are more concerned than White individuals about the confidentiality of the Census.⁸
- d. The widely-publicized proposal to add a citizenship question to the census form will also increase the gap in self-response between White and Non-White individuals.⁹ Although litigation was successful in preventing the addition of a citizenship question to the 2020 questionnaire, the proposed addition of the citizenship question has politicized the 2020 Census, distracted staff, diverted resources, and fueled distrust. The revelations that the current administration used a “contrived” rationale for adding the citizenship questions and circumvented the standard process for adding a question contributes to negative attitudes that undermine the public’s willingness to respond.¹⁰ The Trump administrations directive to the Census Bureau to identify the citizenship status of every individual in the country through administrative records is likely to further enflame these attitudes. The Census Bureau offered a “conservative” estimate that the addition of a citizenship question would cause a 5.8 percentage point decline in self-response among households that include a non-citizen, subsequently updated to an 8 percentage point decline in self-response among 28.1% of U.S. Households.¹¹ This translates into 2,832,480 additional households being sent to Non-response Follow-up (NRFU) operation, the process that enumerates those

⁶ *Public Trust in Government: 1958-2019*, Pew Research Center - U.S. Politics and Policy (April 11, 2019), <https://www.people-press.org/2019/04/11/public-trust-in-government-1958-2019/>.

⁷ See U.S. Census Bureau, *Privacy Research in Census 2000*, Census 2000 Topic Report No. 1 (2003).

⁸ Kyley McGeeney, et al., *2020 Census Barriers, Attitudes, and Motivators Study Survey Report A New Design for the 21st Century*, version 2.0. (January 24, 2019), <https://www2.census.gov/programs-surveys/decennial/2020/program-management/final-analysis-reports/2020-report-cbams-study-survey.pdf>.

⁹ *Kravitz*, 355 F. Supp. 3d. at 716; *State Of New York, et al. v. United States Department Of Commerce*, et al., Case 1:18-cv-02921-JMF.

¹⁰ Sarah Evans, et al., *2020 Census Barriers, Attitudes, and Motivators Study (CBAMS) Focus Group Final Report (2019)*, U.S. Census Bureau (January 24, 2019) reported that some CBAMS focus group participants said the purpose of the citizenship question is to find undocumented immigrants. One said, “[The question is used] to make people panic. Some people will panic because they are afraid that they might be deported. *Id.* at 59.

¹¹ The analysis has now been peer-reviewed. Brown et. al., *Predicting the Effect of Adding a Citizenship Question to the 2020 Census Demography*, (2019).

households that fail to self-respond.¹² However, the negative effects of the controversy surrounding the citizenship question are likely to extend beyond noncitizen households, depressing cooperation among racial and ethnic minority citizens. It is well-documented that Hispanic citizen households are likely to experience spill-over effects.¹³ A survey experiment that randomized if respondents were told that a citizenship question would be included on the census form found an eleven-point drop in the percentage of foreign-born respondents who said they would complete the census, a six-point drop among Latinos, and a two point drop for the overall sample.¹⁴ Another RCT found that including a citizenship question reduced the count of the Hispanic population by twelve percentage points, and also had significant negative impacts on non-Hispanic individuals.¹⁵ While these analyses focused on calculating the impact of the questionnaire content, survey methodologists recognize that the decision to cooperate also depends on the sociopolitical climate.¹⁶ To the extent the census is viewed as political because of the broader citizenship question controversy and rhetoric, it can have consequences for the willingness of individuals to respond and to respond completely and honestly *even though the question was ultimately removed from the questionnaire*.¹⁷ Indeed, A Census Bureau 2019 Test that randomized the inclusion of the citizenship question on the census form found equally low self-response rates (50.5 vs. 52 percent) whether or not the question was included, suggesting the controversy itself may have “treated” those in the

¹² This estimate relies on the assumptions from the Brown et. al. article that the 2020 Census will count 320 million persons in 126 million households. *Id.* at 42. It is estimated that 76% of the nation’s undocumented immigrant population are Hispanic. Jeffrey S. Passel and D’Vera Cohn, *U.S. Unauthorized Immigrant Total Dips to Lowest Level in a Decade*, Pew Research Center (November 27, 2018), https://www.pewhispanic.org/wp-content/uploads/sites/5/2019/03/Pew-Research-Center_2018-11-27_U-S-Unauthorized-Immigrants-Total-Dips_Updated-2019-06-25.pdf.

¹³ For an example of spill-over effects on Hispanics see Marcella Alsan and Crystal Yang, *Fear And The Safety Net: Evidence From Secure Communities*, National Bureau of Economic Research (June 2018, revised March 2019).

¹⁴ Matt Barreto et al, *New Research Shows Just How Badly a Citizenship Question Would Hurt the 2020 Census*, The Washington Post (April 22, 2019), https://www.washingtonpost.com/politics/2019/04/22/new-research-shows-just-how-badly-citizenship-question-would-hurt-census/?utm_term=.3e5affc49b66. This report also references the results of a survey experiment that found a significant decline in self-reported willingness to respond to the census: a drop of 7 to 10 percent nationally, 11 to 18 percent of immigrants, and 14 to 17 percent of Latinos. *Id.*

¹⁵ Matthew Baum, Bryce Dietrich, Rebecca Goldstein, and Maya Sen, *Estimating the Effect of Asking About Citizenship on the US Census: Results from a Randomized Controlled Trial*, Harvard University (2019).

¹⁶ Robert Groves et al., *Survey Methodology* (2nd). Hoboken: John Wiley and Sons (2009); D. Sunshine Hillygus, et. al., *Hard Count: The Political and Social Challenges of Census Mobilization*, Russell Sage Foundation (2006).

¹⁷ Hillygus, et. al., *supra* n. 43.

control group.¹⁸ Many households will not be aware that a citizenship question *will not* be on the 2020 questionnaire. In 2010, the census form did not include a citizenship question, yet public opinion polls found that 21 percent of the public thought that the census could be used to determine if someone was in the country legally.¹⁹

UNDERCOUNT OF GROUPS WITH A LOWER-SELF-RESPONSE RATE

14. Given the cost and complexity of estimating undercounts from post-enumeration surveys and demographic analyses, researchers inside and outside the Census Bureau use self-response rates (historically, mail return rates) as a proxy for the risk of being missed in the census.²⁰
15. NRFU operations have not previously and will not in 2020 fully mitigate a differential self-response rate for several reasons. It is well-documented that data collected through NRFU operations are less accurate and more costly than that collected through self-response.²¹ All of the factors that affect the willingness of a household to self-respond also impact their willingness to respond and to respond honestly to a census enumerator.²² NRFU operations also do not correct for deliberate omissions of household members—when a household responds but leaves individual members of the household off their questionnaire.²³ The use of proxy respondents will not correct for a differential self-response because proxies are more likely to systematically undercount those living in

¹⁸ <https://www2.census.gov/programs-surveys/decennial/2020/program-management/census-tests/2019/2019-census-test-report.pdf>.

¹⁹ Pew Hispanic Center, *Latinos and the 2020 Census* (April 1, 2010), <https://www.pewresearch.org/wp-content/uploads/sites/5/reports/121.pdf>. Analysis of the data finds that Black respondents (28%) were more likely than White respondents (20%) to say this is the case.

²⁰ There are many reasons for this. Self-response rates are often available even when a complete coverage assessment has not been conducted. The coverage assessments that produce the estimates of the differential undercount outlined above are not finalized until years after the decennial count. Given their independent structure, they are also not able to be directly linked to any particular operational decision or feature. Finally, as discussed below, many of the census tests conducted during the decade did not have coverage assessments.

²¹ J. Brown et. al., *Working Paper: Understanding the Quality of Alternative Citizenship Data Sources for the 2020 Census*, Center for Economic Studies, U.S. Census Bureau, 18–38 (2018), <https://www2.census.gov/ces/wp/2018/CES-WP-18-38.pdf>.

²² *Id.*

²³ Rodney L. Terry, et. al., *Exploring Inconsistent Counts of Racial/Ethnic Minorities in a 2010 Census Ethnographic Evaluation*, *Bulletin of Sociological Methodology* 135, no. 1: 32–49, 42 (2017); see also Roger Tourangeau et. al., *Who Lives Here? Survey Undercoverage and Household Roster Questions*, *Journal of Official Statistics* 13, no. 1 (1997).

large, crowded, and complex households—disproportionately racial and ethnic minorities.²⁴

16. Likewise, the imputation procedure used by the Census Bureau will fail to mitigate a differential self-response rate because it estimates the household size of uncounted households based on households who responded, which will underrepresent minority households.²⁵ All of these issues are recognized by the Census Bureau.²⁶
17. Finally, the available evidence shows a statistical relationship between self-response rates and undercounts.²⁷ Aggregate analyses, for example, show that census tracts with lower mail return rates have higher net undercounts.²⁸ Indeed, the Census Bureau labels some census tracts as HTC based on the mail return rate—these tracts tend to be disproportionately communities of color and rural areas.
18. The Census Bureau acknowledges that NRFU is less successful among the HTC populations and past censuses consistently show that groups with a lower self-response rate also have a higher differential undercount.²⁹ While Providence County, Rhode

²⁴ Proxies can be unwilling (in the case of a landlord not wanting to accurately report the number of residents if it exceeds occupancy laws) or unable (in the case of a postal worker unknowledgeable about all household members). Terry et. al., *supra* n. 14. Tourangeau et. al., *supra* n. 14; Elizabeth Martin, *Strength of Attachment: Survey Coverage of People with Tenuous Ties to Residences*, *Demography* 44, no. 2: 427. (2007). Nonrelatives (e.g., boarders or roommates) were more likely than relatives of the respondents to be left off a census or survey roster. Robert Fay, *An Analysis of Within-Household Undercoverage in the Current Population Survey*, Annual Research Conference (1989); Edward Kissam, *Differential Undercount of Mexican Immigrant Families in the US Census*, *Statistical Journal of the IAOS* 33, no. 3 797–816 (2017); M. de La Puente, *An Analysis of the Underenumeration of Hispanics: Evidence From Small Area Ethnographic Studies*, Annual Research Conference Proceedings. Bureau of the Census, 45–69 (1992).

²⁵ David Fein, *Racial and Ethnic Differences in U.S. Census Omission Rates*, *Demography* 27:285-302 (1990); Arnold Jackson, *2010 Census Mail Response/Return Rates Assessment Report*, 2010 Census Planning Memoranda Series, No. 198 (2012).

²⁶ See e.g., Brown et. al., *supra* n. 12; James Farber, Deborah Wagner, and Dean Resnick, *Using Administrative Records for Imputation in the Decennial Census*, *Proceedings of the Survey Research Methods Section*, American Statistical Association, (2005), <https://ww2.amstat.org/sections/srms/Proceedings/y2005/Files/JSM2005-000278.pdf>; As documented at *State Of New York et. al. v. United States Department Of Commerce*, et al., Case 1:18-cv-02921-JMF, 121–125.

²⁷ For review, see Eugene P. Ericksen, *Errors in the Census*, in Margo J. Anderson et al., (Eds.), *Encyclopedia of the U.S. Census* (Second Edition) Sage/CQ Press (2012). For example, analyses of the 1990 Census find a correlation between the mail non-return rate and the net undercount of .41 and between the mail non-return rate and omissions of .71. *Id.*

²⁸ As well as higher omissions and erroneous enumerations. National Research Council, *The 2000 Census: Interim Assessment. Panel to Review the 2000 Census* (2001); Ericksen and DeFonso, *Beyond the Net Undercount: How to Measure Census Error* (1993).

²⁹ U.S. Census Bureau, 2010 Census Planning Memoranda Series, No. 198, *2010 Census Mail Response/Return Rates Assessment Reports* (2012); Thomas Mule, U.S. Census Bureau, *Census Coverage*

Island—a county that is majority White—has widespread broadband access, it still faces concerns for self-response reporting.³⁰

19. Furthermore, the cancellation of three coverage measurement operations from the scope of the initial field test in Providence County meant it wasn't even possible to estimate the undercount in the 2018 field test.

CUTS TO KEY PROGRAMS: THE COMMUNICATION CAMPAIGN AND PARTNERSHIP PROGRAM

20. A core part of the Census Bureau's strategy for reducing differential self-response rates is the Integrated Partnership and Communications operation. This communication and outreach campaign is intended to communicate the importance of participating in the census, to engage and motivate people to self-respond, and to raise and keep awareness high throughout the entire enumeration process. A primary goal of these efforts encourage participation of HTC households—those “less likely to respond or [who] are often missed.”³¹ Activities include paid media advertising, partnership efforts in local communities, a Census in Schools program for outreach to students in elementary and secondary schools, website development, and social media communication. Unfortunately, underfunding has jeopardized the scope and effectiveness of these efforts, and available evidence suggests that these efforts will be unable to close the likely gap in self-response between White and Non-White households.
21. Evaluations of the partnership program in 2010 found it to be effective at increasing the self-response of HTC households. An aggregate-level analysis found that HTC census tracts with more partners saw a significant increase in the 2010 Census mailback rate compared to the 2000 Census mailback rate—having 3-4 partners in a tract increased the mailback rate by half a percentage point.³² An independent evaluation of the 2010 Integrated Communication Program by the National Opinion Research Center (NORC) found that partnership contact was one of the strongest predictors of mail response rate

Measurement Estimation Report: Summary of Estimates of Coverage for Persons in the United States, (2012).

³⁰ According to FCC, broadband access is 99 percent and adoption is greater than 80 percent. See *Mapping Broadband Health in America 2017*, FCC, <https://www.fcc.gov/reports-research/maps/connect2health/background.html>; According to the 2010 Census, 66 percent of the population is Non-Hispanic White.

³¹ U.S. Census Bureau, *Integrated Partnership and Communications Update Presentation to the National Advisory Committee* (April 27, 2017), <https://www2.census.gov/cac/nac/meetings/2017-04/2017-ipcupdate.pdf>.

³² *2010 Census Evaluation of National Partnership Research Report*, 2010 Census Planning Memoranda Series, No. 196 (May 29, 2012).

for Black individuals in 2010.³³ Black individuals who reported exposure to the partnership program were twice as likely to mail return their census form compared to those not exposed.³⁴

22. The NORC analysis allows an estimation of the predicted effect of reducing the partnership budget and staff on the self-response rate of the Black population. My analysis uses the actual total partnership spending in 2010 combined with the estimated contact rate and estimated contact effect for Black respondents in the NORC analysis.³⁵ Based on these assumptions, the average cost to mobilize each additional member of the Black population using the partnership program was roughly \$14.00 in 2010. Using this average cost estimate together with the planned budget reduction for 2020 results in a predicted reduction in the Black self-response rate of approximately 7 percentage points. If I instead estimate a project of the effect of the planned reduction of partnership staff in 2020 compared to 2010—assuming each partnership staff person contributed equally to the partnership contact rate—the predicted reduction in the Black self-response rate is 11 percentage points. Because the NORC study found no relationship between partnership contact and self-response for White respondents, these predicted effects translate into a worsened differential self-response rate.
23. In sum, although the Census Bureau is relying on the communications campaign to mobilize hard to count households, all evidence points to it failing to close the expected gap in differential undercount. Indeed, some evidence suggests the campaign could exacerbate the gap if the messaging is more likely to reach and mobilize White

³³ A. Rupta Dattam et al., 2919 Census Integrated Communications Program Evaluation (CICPE), 2010 Census Planning Memoranda Series No. 167 (March 15, 2012).

³⁴ *Id.* at table ES-8, xxii. The estimate comes from a logistic regression model predicting mail return prior NRFU, estimated separately for each race or ethnic group. The model controls for all measured types of exposure. For a discussion of the limitations of correlational analysis using self-reported exposure measures, see pages xiii-xiv. Although a stronger research design would rely on an RCT in which a control group received none of the communications, such an approach is not practical in the setting of an actual census and the available data were viewed as inadequate to the task.

³⁵ Estimates based on partnership budget and staff plans for 2020 Census as of July 2019. Among Black respondents to the NORC study, 45.2% mailed back their census form before April 18, the start of NRFU operations, compared to 67.1% of White respondents; 74.6% of Black respondents were enumerated through self-response or an enumerator (without use of a proxy or imputation)—the number on which I base my analysis since the partnership contacts could also increase cooperation with enumerators (and NORC analysis was estimated using the Wave 3 measure of exposure). In wave 1, just 17% of Black respondents reported partnership exposure and that increased to 58% by wave 3. Based on the estimated effect in table ES-8 and exposure rates reported in table 4-3, the NORC results suggest those exposed to the partnership program were 26 percentage points more likely to cooperate. Projecting the estimates from the NORC study to the estimated Black population in 2010 implies that only 47.2% of the Black population would have been enumerated through self-response or an enumerator if not for the partnership program activities.

households. Moreover, reductions in the number of partnership staff can be expected to further reduce the self-response of Black households.

CUTS TO KEY PROGRAMS: FIELD STAFF AND INFRASTRUCTURE

24. In 2010, the Bureau established 12 Regional Census Centers (RCCs) and nearly 500 Area Census Offices (ACOs). In contrast, the new design for the 2020 Census field operations includes just 6 RCCs and 248 ACOS. The ACOs will house the managers, staff, materials, and equipment needed to support enumerators. This design change has been driven by cost rather than quality considerations, and evidence suggests that it is a decision that could worsen the differential undercount. In 2011, Census Director Robert Groves talked about the closure of 6 of 12 regional as ones made “in anticipation of spending limits.”³⁶ In 2010, office locations were based on projected NRFU workload and placement of at least one office in each congressional district.
25. A 2018 OIG report concluded that the agency used “poorly defined criterion” and unreliable workload estimates in determining the location of ACOs for 2020. Operational plans claim criterion such as response rate projections, anticipated NRFU workload, optimal number of census takers per office, and field workload; yet, the number and locations of ACOs did not change when the projected number of enumerators more than doubled in response to anticipated reductions in the projected self-response rate. Rather than opening up an additional 101 offices on the basis of the original decision rule, the Bureau decided to increase the average number of core enumerators per office to 1,034 (a 41 percent increase). Moreover, the Bureau has experienced problems and delays in opening the ACOs so much so that 111 of the 248 (45%) have required deviations from ACO location requirements.³⁷
26. The Census Bureau has also increased the staff to supervisor ratio from 1:8 in 2010 to 1:20—an even greater increase than the 1:15 ratio planned before the 2016 Census Test—and despite concerns by the OIG and GAO regarding an observed failure to adequately manage staffing, such as removing unproductive or poor-performing enumerators.³⁸ Indeed, given limitations in the Census test design and methodology, the OIG concluded that “[t]he Bureau’s inability to isolate the effect of each enumerator-to-supervisor ratio on NRFU performance (e.g., measures of cost, quality, and completion rate) means that the Bureau is unable to determine the optimal enumerator-to-supervisor

³⁶ Robert Groves, *The Consequences of Budget Cuts*, U.S. Census Bureau Census Blogs (July 15, 2011), <https://www.census.gov/newsroom/blogs/director/2011/07/the-consequences-of-budget-cuts.html>

³⁷ GAO-19-602, p. 9.

³⁸ *2020 Census: 2016 Census Test Indicates the Current Life-Cycle Cost Estimate is Incomplete and Underestimates Nonresponse Followup Costs* FINAL REPORT NO. OIG-17-020-I (March 16, 2017); *2020 Census: Additional Actions Could Strengthen Field Data Collection Efforts*, GAO-17-191, (January 26, 2017). Staff ratios reported in 2020 Census Operational Plan Executive Summary V. 1, 16 and 2020 Census Operational Plan, V. 4, 129.

staffing ratio” and called the Census Bureau’s claim that the 2015 Census Test staff ratio of 1:15 being “sufficient” was a misstatement given the evidence.³⁹

27. The location of the ACO for Prince George’s County illustrates the potentially problematic implications of this change. In 2010, Prince George’s County had an ACO located within the county, in Largo, Maryland, with 1,681 positions.⁴⁰ In contrast, the 2020 plans include Prince George’s County in the Annapolis, MD ACO area—located well outside Prince George’s County.⁴¹ This despite the fact that most of the population of Prince George’s County will be geographically closer to the Washington, DC ACO office. The Bureau decision to increase the number of field staff at offices rather than increasing the number of ACOs and locating ACOs within HTC communities is more likely to have an impact on Prince George’s County given the expected increase in the differential self-response of Non-White individuals. The 2010 Census estimated Prince George’s County to be 15% Non-Hispanic White; 2017 American Community Survey estimates estimate the White population has shrunk to 13.3% of the county population. In contrast, the county of Annapolis, Maryland is majority White.
28. The Bureau’s most recent Lifecycle Cost Estimate projects that 260,829 core enumerators would be needed, assuming a (median) 60.5% self-response rate and an increased workload productivity rate of 1.55 households enumerated per hour.⁴² Given that the self-response expectation of 60.5% for 2020 is not rooted in tests over the course of the decade and was instead last updated in 2017 (prior to much of the evidence pointing to a larger differential self-response rate between White and Non-White households outlined in this report), there is considerable reason to consider this a significant risk to the 2020 count. The Census Bureau acknowledges “If the 2020 Census self-response rate falls below expectations, then the initial NRFU workload will be higher than expected, and the infrastructure may be insufficient to support the increased field data collection volume.”⁴³ Although the Census Bureau did not update their assumptions about the expected self-response rate after observing a large differential between White and Non-White populations in the 2018 Census Test, they did increase their assumed productivity rates.
29. There are a number of reasons to think that the improved productivity rates observed in Providence County between 2010 and 2018 will not hold for the entire country. Providence County is a majority White county with high rates of Internet access and historically high levels of Census cooperation. The Providence County 2010 census self-

³⁹ OIG-17-020-I, 7, 11.

⁴⁰ Positions do not necessarily equal enumerators since one person can cover more than one position. *See David Katzoff, LCO by LCO Number of Positions (April 16, 2018)*, [https://www.censushardtocountmaps2020.us/img/acolco/LCO%20by%20LCO%20and%20State%20by%20State%20Estimated%20Number%20of%20FY%2010%20Positions%20\(For%20Release\).pdf](https://www.censushardtocountmaps2020.us/img/acolco/LCO%20by%20LCO%20and%20State%20by%20State%20Estimated%20Number%20of%20FY%2010%20Positions%20(For%20Release).pdf)

⁴¹ *See Initial Locations of 2020 Area Census Offices*, https://www2.census.gov/programs-surveys/decennial/2020/program-management/memo-series/2020-memo-2017_21_ACO_list.pdf.

⁴² Benjamin Taylor deposition at 117. The Census Bureau will clear a nd train 399, 938 enumerators.

⁴³ 2020 Census Operational Plan. Version 4, 131.

response rate was 75.2%--far exceeding the national average of 63.5%. According to the 2017 ACS, Providence County is 62% Non-Hispanic White, 12% Black, and 22% Hispanic. The political and social environment in Providence County is also relevant. We might expect, for instance, that racial and ethnic minorities are less fearful of cooperating with government workers given Providence Mayor Jorge O. Elorza, the son of Guatemalan immigrants who settled in Providence, has labelled Providence a “sanctuary city”⁴⁴ and Rhode Island Governor Lincoln Chaffee actions limiting federal immigration enforcement.⁴⁵

30. The consequences of under-staffing and reduced field presence will again be most acutely felt by the count of racial and ethnic minorities because these households will be more likely to be omitted from MAF without in-field address canvassing and, for those included in the MAF, less likely to self-respond and thus more likely to be included in the NRFU operation. In a 2017 Budget Impact report, the Census Bureau acknowledged that “[t]he field office infrastructure cut will lead to delays in opening offices in 2018 and 2019, directly increasing the risk of operational problems and reduced field efficiency.”⁴⁶ The concern was so significant that 54 members of Congress sent a letter to Secretary Ross expressing “significant concern” that “the decision to dramatically reduce the Bureau’s field presence, will disproportionately underrepresent rural, low-income, and minority communities.”⁴⁷ Given the likely geographic distribution of omissions from MAF and expected declines in self-response, it could have severe implications for field operations.⁴⁸ As explained in an OIG report, “if the field infrastructure is not sufficient to support the work for the 2020 Census, then there is significant risk of not effectively managing the associated field workload, which could impact cost and data quality.”⁴⁹
31. In sum, staffing and infrastructure plans rest on assumptions that have not been sufficiently tested. Worse still, the current estimates have not been updated to account for the expected increase in nonresponse caused by the increased reluctance of racial and ethnic minorities to respond. As the Census Bureau acknowledges, this reduced local presence creates a major risk for the 2020 count if self-response rates decline below

⁴⁴ Scott Blake, *Elorza: We are a Sanctuary City*, Providence Business News (August 31, 2018), <https://pbn.com/elorza-we-are-a-sanctuary-city/>.

⁴⁵ In 2011, he issued Executive Order 11-02 that rescinded the requirement to e-verify employment eligibility with the federal government. In July 2014, he issued a Department of Corrections Policy directing executive agencies not to honor a ICE detainer without a warrant.

⁴⁶ U.S. Census Bureau, *Department Of Commerce FY2017 Budget Impact Paper*, Michael Anderson, Office Of Budget (September 22, 2016).

⁴⁷ [Letter to Congressman Wilbur L. Ross, Jr., US Congress \(January 16, 2019\)](https://panetta.house.gov/sites/panetta.house.gov/files/documents/2019.01.16_CongressmanPaneta_Letter_CommerceDept_AreaCensusOffices.pdf), https://panetta.house.gov/sites/panetta.house.gov/files/documents/2019.01.16_CongressmanPaneta_Letter_CommerceDept_AreaCensusOffices.pdf.

⁴⁸ Using the original ratio of 735 enumerators per office would result in 349 ACOs. However, rather than opening an additional 101 offices, the Bureau is increasing the average number of core enumerators per office to 1,034 (a 41 percent increase). Kissam et al. (2018) highlight the consequences of uneven LUCA participation and inadequately targeted in-field address canvassing for likely omissions from MAF.

⁴⁹ Final Report No. OIG-18-018-A, 6.

assumed and modeled levels or a cybersecurity or other event decreases the public's willingness to respond online.

CUTS TO KEY PROGRAMS: QUESTIONNAIRE ASSISTANCE CENTERS

32. For numerous reasons, including the issues identified above with the MAF, it is all the more important during the 2020 Census to provide resources for a voluntary “backstop” for those households not listed in the MAF (that will therefore not receive a mailing). In 2010, households excluded from the MAF could nonetheless complete a census form at one of 29,157 staffed Questionnaire Assistance Center (QAC) sites or 9,670 unstaffed Be Counted (BC) sites.⁵⁰ The QAC/BC sites provided a means for persons to be included in the count even if they did not receive a census questionnaire, believed they were omitted from a form, or had no usual address on Census Day. These sites were typically established in community organizations, libraries, and local government offices in HTC areas. A similar “Be Counted” program existed in the 2000 Census with 28,136 sites.
33. Funding for these centers has been completely eliminated from the 2020 Census.⁵¹ The impact of the Census Bureau's change is likely to be significant. In 2010, 784,103 questionnaires were submitted (2.8 million forms were picked up by the public) from QAC/BC locations; the Census Bureau reports that 760,748 people were added to the census count.⁵² This was a nearly 36% increase compared to 2000, when 560,880 persons were added to the census. Although not all of the forms represent households omitted from MAF, 38% of those who visited the QAC in 2010 said they did not receive a questionnaire in the mail (41% in Puerto Rico), suggesting these centers were an effective way for people omitted from MAF to be counted.⁵³ Assuming that QACs in 2020 would have produced a similar 36% increase, this design change could mean a loss in the self-response of more than one million HTC individuals.
34. The elimination of Questionnaire Assistance Centers/Be Counted forms could result in the loss of the self-response of more than one million individuals in HTC communities, including Black communities.

⁵⁰ QACs employed a temporary census worker at the site for 15 hours per week to assist respondents in completing their forms, where the BC sites did not have a census employee. Forms were available in 6 languages. The total operational spending was \$35,574,131 and 31,055 temporary employees worked on the operation—not including partnership staff. U.S. Census Bureau, *2010 Census Be Counted and Questionnaire Assistance Centers Assessment* (May 22, 2012), <https://www2.census.gov/programs-surveys/decennial/2010/program-management/5-review/cpex/2010-memo-194.pdf>.

⁵¹ In 2020, the Census Bureau has only planned for questionnaire assistance to be available by telephone. U.S. Census Bureau, *2020 Census Operational Plan: A New Design for the 21st Century*, v. 4 (December 2018), <https://www2.census.gov/programs-surveys/decennial/2020/program-management/planning-docs/2020-oper-plan4.pdf>.

⁵² U.S. Census Bureau, *2010 Census Be Counted and Questionnaire Assistance Centers Assessment*, 2010 Census Planning Memo No. 194, xiii (May 22, 2012).

⁵³ *Id.* Table 41 reports that 70,173 addresses were added to MAF from the QACs after field verification.

35. In response to stakeholder concern about the elimination of QAC/BC locations, a last-minute decision was made to implement a “Mobile Response Initiative” “in lieu of establishing community-based QACs,” in which Census staff “will be present at markets, festivals, and other high-traffic events in hard-to-count communities.”⁵⁴ This plan is unclear, untested, and based on the available evidence, unlikely to be effective. For example, based on the Census Bureau’s evaluation of QACs, visits peaked in the middle of the week—on Wednesdays and on Census Day, a Thursday. In contrast, festivals tend to be held on weekends and must compete for attention from many different organizations and vendors.

DESIGN CHANGE: THE MASTER ADDRESS FILE (MAF)

36. Among the redesigns of the 2020 Census with implications for the potential undercount of racial and ethnic minorities is the Census Bureau’s new method for creating the master address file (MAF)—the address and physical location of each place in the country where someone is (or could be) living.
37. In prior years this list was created through an extensive field operation in which thousands of temporary workers conducted address canvassing to document every possible household. For the first time in 2020, the Census Bureau is reducing the amount of in-field address canvassing that must be completed by field staff by using “in-office” address canvassing. That is, the Census Bureau determines the physical location of housing units through use of aerial imagery and administrative records, rather than canvassing by field staff.
38. An accurate address list is the cornerstone of a successful census. Only addresses in the MAF will receive the mailed communications from the Census Bureau or will receive an in-person visit as part of the NRFU operation. Mailed communications remain important for the 2020 Census as households will receive a mailing directing them to the appropriate link at which to complete the online form.⁵⁵
39. Critically, inaccuracies in the MAF are likely to exacerbate the differential undercount because racial and ethnic minorities are more likely to be missed. Recent research concludes that one reason for an undercount of racial and ethnic minorities is that they

⁵⁴ *The Community Speaks: A Report of the National Latino Commission on Census 2020*, NALEO Education Fund, 17 (May 2019), https://d3n8a8pro7vhm.cloudfront.net/naleo/pages/1489/attachments/original/1558496505/1.TheCommunitySpeaks-Report_1.pdf; see Report to the Committee on Commerce, Justice, Science and Related Agencies, Appropriations Bill, 116th Congress, 1st sess. (2019-2020), <https://docs.house.gov/meetings/AP/AP00/20190522/109552/HMKP-116-AP00-20190522-SD002.pdf>. The House has proposed adding \$100 million in funding for this initiative.

⁵⁵ 2015 Census Test: Advertising and Partnerships Savannah DMA National Advisory Committee Monica Vines, Researcher (October 8, 2015).

live in unusual or concealed housing units that are not in the MAF.⁵⁶ Data from the Bureau and external researchers finds that the MAF is more likely to miss those living in complex housing situations, disproportionately racial and ethnic minorities.⁵⁷ Large ethnographic studies in a number of different localities confirm “irregular housing,” such as informal conversions from single family to multi-family arrangements are one reason for undercounts.⁵⁸ More recent research finds a record number of households living in multigenerational households.⁵⁹

40. Funding decisions have jeopardized the cost and quality of the MAF. Because of cancelled testing, the Census Bureau has reduced the estimated percent of households to be correctly canvassed in office, significantly increasing anticipated costs and creating significant uncertainty about total costs.⁶⁰ A 2017 OIG investigation found significant issues with MAF, concluding that the Census Bureau did not meet its test objectives because of “schedule delays which affected test preparedness.” Nearly half of test activities had a delayed start or finish date, with cumulative consequences: “Each activity is linked to preceding and succeeding activities, so a delay to one activity may cause many other activities to be delayed and jeopardizes the Bureau’s ability to effectively

⁵⁶ Edward Kissam, *Differential Undercount of Mexican Immigrant Families in the US Census*, Statistical Journal of the IAOS, 33(3), 797-816 (2017). Community-based Address Canvassing pilots have identified significant additional housing units.

⁵⁷ For a review of the literature, see Edward Kissam, *A Summary Review of Research Relevant to Housing Units Missing from the Census Bureau’s Master Address File (MAF)*, WKF Giving Fund <http://www.wkfamilyfund.org/docs/Wkf%20%20A%20Summary%20Review%20of%20Research%20Related%20to%20Census%20Missing%20Housing%20Units%20-%203Oct.pdf>; see also William P. O’Hare, et. al., *The Invisible Ones*, NALEO Educational Fund (April 2016), <ftp://ftp.census.gov/cac/nac/meetings/2016-11/2016-04-latino-children.pdf>.

⁵⁸ Rodney Terry, et. al., *Exploring Inconsistent Counts of Racial/Ethnic Minorities in a 2010 Census Ethnographic Evaluation*, Bulletin of Sociological Methodology 135, no. 1, 32-49, 42 (2017); M. De la Puente, *Why are People Missed or Erroneously Enumerated in the Census – A Summary of Findings from Ethnographic Research. Proceedings of the 1993 Research Conference on Undercounted Ethnic Populations* (1993); A survey of San Joaquin Valley Latino Immigrants found that one-fifth of those in the U.S. in 2010 say they never received a census form in 2010 and were not contacted by an enumerator. Edward Kissam, et. al., *San Joaquin Valley Latino Immigrants*, San Joaquin Valley Health Fund (January 2019), https://cviic.org/wp-content/uploads/2019/01/SJVCRP_Survey_Findings_Report_011819-small.pdf.

⁵⁹ D’Vera Cohn and Jeffrey S. Passel, *A Record 64 Million Americans Live in Multigenerational Households*, Pew Research Center (April 5, 2018), <https://www.pewresearch.org/fact-tank/2018/04/05/arecord-64-million-americans-live-in-multigenerational-households/>.

⁶⁰ U.S. Government Accountability Office, *2020 Census: The Address Canvassing Test Revealed Cost and Schedule Risks and May Not Inform Future Planning as Intended*, Final Report No. OIG-17-024-A (May 11, 2017), <https://www.oig.doc.gov/OIGPublications/OIG-17-024-A.pdf>.

plan and carryout testing activities in a timely manner.”⁶¹ Budget cuts also resulted in planned software functionality not being developed.⁶² Despite early plans to canvass no more than 25% of addresses, the most recent operational plan now includes plans to canvass 38% of addresses, resulting in significant cost increases.⁶³

41. Funding decisions have also jeopardized the quality of the MAF. According to an OIG investigation, the address canvassing portion of the 2018 Census Test had significant issues and inaccuracies—61% of the 433 locations tested showed significant differences between the in-office and in-field results.⁶⁴ The investigation reported that a 2016 test estimated that 1.4 million households could be missed as a result of inaccuracies from in-office canvassing. Aerial imagery is not able to identify low-visibility housing accommodations (e.g., housing in a garage) and administrative records are more likely to be incomplete for racial and ethnic minorities.
42. Evidence from community-based address canvassing as part of the Local Update of Census Address (LUCA) program has found that hidden housing units that otherwise would have been omitted from MAF are overwhelmingly minority households: “the neighborhoods where in-field community-based address canvassing added newly-identified housing units are mostly ones with high proportions of households headed by non-citizens, racial/ethnic minority respondents, and heads of household with lower-than average educational attainment.”⁶⁵ Unfortunately, LUCA participation is uneven across the country with some local areas vigorously seeking to improve the MAF (e.g., California has budgeted \$7 million for LUCA efforts), but other jurisdictions doing little or nothing.
43. Following the problems identified in the 2018 End-to-End Test, the Census Bureau has budgeted for late or supplemental cases being added to NRFU,⁶⁶ but the bigger concern is about the households omitted from MAF that never get added. Critically, the Census

⁶¹ *Id.*

⁶² U.S. Government Accountability Office, *2020 Census: Actions Needed to Improve In-Field Address Canvassing Operation*, GAO-18-414, 7 (July 16, 2018).

⁶³ U.S. Census Bureau, *2020 Census Operational Plan: A New Design for the 21st Century*, V. 4. (December 2018), <https://www2.census.gov/programs-surveys/decennial/2020/program-management/planning-docs/2020-oper-design-model.pdf?#>.

⁶⁴ Office of Inspector General, *2020 Census: Issues Observed During the 2018 End-to-End Census Test's Address Canvassing Operation Indicate Risk to Address List Quality*, OIG-19-008-A (February 2019), <https://www.oversight.gov/sites/default/files/oig-reports/archive/17803//OIG-19-008-A.pdf>.

⁶⁵ Ed Kissam, Cindy Quezada, and Jo Ann Intili. "Community-based canvassing to improve the US Census Bureau's Master Address File: California's experience in LUCA 2018." *Statistical Journal of the IAOS Preprint* (2018), 609.

⁶⁶ Benjamin Taylor deposition at 100–104.

Bureau has eliminated programs that had been previously successful at enumerating households omitted from MAF, due in part to budget constraints.

DESIGN CHANGE: ADMINISTRATIVE RECORDS

44. Another aspect of the census redesign is the use of administrative records in the NRFU operation, the process that enumerates those households that fail to self-respond. Administrative records refer to micro data records contained in files collected and maintained by administrative agencies, such as the U.S. Postal Service, Internal Revenue Service, or the Social Security Administration. In previous censuses, in-field enumerators visited the home of every non-responding household at least six times before imputing. In 2020, administrative records will be used to classify a non-responding household as occupied, vacant, or nonexistent (thus removing it from the NRFU workload) and to enumerate the household. The operational plan outlines that administrative records will be used if a household is not counted after one visit and if the administrative records are of “sufficient quality.” Administrative records will be used to identify vacant households and to fill in the responses if the administrative records are deemed to be of adequate quality.
45. This operational change is one that the Census Bureau recognizes is going to be less effective for counting HTC households. Administrative records are less available and lower quality for racial and ethnic minorities. As reported in a GAO report, “records generally tend to over-represent white and economically-advantaged populations in comparison to how other groups appear in the records.” A 2017 Urban Institute Research Report concluded that “vulnerable and hard-to-reach subpopulations may be systematically underrepresented by the new procedures. These subpopulations may not have the same body or quality of administrative records as other groups.” Another study concludes that “[g]iven the unevenness in which groups are represented in the Administrative Records . . . they could increase some of the undercount differentials in the 2020 Census. There is no doubt that using administrative records instead of repeated visits to non-responding households will save money, but it not clear yet that it will not compromise quality.” Young children are especially likely to be missed by administrative records.
46. The use of administrative records can worsen the differential undercount in two ways: First, the lack of administrative records for racial and ethnic minorities could increase the likelihood that occupied Non-White households get mistakenly classified as vacant. Indeed, census research using administrative records predicted a higher frequency of vacant households than shown in 2010 for areas with a high concentration of Black households. Second, because records are more available for White households, those individuals are more likely to be enumerated.
47. Finally, the use of administrative records increases the risk and perception of risk about the confidentiality of the census which disproportionately affects Black and Hispanic households. Census research examining public opinion towards administrative records found that Black respondents and Hispanic respondents were less likely than White respondents to say they would prefer to have their household enumerated using

administrative records rather than with an interviewer coming to their homes. Despite concerns raised by stakeholders and advisory committees, the Census Bureau has not sufficiently evaluated the impact of the use of administrative records on the count of HTC households. When they raised the need for additional research and testing, CSAC was told that testing “could not be extended simply because time is too short.”

48. Urban Institute projections of the differential undercount in 2020, even assuming that the 2020 Census proceeds as planned by the Census Bureau’s operational plans, find an undercount of Black individuals of 3.24% (a differential undercount of 3.54%) and an undercount of Hispanic individuals of 2.84% (a differential undercount of 3.14%).

CONCLUSION

49. It is my opinion that the 2020 Census will unreasonably undercount of racial and ethnic minorities compared to the Non-Hispanic White population. Motivated by budget constraints and the imperative to achieve cost savings, the Census Bureau made a number of changes to their methodology and processes, despite available evidence indicating these changes could worsen the undercount of HTC households and without adequate research and planning to mitigate that possibility.
50. The effects of these decisions are cumulative and often difficult to quantify precisely given available data, but the following quantifiable estimates, detailed further above, are the basis for my conservative estimate that the differential undercount of Black individuals is likely to worsen by *at least two percentage points*:
- a. A predicted reduction in Black self-response associated with a reduction in the funding and staffing of the partnership program of 7-11 percentage points.
 - b. The elimination of Questionnaire Assistance Centers/Be Counted forms could result in the loss of the self-response of more than one million individuals in HTC communities, including Black communities.
 - c. An attitudinal gap between Black and White respondents showing Black respondents were 14 percentage points more likely than White respondents to be Extremely/Very concerned that the Census Bureau will not keep answers to the 2020 Census confidential and 19 percentage points more likely to be Very/Extremely concerned that their answers to the 2020 Census would be used against them. Similar gaps in attitudes about the use of administrative records and in concerns about cybersecurity. A study conducted after the decision to not include the citizenship question on the census continues to find heightened confidentiality concerns among racial and ethnic minorities.⁶⁷
 - d. Although the 2020 Census will not include a citizenship question—which the Census Bureau predicted would decrease the self-response of non-citizen households by 8 percentage points—the controversy and rhetoric is nonetheless likely to impact the cooperation of non-citizen, Hispanic, and other Non-White households.
 - e. An expectation that the predicted differential self-response between White individuals and Non-White individuals will translate into a differential undercount because the NRFU operations historically have never been able to fully mitigate differential self-response rates and because enumeration by proxy respondents and imputation systematically undercounts Black and Hispanic household size. As summarized in the *Kravitz* decision, the data patterns suggest that a ten-

⁶⁷ <https://censusproject.files.wordpress.com/2019/11/article-1-census-findings-press-release-memo.pdf>

percentage point drop in self-response rates is associated with an approximate two-percentage point increase in the undercount.⁶⁸

- f. The Urban Institute's projection that Black individuals will have an undercount of 3.24% and Hispanic individuals will have an undercount of 2.84% even if the citizenship question is not included. Former Census Director John Thompson further says that these estimates "may be a little bit on the conservative side" and concludes that "It could be as bad as 1990. It could be worse."⁶⁹
- g. Finally, the less quantifiable, but clearly disparate effects of other funding, design, and resource decisions, such as the use of internet self-response, in-office canvassing, and administrative records, coupled with key resource cuts, such as to field staff, field offices, and outreach.

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

Executed this 21st day of January, 2020



Professor D. Sunshine Hillygus

⁶⁸ See *Kravitz v. United States Dep't of Commerce*, 366 F. Supp. 3d 681, 720 (D. Md. 2019).

⁶⁹ Hansi Lo Wang, *Census Could Lead to the Worst Undercount of Black, Latinx People in 30 Years*, NPR (June 4, 2019), <https://www.npr.org/2019/06/04/728034176/2020-census-could-lead-to-worst-undercount-of-black-latinx-people-in-30-years>.

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

CENTER FOR POPULAR DEMOCRACY
ACTION, *et al.*,

Plaintiffs,

v.

BUREAU OF THE CENSUS, *et al.*,

Defendants.

Case No. 19 Civ. 10917 (AKH)

DECLARATION OF DEIRDRE DALPIAZ BISHOP

I, Deirdre Dalpiaz Bishop, 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 currently serve as the Chief of the United States Census Bureau's Geography Division. I have served in this capacity since May 2016. Previously, I served as the Chief of the Decennial Census Management Division; I served in that capacity from January 2015 to May 2016. I have a bachelor's degree in Urban Studies from Lehigh University and a master's degree in Public Administration from New York University. I have been employed by the Census Bureau since 1996, starting as a GS-9 Geographic Specialist in the New York Regional Office and serving in positions of increasing responsibility over the past 24 years. I have been a member of the Senior Executive Service since 2015.

2. I am recognized as an expert in the management of geospatial information in both national and international communities. I am a member of the Federal Geographic Data Committee's Executive Committee, guiding the development of the National Spatial Data

Infrastructure for the United States. By appointment of the United States Ambassador to the Organization of American States, I serve as President of the United States National Section of the Pan American Institute of Geography and History. By appointment of the Chief Statistician of the United States, I serve as Head of the United States Delegation for the United Nations Committee of Experts on Global Geospatial Information Management.

3. In connection with my job responsibilities I am familiar with this litigation, as well as the government's efforts to defend the Census Bureau and the U.S. Department of Commerce. The following statements are based upon my personal knowledge or on information supplied to me in the course of my professional responsibilities, and these statements are provided in support of Defendants' Opposition to Plaintiffs' Motion for Preliminary Injunction.

I. Executive Summary

4. In this declaration, I address the following subjects and draw the following conclusions:

- a. I explain the role, development, and uses of the Census Bureau's Geographic Support program, the sophisticated digital mapping and address system that forms the basis for the Census Bureau's data collection activities, including the Master Address File, a list of all known housing units in the nation. In particular, I explain the participation in the creation of the list by local governments, including those of Prince George's County, MD; the State of New York; the City of New York; Orange County, NY; and the City of Newburgh, NY in Orange County.
- b. I describe the historical use of address canvassing, both in-field and in-office, to validate address lists used from the 1970 Census through the 2020 Census, focusing on the preparations for the 2020 Census in particular. Based on my work managing

geographic operations over the past three decennial censuses, I can confidently conclude that the current Master Address File is the most complete and accurate in history.

- c. I explain the current status of Address Canvassing field operations for the 2020 Census, which are complete. No further in-field canvassing can be done prior to the 2020 Census if the 2020 Census is to be successfully completed.
- d. I respond to the Declaration of Dr. Mark Doms, noting in particular (1) that Dr. Doms was aware of and in a position to influence the design decisions of the 2020 Census that Plaintiffs now criticize; (2) that Dr. Doms's criticism of the imagery-based approach to address canvassing in the 2020 Census is incorrect and based on faulty assumptions; and (3) that Dr. Doms's suggestion that canvassing in-field for only part of the country would negatively affect the enumeration of hard to count communities is incorrect. In fact, the combination of in-office and in-field is designed to focus resources on the most difficult to count areas and populations, while avoiding the expenditure of resources in stable, easy-to-enumerate neighborhoods.

II. Role of the Geographic Support Program at the United States Census Bureau

5. As the Chief of the Geography Division, I lead the ongoing development and implementation of the Geographic Support (GS) Program. This program supports and maintains the geospatial infrastructure required for the Census Bureau's data collection, processing, tabulation, and dissemination programs for the United States, Puerto Rico, and Island Areas. The GS Program provides the foundation for every social and economic data product and geographic service produced by the Census Bureau, including the Decennial Census, American Community Survey, Economic Census, Current Surveys and other intercensal demographic statistics programs (i.e., ongoing surveys such as the Current Population Survey and the Survey of Income and Program Participation), and the Population Estimates Program.

6. "Geospatial infrastructure" refers to the full range of geographic information maintained by the Census Bureau, including addresses and associated address points of latitude and longitude; road features such as local streets and highways; and boundaries. The boundaries represent geographic areas such as states, counties, and municipalities; congressional, state legislative, and voting districts; and statistical areas such as census tracts (roughly equivalent to about 4,000 people or 1,600 housing units), block groups (containing about 600 to 3,000 people or 240 to 1,200 housing units), and blocks (roughly equivalent to a city block).

7. The base of the existing geospatial infrastructure began with the development of the Topologically Integrated Geographic Encoding and Referencing (TIGER) System in preparation for the 1990 Census. Working with the United States Geological Survey (USGS) and tribal, state, and local government officials, the Census Bureau developed the first digital topologically integrated map of the nation. Layers of geographic information in electronic format (e.g., first roads, then census blocks, then city boundaries) allowed for the tabulation and

dissemination of 1990 Census population and housing data at small levels of geography such as the city block.

8. While originally created to support the 1990 Census, TIGER soon became a national resource, providing the foundation for rapid expansion of a new industry called GIS (geographic information systems). TIGER's network of roads and boundaries facilitated the growth and development of the high-quality digital maps now standard on smartphones, tablets, and car navigation systems. Continued maintenance and regular on-line public release (twice per year) of TIGER have provided both the public and private sectors with a reliable source of updates to their geospatial information.

9. The federal Office of Management and Budget has recognized the quality of the Census Bureau's geospatial data and for that reason has designated the agency as the key federal source for geographic area boundaries for the nation. The Census Bureau serves as the lead federal agency for collection, maintenance, and dissemination of tribal, state, county, and local boundaries.

10. Of equal magnitude, in preparation for the 2000 Census, the Census Bureau created the Master Address File (MAF), a list of all known housing units in the nation. Working with the United States Postal Service, and tribal, state, and local governments, this list has grown to approximately 150 million addresses. Each address in the MAF is linked to a reference point of latitude/longitude in the TIGER database. The Census Bureau is prohibited from sharing the MAF under constraint of Title 13 of the U.S. Code. However, the agency has been designated by the Federal Geographic Data Committee as co-lead, along with the Department of Transportation, for the creation of a National Address Database, a key component of the National Spatial Data Infrastructure.

11. Over the past three decades, the Census Bureau has remained a leader in digital mapping and geographic information and, as such, routinely advises other nations' statistical organizations seeking to develop and implement high-quality digital geographic information, digital maps, and national address lists. The Census Bureau has been a leader among statistical organizations in the use of imagery to validate the contents and quality of its address list in comparison to housing on the ground, and has been sought out by other nations' statistical agencies seeking to adopt similar methods.

12. The Census Bureau's geospatial foundation—the dataset used by the Census Bureau as the basis for all of its data collection work for its surveys, including the decennial census—comprises four primary building blocks:

- 1) Addresses – a national address list of all known living quarters and associated address points (latitude and longitude coordinates);
- 2) Features – a national network of roads, highways, rivers, railroads, parks, and landmarks;
- 3) Boundaries – a national inventory of legal, statistical, and administrative boundaries, including tribal, state, county, place, and township boundaries; congressional, state legislative, and voting districts; school districts; and census tracts, block groups, and census blocks; and
- 4) Imagery – a national data set of satellite and aerial imagery.

13. These data are developed and maintained through two key areas of strategic partnership:

- 1) Relationships with tribal, state, and local governments; federal agencies; international organizations; academia; non-profit organizations, and the private sector in support of our ongoing geospatial programs; and
- 2) Expertise shared across domestic and international domains, with leadership by the U.S. Census Bureau.

14. The GS Program maintains the MAF/TIGER System. This integrated IT system includes:

- The MAF/TIGER Database of addresses, address points, features, boundaries, and imagery;
- A processing environment including hardware and software (e.g., servers, platforms, and database software); and
- The software applications necessary to maintain, update, and create all geographic products and services.

15. An integrated MAF/TIGER System provides the foundation for the Census Bureau's data collection, tabulation, and dissemination activities. The MAF/TIGER System is used to generate the universe of addresses that will be included in a decennial census or survey. Those addresses are then invited to respond, typically through an invitation in the mail. The MAF/TIGER System is used to control responses as they are returned to the Census Bureau and to generate a list of nonresponding addresses that will be visited in person. Finally, the MAF/TIGER System is used to ensure that each person is counted once, only once, and in the right place.

16. Internal and external stakeholders rely on GS Program products and services for analysis and decision-making. In addition to the use of GS Program geographic areas for congressional and legislative redistricting after each Decennial Census, federal, state, and local governments use GS Program geographic area and feature data to implement a variety of programs and products. For example, the USGS relies upon the GS Program as the source for roads on their topographic map series and in the National Map. The Federal Highway Administration uses GS Program data to authorize transportation planning organizations and conduct transportation planning activities. Local governments use GS Program data as inputs when planning expansion of services as well as changes to school attendance area boundaries. Private sector firms producing data for use in dashboard navigation systems and on-line maps utilize GS Program products as a source for geographic area boundaries and as a source for detecting changes to roads and other physical features. Private sector firms also use geographic information produced by the GS Program as an input when conducting analysis to identify potential locations for retail expansion, opening of new offices, and other business-related decisions.

17. GS Program products are used in the design and implementation of the Decennial Census. The MAF/TIGER System is the source for all geographic area boundaries used to tabulate and disseminate Decennial Census data. In addition, road and other features within the MAF/TIGER System are used to define geographic areas used to manage and conduct field operations; for example, to define the assignment areas in which fieldworkers carry out their work.

18. The primary (but not exclusive) way that individuals are directly invited to respond to the Decennial Census is by being contacted by mail at their residence. Accordingly,

the Census Bureau requires a complete and accurate a list of residential addresses in the United States and Puerto Rico. The process of validating the accuracy and completeness of the address list, and making necessary updates and changes, is referred to as “address canvassing.”

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

III. Historical Background

20. It is my understanding that Plaintiffs in this action have challenged the use of in-office address list development for purposes of the 2020 Census.

21. In-office address list development is not new to the 2020 Census. Since 1970, the Census Bureau has relied upon a combination of in-office processing of address lists acquired from external sources and in-field canvassing to develop its address list for the decennial census. In previous decennial censuses that have relied on mailed questionnaires, the Census Bureau has used some form of in-field canvassing to validate and update its address list prior to mailing questionnaires. For the 1970, 1980, and 1990 censuses, the Census Bureau began with a commercially purchased address list for available metropolitan areas, then conducted canvassing operations to improve the list with fieldworkers traversing every road.

22. In support of the 2000 Census, and in response to the Census Address List Improvement Act of 1994 (P.L. 103-430), the Census Bureau began development of a permanent

address list, the MAF. The Census Address List Improvement Act changed the Census Bureau's Decennial Census address list development procedures. The Act expanded the methods the Census Bureau could use to exchange address information with tribal, state, and local governments in order to support its overall residential address list development and improvement efforts.

23. The MAF is maintained and updated in the office primarily through biannual processing of the U.S. Postal Services' address list, the Delivery Sequence File (DSF), with validation and additional updates provided through in-field operations. The use of DSF addresses as a primary source for maintenance and updating of the MAF for the 2020 Census continued the process used for the 2000 and 2010 Censuses. Additional sources of address information, including address lists obtained from tribal, state, and local government partners (often tax and property assessment offices or planning departments), were incorporated into the process over the years.

IV. Preparing for the 2020 Census – Address List Development

24. In support of the 2020 Census, address list development efforts at the Census Bureau incorporated a three-pronged approach: (1) continual assessment and update of the MAF using partner-provided data; (2) In-Office Address Canvassing; and (3) In-Field Address Canvassing.

1. Continual Assessment and Update using Partner-Provided Data

25. Similar to address list development efforts for the 2000 and 2010 Censuses, the U.S. Postal Services' DSF served as a primary source of address updates. Since 2010, the DSF provided 5.9 million new addresses to the MAF. An additional 2.4 million addresses that were new to the DSF matched to addresses already in the MAF, serving as a validation of other sources.

26. Address and spatial data from tribal, state, and local governments provided a critical validation and enhancement of the MAF/TIGER System. The ubiquity of high-quality geospatial data, coupled with sophisticated tools for managing and exchanging data, has increased substantially over the past three decades, in large part due to the Census Bureau's development and ongoing update of the TIGER database and public distribution of geospatial data. The ongoing collaboration of the Census Bureau with federal, tribal, state, and local government agencies in the production and sharing of geospatial data, along with organizations like the Federal Geographic Data Committee, the National Geospatial Advisory Council, and the National States Geographic Information Council, have made it possible to maintain high-quality address and geographic information in the office through exchange of digital files rather than rely on costly fieldwork.

27. Between 2013 and 2019, the Census Bureau accepted nearly 107 million address records from government partners. Over 99.5 percent of those records matched to addresses already contained in the MAF, many of which were obtained from the U.S. Postal Services' DSF. The remaining 0.5 percent of address records from partner governments represented new addresses and were used to update the MAF. In addition, partners submitted over 75 million address points that were either new or enhanced existing address point locations in TIGER. Over 257,000 miles of roads were added to TIGER using data submitted by partners.

28. As part of this process, the Census Bureau accepted 205,792 records from Prince George's County, MD, of which 100 percent matched to the MAF; 232,403 records from the City of New York for Kings County, NY, of which 100 percent matched to the MAF; and 133,467 records from Orange County, NY (encompassing Newburgh city), of which 99.98

percent matched to the MAF. Again, this demonstrates a high level of accuracy within the MAF for Prince George's, MD, Kings County, NY and Orange County, NY.

29. For the third decade, as mandated by the Census Address List Improvement Act of 1994, the Census Bureau implemented the Local Update of Census Addresses (LUCA) Program to provide tribal, state, and local governments an opportunity to review and update the Census Bureau's address list for their respective jurisdictions. In 2018, participants from over 8,300 entities provided 22 million addresses, of which 17.8 million (81 percent) matched to addresses already in the MAF. The Census Bureau added 3.4 million new addresses to the MAF, nationwide, as a result of LUCA. In Prince George's County, the Census Bureau added 12,278 new addresses and corrected 41,370 address records already in the MAF. In Kings County, NY, the Census Bureau added 21,831 new addresses and corrected 13,503 address records already in the MAF. The Census Bureau received 75 new addresses from Newburgh city and three corrections to addresses in the MAF.

30. To allow tribal, state, and local governments one final opportunity to submit addresses where construction was completed between March 2018 and April 1, 2020 (Census Day), the Census Bureau conducted the New Construction Program. As of February 10, the processing of New Construction submissions continues. Prince George's County has provided 4,703 addresses to the Census Bureau through the New Construction Program. Of these, 4,394 matched to addresses already contained in the MAF as a result of other address update processes. New York City and the State of New York provided 43,040 addresses to the Census Bureau within Kings County, NY through the New Construction Program. Of these, 20,269 matched to addresses already contained in the MAF as a result of other address update processes. Although it was free to participate in the New Construction Program, Newburgh city chose not to do so.

31. Throughout the decade, the Census Bureau tailored the GS Program outreach and acquisition strategy, based on continual assessment of geographic areas in which changes had been detected and/or no other external data source contributed information.

2. In-Office Address Canvassing

32. The Census Bureau's decision to reengineer the Address Canvassing Operation to include an imagery-based in-office component developed out of assessments of the 2010 Census Address Canvassing results. In preparation for the 2010 Census, the Census Bureau canvassed the entirety of the United States and Puerto Rico in the field, with canvassers comparing the address list to housing and addresses visible on the ground and either validating or updating the address list accordingly. Analysis of 2010 Census Address Canvassing results indicated that approximately 75 percent of census blocks had no changes to addresses as a result of field work. The results of the 2010 Census Address Canvassing Operation indicated a high level of completeness in the Census Bureau's address list. Between 2011 and 2013, the Census Bureau further evaluated the availability, quality, and completeness of geospatial data available from partners. Results showed high rates of matching between address lists provided by GS Program partners and addresses already in the MAF. For these reasons, the Census Bureau determined that a 100 percent in-field validation was redundant, wasteful, and would not improve quality.

33. In 2014, the Census Bureau announced the decision to implement the use of in-office methods and data sources to detect change or stability moving forward. This decision was affirmed by external stakeholders during multiple public presentations, including Geography Division Address Summits (2011 and 2013); National Academy of Sciences Panel on Reengineering the 2020 Census meetings; 2020 Census Program Management Reviews (2014 –

2017); Census National Advisory Committee meetings (2015 - 2017); and Census Scientific Advisory Committee meetings (2014 – 2017).

34. Between September 2015 and June 2017, the Census Bureau conducted a 100 percent in-office review of every census block in the nation (11,155,486 blocks), using two different vintages of imagery (one from 2009, which was contemporary with the timing of address list development and Address Canvassing for the 2010 Census, and one concurrent with the day on which in-office review occurred) and housing unit counts from the MAF. The 2009-vintage imagery was acquired from a variety of sources, including the National Agricultural Imagery Program as well as publicly available imagery from state and local governments. Current imagery was acquired through the National Geospatial Intelligence Agency's Enhanced View Program, through which federal agencies can access imagery of sufficiently high quality and resolution to detect individual housing units and other structures, driveways, roads, and other features on the landscape. The quality and resolution of National Geospatial Intelligence Agency's imagery is similar to, if not better than, imagery included in commercial applications available on smart phones and other devices, such as Google Maps and Bing Maps.

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

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

36. However, since the 2020 Census was still several years away when In-Office Address Canvassing completed its initial review of the nation, the Census Bureau continued the in-office review to ensure the MAF was keeping up with changes on the ground. The Census Bureau used information from the U.S. Postal Services' DSF and partner governments, including Prince George's County, MD, the State of New York, the City of New York, and Orange County, NY to identify areas experiencing recent change and triggered these areas for re-review. Between July 2017 and March 2019, the additional review resulted in the categorization of nearly 87.9 percent of the 11.1 million census blocks as passive, indicating a need for in-field review of only 12.1 percent of census blocks.

3. In-Field Address Canvassing

37. The remaining census blocks, encompassing 39,203,593 addresses, were those in which the Census Bureau could not confirm the accuracy and completeness of the address list through in-office methods, and therefore, required fieldwork to either validate or update addresses. The geography used to manage In-Office Address Canvassing was the census block, while the geography used to manage In-Field Address Canvassing was a different, sometimes larger, geographic area known as the Basic Collection Unit, designed specifically to facilitate navigation in the field. Basic Collection Units included both passive and active blocks. As a result, the total number of addresses included in In-Field Address Canvassing was 50,038,437. This represented 35 percent of all addresses in the portion of the nation in which residents will receive decennial census materials by mail—a larger amount than were actually needed based on the In-Office Address Canvassing results.

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

39. It is important to note that because In-Field Address Canvassing occurs only during a specific period prior to the Decennial Census, other in-office address update processes, such as on-going processing of the U.S. Postal Services' DSF and the New Construction Program, are required to ensure that the Census Bureau has a complete and accurate address list at the time the 2020 Census invitation mail-out occurs in March 2020. To rely only on In-Field Address Canvassing to construct the address list for the decennial census would mean missing opportunities to include new housing built and occupied after fieldwork occurred as well as conversions of existing units from commercial to residential uses (many of which are difficult to identify in the field, but are identified in address files from partners).

V. Delivery of Address Data in Support of 2020 Census Operations

40. The design for address list development in the decade leading up to the 2020 Census was the most comprehensive in history. Extensive partnerships with tribal, federal, state, and local governments provided multiple opportunities to validate and update the MAF using the most authoritative sources available. This process of continual assessment and update using partner-provided data created a strong foundation on which to implement the use of satellite

imagery to validate existing addresses or detect change during In-Office Address Canvassing. This suite of in-office methods allowed the Census Bureau to focus In-Field Address Canvassing resources in the hardest to validate census blocks.

41. The MAF created the foundation for the 2020 Census, which is now underway. Enumeration in Remote Alaska began on January 21, 2020. Over 147 million households will begin receiving invitations to self-respond in March 2020. The final step in address list development for the 2020 Census will only include processing of new addresses identified during the enumeration process. It is certainly not possible to change the process now or do additional In-Field Address Canvassing.

42. As Chief of the Geography Division, I can confidently say that the Census Bureau's MAF is the most complete and accurate in history. Twenty-four years (encompassing three censuses) of managing geographic operations at the Census Bureau has provided me with the unique opportunity to witness the development of a national address list from its beginning in the 1990s to completion in support of the 2020 Census.

VI. Responses to Dr. Doms

43. In the course of preparing this declaration, I have reviewed the portions of the Declaration of Dr. Mark Doms submitted in connection with Plaintiffs' Motion for Preliminary Injunction that pertain to the issue of address canvassing, specifically paragraphs 36-44 of the Doms Declaration.

44. It should be noted that I had the opportunity to work with Dr. Doms between September 2015 through August 2016, while he was serving as Under Secretary for Economic Affairs for the Department of Commerce and I was transitioning into my role as Chief of the Decennial Census Management Division. In May 2014, I was selected to serve as the Senior

Advisor for Administrative Records and Data Linkage within the Decennial Directorate of the Census Bureau. Shortly thereafter, I was asked to author “The Path to the 2020 Census.”

45. The path outlined how the Census Bureau would design and conduct a census that cost less per housing unit than the 2010 Census while maintaining high quality. Determining the path involved the identification of cost drivers and innovative methods aimed at reducing those costs. The path focused on four key design areas: Reengineering Address Canvassing; Optimizing Self-Response; Utilizing Administrative Records; and Reengineering Field Operations. If planned and implemented correctly, Decennial Directorate budget staff estimated the avoidance of \$5.1 billion as compared with following the 2010 Census design.

46. On September 5, 2014, I briefed Dr. Doms on “The Path to the 2020 Census Design.” His response was overwhelmingly positive and resulted in his approval for the Census Bureau to share the design publicly. On October 3, 2014, I presented “The Path to the 2020 Census” at the 2020 Census Program Management Review. Immediately following, Timothy F. Trainor, Chief of Geography Division at that time, presented the Geography Division’s 2014 Recommendation to reduce fieldwork for the 2020 Census through more in-office review and validation of addresses. Both presentations are available here:

https://www.census.gov/library/video/2014-10_2020-pmr.html.

47. In October 2014, I was asked to serve as Acting Chief of the Census Bureau’s Decennial Census Management Division. I was non-competitively placed in that position beginning December 28, 2014. I was instructed that my work, and the work of the division, should focus on delivering the 2020 Census design decisions to Executive Leadership within the Census Bureau and Department of Commerce by July 31, 2015. It was expected that a final

version of the 2020 Census Operational Plan would be completed no later than September 2015. To demonstrate progress toward these goals, my team and I briefed Dr. Doms on a regular basis.

48. My records show that topical briefings focused on the four key design areas, as well as the research and testing areas, and occurred as follows:

- i. October 17, 2014 – Utilizing Administrative Records
- ii. December 19, 2014 – The Census Bureau’s Microsimulator
- iii. January 30, 2015 – Optimizing Self-Response
- iv. April 3, 2015 – The 2015 Census Test
- v. May 29, 2015 – The Address Validation Test
- vi. June 19, 2015 – 2020 Census Testing in Fiscal Year 2016
- vii. July 24, 2015 – 2020 Census Operational Plan
- viii. August 7, 2015 – 2015 Census Tests

While Dr. Doms offered thoughtful questions and suggestions during these briefings, at no time did he object to the 2020 Census design plans or the testing of those plans. His approval of the 2020 Census Operational Plan kicked off a series of over twenty presentations in September and early October 2015 to internal and external stakeholders, including the Department of Commerce Milestone Review Board, the Office of Management and Budget, the Government Accountability Office, the Department of Commerce Office of the Inspector General, the House Oversight and Government Reform Committee, the Senate Homeland Security and Governmental Affairs Committee, and both the House and Senate Appropriations Committees that oversee the Census Bureau. The response to the 2020 Census design was overwhelmingly positive.

49. On October 6, 2015, the Census Bureau publicly released the first version of the 2020 Census Operational Plan during a 2020 Census Program Management Review. The transcript is available here: https://www.census.gov/library/video/2014-10_2020-pmr.html. The 2020 Census Operational Plan was released three years ahead of last decade. Implied throughout the development process was Dr. Doms' support and approval of the 2020 Census design.

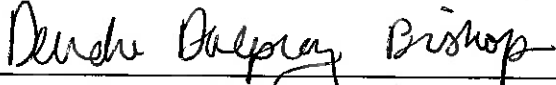
50. In regard to the points raised by Dr. Doms, particularly with regard to the way in which the address list for each decennial census is developed, my thoughts have been addressed throughout this Declaration. However, I would like to focus on one particular flawed assertion made in Dr. Doms' declaration.

51. First, the assertion by Dr. Doms that the imagery-based approach implemented by the Census Bureau is flawed. This statement, I assume, was based on the Department of Commerce Inspector General's report following the 2018 Census Test in Providence, RI, in which we included a sample of passive blocks to test the accuracy of the in-office imagery-based methodology. For the 2018 End-to-End Test, 433 blocks in the Providence site were selected for canvassing in the field in order to evaluate In-Office Address Canvassing processes. Of these, 233 were passive; 200 had been triggered for re-review in the office. Because the Census Bureau's methodology for determining the In-Field Address Canvassing workload converts on-hold and triggered blocks to active status (thus leading them to be verified in-field), the 233 passive blocks are the appropriate universe for evaluating the accuracy of In-Office Address Canvassing in identifying blocks as passive. The Census Bureau reviewed the In-Field Address Canvassing results for the 233 passive blocks after applying its standard process for reviewing data from fieldwork to assure the quality and accuracy of address updates prior to updating the MAF and establishing the list of addresses for Decennial Census enumeration. This review

identifies addresses that were erroneously added or deleted as well as adds that duplicate addresses already on the MAF. This review also identifies instances in which canvassers used a combination of add and delete actions to correct an address's location (i.e., deleting from one block and adding to another). While this combination of actions corrects coverage at a block-level, it does not indicate an error in the overall address list. In other words, this combination of actions improves our mapping information. It does not have any implications for an individual's ability to receive mailings from the Census Bureau and be enumerated. It is inappropriate to treat these add/delete combinations as an indication that households might not receive a questionnaire in the mail and might be missed in the Decennial Census. Based on our review of processed In-Field Address Canvassing results, we found that 98 percent of the addresses in the in-sample passive blocks were validated and only 2 percent of the addresses returned from the field represented coverage errors. The Census Bureau documented our disagreement with the OIG's methodology in a memo dated September 21, 2018 and attached here as Exhibit A.

52. In conclusion, the Census Bureau has focused in particular on the hardest to count areas in conducting In-Field Address Canvassing. That does not mean that In-Office Address Canvassing is somehow less accurate or inferior to In-Field Address Canvassing in most cases. It would be incorrect to draw the conclusion that the decision to conduct In-Office Address Canvassing in some areas in lieu of In-Field Address Canvassing would negatively affect the enumeration of hard to count communities.

Executed on this 18th day of February, 2020.



Deirdre Dalpiaz Bishop
Chief, Geography Division
United States Census Bureau

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

CENTER FOR POPULAR DEMOCRACY
ACTION, *et al.*,

Plaintiffs,

v.

BUREAU OF THE CENSUS, *et al.*,

Defendants.

Case No. 19 Civ. 10917 (AKH)

DECLARATION OF BURTON H. REIST

I, Burton H. Reist, make the following Declaration pursuant to 28 U.S.C. § 1746, and state under penalty of perjury that the following is true and correct to the best of my knowledge and belief:

1. I have served for over a decade in a leadership position overseeing decennial census activities at the U.S. Census Bureau, and for over two years at the Department of Commerce. I am currently the Assistant Director of the Communications Directorate with responsibility for operations and management, where I have served since December 2018. I currently oversee the Public Information Office, the National Partnership Program, and the Program Management Office for the Integrated Communications Contract, which provides extensive communications support for the 2020 Census. In all of these areas, I provide executive leadership for ensuring the development of the Integrated Partnership and Communications (IPC) Program and ongoing strategic communications for the 2020 Census Program.

2. Previously, I served as Chief, Decennial Communications and Stakeholder Relations since February 2017. My duties included oversight of the budget and communications

for the three Decennial Programs – the 2020 Census, the American Community Survey, and the Census Bureau’s Geographic Programs. From October 2014 and January 2017, I was the Director of External Affairs for the Economic and Statistics Administration (ESA), a former component of the Department of Commerce, where I reported to the Chief of Staff for the Undersecretary of Economic Affairs. My duties in this position included oversight of communications activities at the Census Bureau and the Bureau of Economic Analysis, and I provided advice to the Undersecretary on the 2020 Census Program. Prior to taking this position at ESA, I ran the 2020 Census Research and Planning Office at the Census Bureau from December 2011 through September 2014, where I directed the research and testing program for the early development of the 2020 Census design. I was the Assistant Director of the Communications Directorate during the 2010 Census, and I was part of the leadership team directing the 2010 Census communications program.

3. I have served with the Census Bureau, and its parent bureau the Economic and Statistics Administration (a former component of the Department of Commerce), for 20 years in the areas of communications and outreach, policy coordination and senior management. In addition to the responsibilities described above, I also served as the Census Bureau’s FOIA Officer for two years from 2005 through 2007.

4. I hold a Bachelor’s Degree in Politics from the University of California, Santa Cruz, and a Master’s Degree in Public Administration from Cornell University.

5. I am knowledgeable and well informed about 2020 Census Operations generally and the IPC in particular, and I make this declaration based on my personal knowledge and/or information supplied to me in the course of my professional duties.

I. Executive Summary

6. In this declaration, I address the following topics and draw the following conclusions:
- a. I describe the Integrated Partnership and Communications Program for the 2020 Census, which includes both (1) an advertising and communications campaign and (2) a partnership program, each of which are designed to encourage self-response from everyone in the United States, particularly hard-to-count communities.
 - b. I explain the innovations in the Partnership Program for the 2020 Census, most significantly the decision to double the number of Partnership Specialists, the professional staff that fulfills the core mission of the partnership program of reaching out and forming partnerships with local organizations to encourage self-response. The Partnership Program for the 2020 Census is anticipated to have a greater effect, based on a larger number of partnerships, than in the 2010 Census.
 - c. I explain that the elimination of the Partnership Assistant position—a clerical position in the 2010 Census that has become obsolete as a result of the 2020 Census’s new design—is unlikely to have a negative effect on the Partnership Program’s success, but will save taxpayer money from being wasted.
 - d. I explain that the Advertising and Communications Campaign is larger in terms of dollars spent, both in total and per person, than the campaign was in the 2010 Census and is better designed and tested to make each dollar spent more effective than in 2010.
 - e. I explain the mistakes Dr. Doms makes about the IPC in his declaration submitted in this case, particularly (a) assuming incorrectly that each dollar spent on the

Partnership Program has an equal effect, when in fact dollars spent on Partnership Specialists are significantly more valuable in terms of their effect than dollars spent on Partnership Assistants, and (b) ignoring the significant effect and importance of the Advertising and Media Campaign in their focus on the Partnership Program. These mistaken assumptions render his conclusions about IPC unreliable.

- f. I explain my experience working with Dr. Doms and his contemporaneous support for the innovations in the 2020 Census design that he now criticizes.

II. The Integrated Partnership and Communications Program

7. The purpose of the IPC is to communicate the importance of participating in the Census and encourage self-response from all people living in the United States, with a particular focus on hard-to-count communities that have been historically undercounted. This includes population groups, such as African American, Hispanic/Latino, Native American, Asian & Pacific Islander, and other segments of the population including young children, single young mobiles like college students, people who speak languages other than English, renters, low income households, and single parent households. Subsidiary goals are to generate good will for census workers going door-to-door in the non-response follow up (NRFU) and other operations, and to assist with data dissemination after the census. The overriding goal of the IPC, however, is to motivate and enable self-response.

8. The IPC program accomplishes its goal of motivating and encouraging self-response to the census through both (1) the Integrated Communications Contract (“ICC”), and (2) the Partnership Program.

A. The ICC

9. The ICC is the major contract that supports all components of the communications campaign. Each decade since the 2000 Census, the Census Bureau has mounted an increasingly robust and sophisticated communications campaign that includes paid media (prior to 2000 we relied on Public Service Announcements and earned media). These campaigns have included paid print, television, radio, and social media ads targeted at English-speaking audiences, as well as specific population groups, including: Black/African American, Hispanic/Latino, Asian, American Indian and Alaska Native, and Native Hawaiian and Other Pacific Islanders. Advertising has been extensive, and included mass media consumed by English-speaking audiences, and national and local media that focuses on the following specific population groups: Black/African American, Hispanic/Latino, Asian, American Indian and Alaska Native, and Native Hawaiian and Other Pacific Islanders.

10. For the 2020 Census the Census Bureau will mount a paid media campaign that is more extensive than ever before. It will include creative placements in all of the media streams included in the 2010 Census, as well as an expanded presence in social and digital media. This is the first census where we are making a significant investment in digital advertising, and spending time and resources targeting online sites including Facebook, Instagram, paid search engines, display ads, and programmatic advertising. The push to have a greater digital presence will allow the Census Bureau to reach a mobile audience, tailor messages, micro-target, and shift campaign ads and messages as needed. The country is moving online and one way to reach people is to expand how we connect with them. Online media, particularly search engines and social networking sites, make up a significant portion of digital connections. Should a specific area of the country generate lower than expected responses, the Census Bureau can increase advertising outreach to that area. Micro-targeting to regions allows the Census Bureau to tailor

its messaging, including directing appropriate messages to hard-to-reach communities and those who distrust government, both of which have been traditionally undercounted. Also, if the Census Bureau call centers (we will have 10 call centers¹ around the nation accepting census responses and answering questions about the census) detects a sizable number of calls or comments surrounding a specific concern, digital advertising will allow us to respond more directly. These changes are expected to make each dollar spent on the advertising campaign more effective than in any previous census.

11. We also will continue to mount a traditional media campaign that will inform stories in news media across the country in print, social, and digital media. This campaign will include a national events strategy that is more robust than what we saw in previous censuses. This began with the “One Year Out 2020 Census Kick-Off on April 1, 2019, and included events on Constitution Day in September 2019 and a recruiting event in October 2019. Upcoming events include a 2020 Census Interfaith Summit, an event focused on counting young children, and events focused on Census Day, April 1, 2020, and other key dates during the self-response phase of the census. Additional components of the outreach, communications, and partnership effort include a strong research foundation, paid advertising, the Partnership Program, social and digital media, the Statistics in Schools Program, and stakeholder engagement, each of which build on the experience of prior censuses.

12. Since the 2000 Census, the Census Bureau has hired a major advertising firm to build the paid advertising campaign and provide support for the key components of the communications program. For the 2020 Census, this contract was awarded to VMLY&R, a

¹ In a version of this declaration filed on February 11, 2020 in the substantively-similar case *NAACP v. Bureau of the Census*, No. 8-18-cv-891-PWG (D. Md.), I mistakenly wrote that we will have 9 call centers, when in fact we will have 10.

major legacy-advertising firm with over 80 years of experience. They are managing a contract worth over \$500 million that will include an advertising buy that will exceed the 2010 campaign's ad buy when adjusted for inflation. Known as Team Y&R, or TYR, by the Census Bureau, the contracting team includes 13 subcontractors. TYR includes firms with expertise in reaching and working with the major audiences that will receive advertising through the media outlets directed toward their population groups, including the Black/African American, Hispanic/Latino, Asian, American Indian and Alaska Native, and Native Hawaiian and Other Pacific Islander populations. The campaign will be conducted in all of the thirteen languages supported by the 2020 Census.² By relying on firms with these individual skill sets, the Census Bureau was able to better tailor the media and messaging toward individual groups and gauge the response before going live with the advertising. It also allowed for more creative risk-taking, and less of a one-size-fits-all approach.

13. TYR has been working with the Census Bureau to produce a thoroughly tested platform. Starting earlier in the decade has led to a more integrated campaign for the census program. As compared to 2010, the 2020 Census relied much more on feedback and focus group testing of the 2020 Census campaign messages and taglines. The result of the research testing and creative development produced the "Shape Your Future" campaign platform and over 1,000 creative treatments across all of the key population groups.

14. The campaign launched with recruitment advertising in October 2019 and will continue with four key phases in 2020:

- Awareness: January–March. Educating the public about the 2020 Census.

² The thirteen languages are English, Spanish, Chinese (Mandarin and Cantonese), Vietnamese, Korean, Russian, Arabic, Tagalog, Polish, French, Haitian Creole, Portuguese, and Japanese.

- Motivation: March–May. Issuing a call to action to respond the 2020 Census.
- Reminder: May–June. Letting the public know that census takers will be visiting their homes and that it’s not too late to respond.
- Thank You: September. A small campaign to the public and our partners for supporting and participating in the 2020 Census.

15. The campaign is already underway in local media, and digital advertising is in place nationwide. The full mass media campaign will be live on February 17, 2020, and peak in March, April and May. At its height it will match the major advertising campaigns being deployed by the nation’s largest companies. A music video developed by the firm working with the Native Hawaiian/Pacific Islander population group has gone viral and already has over 1 million hits on YouTube.

16. Since 1990, the Census Bureau has invested heavily in building a robust partnership program, as history has taught us the criticality of having strong partner relationships for a healthy census. The Census Bureau considers the partnership program to be one of the most essential components of the IPC in reaching traditionally undercounted populations.

B. The Partnership Program

17. There are two prongs to the Partnership Program:

- The National Partnership Program works from Census Bureau headquarters mobilizing national organizations.
- The Community Partnership and Engagement Program works through the regions at the local level to reach organizations that directly touch their communities. The National Partnership Program and Community Partnership and Engagement

Program are more integrated than ever before, and the target for both programs will significantly exceed the totals reached in prior censuses.

18. Census partners include national organizations like the National Urban League, the Mexican American Legal Defense Fund, the National Association of Latino Elected Officials (NALEO), the National Association for the Advancement of Colored People (NAACP),³ and the U.S. Chambers of Commerce. Major corporations also become census partners. At the local level, partners can be churches, synagogues and mosques, legal aid clinics, grocery stores, universities, colleges, and schools. Partners are the trusted voices in their communities; they have a profound impact on those who listen when they say the census is important and safe. We depend on our partners to seal the deal with communities that may be fearful or distrustful of the government. Even with all the Census Bureau's innovation and improvements to the self-response system, we have learned—and confirmed through research—that when communities and leaders recognize the importance of participating in the census, this message is better conveyed to households within those communities. The best, most trusted information comes from a person of trust.

I. Innovations for the 2020 Census Partnership Program

19. The Census Bureau's planned Partnership Program for the 2020 Census builds on the successes and lessons learned from the 2010 Census, and the program as a whole has been expanded and improved since the 2010 Census.

20. The most significant change to the Partnership Program since the 2010 Census was the decision to effectively double the number of local Partnership Specialists as compared to

³ The NAACP has been a trusted partner in the last three censuses.

2010. Our 2020 Census plan includes hiring over 1500 Partnership Specialists, compared with only 800 hired for the 2010 Census. Partnership Specialists are the professional staff that carry out the core mission of the partnership program, directly interacting with the various communities who need to be encouraged to respond to the census, and securing partnerships with local organizations in order to encourage self-response. While exact numbers change on a weekly basis, at this time we already have over 1,500 professional partnership staff on board and working to secure partnerships with state, local, and tribal governments, community and faith-based organizations, schools, businesses, and other organizations at the grassroots level. As of February 10, 2020 we have already secured over 266,000 local partners and anticipate entering into 300,000 partnerships, an increase over the approximately 257,000 local partnerships we secured in 2010. Another important improvement over 2010 is that the Census Bureau hired 40 Partnership Specialists in January, 2017, two years earlier than in the previous decade. Hiring these professional staff earlier in the decade enabled us to get a “head start” establishing crucial local connections.

21. One of the significant lessons learned in 2010 was that the early establishment of Complete Count Committees boosted partnership activities. Complete Count Committees unite government and community leaders who then play a pivotal role in establishing, organizing, and integrating census partners at the state, local, and tribal levels. We did not track the Complete Count Committees in 2010, but we know that they were unevenly organized across the regions. In 2020, thanks to our early deployment of staff, we now have over 10,000 Complete Count Committees at the state, local and tribal levels working diligently to educate the public about the census. Maryland and New York each have a Complete Count Committees at the State level, and there are 52 and 676 in these states respectively. This includes 2 Complete Count

Committees in Prince George's County, Maryland, 5 Complete Count Committees in Orange County, New York, and 1 Complete Count Committee in Newburgh, New York. In March, they will echo the advertising campaign and call on their states and communities to respond to the census. The Census Bureau does not control or pay for Complete Count Committees, but all have access to census materials that can help with promotion and education.

22. The National Partnership Program also builds on lessons learned in the 2010 Census, and also benefits from augmented staffing. Nearly twice as many staff members are working with the National Partnership Program when compared to 2010, and they are matched by dedicated support from TYR. These staff members are focused on developing quality relationships that have a lasting impact on the communities they reach. To date, we have established relationships with over 660 participating organizations at the national level, and many of them have dedicated staff working on the 2020 Census. Organizations with dedicated staff include AARP, Target, Comcast, that National Urban League, the NAACP, and NALEO to name just a few. Participating organizations are engaged in partnership activities with the Census Bureau, such as highlighting the 2020 Census in their member or employee communications, inviting us to speak at national or regional conferences, and assisting with recruitment. We do not include an organization on the national partnership list unless both (a) we have an established point of contact with it, and (b) the organization has made specific commitments to support the 2020 Census. The goal is to establish 850 national partnerships for the 2020 Census. This goal is comparable to 2010 in number, but the program for the 2020 Census has been improved, as the partners are now better organized and more rigorously evaluated to ensure that they are doing substantive work on behalf of the 2020 Census.

II. Elimination of the "Partnership Assistant" Position

23. It is my understanding that Plaintiffs in this litigation have criticized the Census Bureau's decision to eliminate the "Partnership Assistant" position employed as part of the 2010 Census program, from the 2020 Census program. It is true that the 2010 Census program employed Partnership Assistants, and that none will be hired for the 2020 Census. We do not intend to hire these individuals for the 2020 Census because we do not need them. These Partnership Assistants were added late in the 2010 planning cycle when the Census Bureau received un-planned for funds as part of the American Recovery and Reinvestment Act. One purpose for adding these positions to the 2010 Census was to create jobs with those stimulus funds, so while they contributed to the 2010 program, we did not consider them as a critical component for the success of the Partnership Program in 2010, nor do we consider them necessary now. In particular, because Partnership Assistants typically did not interact directly with partners, they had little or no direct impact on the number of partnerships secured, and thus only a limited impact on increasing participation in the census.

24. In addition, technological changes employed in the 2020 Census have eliminated the need for hiring Partnership Assistants. The Partnership Assistants performed clerical functions in the Local Census Offices, primarily assisting with paper and pencil administrative activities. These administrative activities are now obsolete with the more automated census in 2020. In short, in the 2020 Census we do not need dedicated clerical office staff to support the Partnership Specialists.

25. Eliminating the Partnership Assistant position for 2020 not only prevents the waste of tax dollars on unnecessary positions, but also enabled us to almost double the number of professional Partnership Specialists, and thus significantly expand the program's ability to reach and increase the participation in the census of hard-to-count communities. Thus, although the

elimination of the Partnership Assistant role technically leads to a reduction in staff from 2010 to 2020, the size of the staff performing the core mission of the program—the Partnership Specialists—has increased significantly. The number of Partnership Specialists is the relevant number for determining the relative scope of the Partnership Program.

26. At this time we believe that we have a strong partnership staff in place that is getting the job done for the 2020 Census. With just two months to go before Census Day, we do not believe that it would be constructive to add additional staff to the program.

III. Innovations in the Advertising and Communications Program

27. The budget for the 2020 Integrated Communications Contract is currently funded at a higher level than in the 2010 Census, adjusted for both inflation and population growth. The cost of the 2010 Census Integrated Communications Contract, in 2020 constant dollars, would be \$456 million. The Census Bureau currently plans to spend approximately \$585⁴ million on the 2020 Census Integrated Communications Contract. This increase more than covers population growth since the 2010 Census, which is estimated at about 30 million. For example, the 2010 Census indicated a population of approximately 309 million, so the \$456 million spent on the communications program for that census was the equivalent of approximately \$1.47 per person. The population projection for the 2020 Census is approximately 336 million, so the \$585 million spent on the communications program will mean an 18% increase in spending to about \$1.74 per person.

28. In addition to spending more on the communications contract (in constant dollars), changes in the media landscape also result in significantly greater reach and frequency

⁴ In a version of this declaration filed on February 11, 2020 in the substantively-similar case *NAACP v. Bureau of the Census*, No. 8-18-cv-891-PWG (D. Md.), I noted that the then-current plan was to spend \$583 million. Since that declaration was filed, the plan was increased to 585 million, and may continue to increase as deemed appropriate going forward.

for the 2020 advertisements. The 2020 media plan will achieve at least a 99.9% reach during the awareness and motivation phases of the campaign, compared to 95% in the 2010 campaign, based on standard measures used throughout the media industry. During the motivation phase of the campaign, when advertising reaches its peak, we expect viewers to see our advertisements on average 61 times compared to up to 48 times in 2010. Given the increase in digital and social media in support of the 2020 Census, we have created over 1,000 separate creative media pieces. These creative pieces are designed to reach all components of the U.S. population, including hard to count populations; this compares to roughly 400 separate creative pieces created in 2010. A sample of these creative pieces can be seen on the Census Bureau's YouTube channel website.

29. Every part of the 2020 Census communications program is grounded in research. Prior to the 2020 Census, the Census Bureau built the strongest research foundation ever to support a United States census communications program that will drive messaging and media placement for the communications campaign. This process began with the analysis of the public's response to censuses and surveys throughout the decade, and the use of other sources including third-party data, to build predictive models that provide estimates of the likelihood that people in all population groups, and all levels of geography, will respond to the census. These models were then translated into "low response scores" that help the Census Bureau anticipate respondent behavior so that messaging, media, and other communications activities can be deployed to maximize impact. These low response scores are then combined with additional information including media usage data to allocate groups into larger segments of the population that will drive the purchase and placement of advertising in the campaign.

30. In a parallel effort, the Census Bureau conducted the Census Barriers, Attitudes, and Motivators Study (CBAMS). This was similar, but far more robust, than the study conducted

in 2010. First, we fielded a quantitative survey with a random sample of 50,000 that achieved a response rate of over 39 percent. We supplemented the results with 42 focus groups conducted throughout the country with the major populations groups that make up the focus of the communications program. The goal of CBAMS was to understand the perceptions and knowledge gaps that inform the likelihood of people to respond to the census, so that messaging and communications activities could be better focused to motivate self-response. For example, CBAMS revealed a lack of knowledge about the questions being asked in the 2020 Census, and the uses of census data. CBAMS also indicated that a significant portion of the public is concerned that census data can be used against respondents, for example in the enforcement of immigration laws, which is not true. We worked with TYR to create advertisements to address these factors and target those advertisements to the specific groups who indicated their self-response might be affected by them. Our message has consistently been that a respondent's information will never be used for law enforcement purposes, but only for the statistical purposes for which it is collected.

31. Taken together, CBAMS and the segmentation analysis provided the foundation for the creative development of the advertising treatments, which were then tested through 122 focus groups conducted nationwide. The result is the most well researched advertising campaign put in place for a decennial census.

32. As part of a larger effort to increase participation in the 2020 Census, and to help ensure that everyone is included in the count, the Bureau has concentrated more efforts around counting complex households: where more than one family live together or families that live in nontraditional arrangements (grandparents raising a child, single parents, etc.). Previous census counts and subsequent differential undercount analysis have shown that people sometimes do not

include everyone living in their homes. To address this, the Census Bureau has undertaken significant promotional and partnership work designed to encourage households to include every single person living in their home for the 2020 Census, and to ensure that no one is left off, either intentionally or inadvertently.

33. It is particularly challenging to count young children under the age of five. Our research indicates that children 0-5 are the fastest growing undercounted population. This undercount happens in two distinct ways. First, families with young children miss the census questionnaire entirely. This can happen because these families are mobile, their lives are changing, and this may be the first census they have filled out so they may not entirely understand how it works. Second, young children are undercounted when their household fills out a census questionnaire and accounts for the adults living at home, but does not include the child in the response. Young children are more likely to be left off forms from complex households. The 2020 Census has dedicated significant resources through our communications program to increase the likelihood that everyone in a household—including very young children—will be counted on Census Day. For example, we will be doing a direct mailing to 14 million households in zip codes we have determined include many complex households with messaging encouraging respondents to include “everyone under the roof,” including children, even if they are not related to the person answering the census. We also have advertising that tackles this issue head on with children carrying the message that everyone must be included in the count.

34. Taken together, these improvements have resulted in a robust IPC that fully prepared to support the 2020 Census. It is my informed, professional opinion that the 2020 Census IPC is superior to the 2010 Census IPC in every material respect.

IV. Response to Dr. Doms on the IPC

35. In the course of preparing this declaration, I have reviewed the portions of the Declaration of Dr. Mark Doms submitted in connection with Plaintiffs' Motion for Preliminary Injunction that pertain to the issue of the IPC.

36. Dr. Doms' analysis is based on mistaken assumptions, which makes his conclusions unreliable. Dr. Doms focuses on the facts the partnership budget has decreased since 2010, and that in 2010, there were 2,961 partnership positions, while in 2020, the Bureau "plans to hire only 1,630 partnership staff." ¶¶ 11-13. He maintains that these changes will lead to a less effective partnership staff that will "disproportionately affect minority communities." ¶¶ 12,16. However, the decrease in partnership budget and the decrease in staffing since the 2010 census is a direct result of eliminating the obsolete partnership assistant position, which even during the 2010 census did not contribute significantly to the partnership contact rate. Indeed, it is incorrect that each dollar spent on partnership programs has an equal impact in the number of partnerships: a dollar spent on a Partnership Specialist is worth far more in terms of developing contacts and partnerships than a dollar spent on a Partnership Assistant, for example. Unlike Partnership Specialists, who make direct contact with partners, Partnership Assistants typically did not, and the elimination of this position is unlikely to have any effect on the overall effectiveness of the partnership program. As noted above, the number of professional Partnership Specialists has been nearly doubled from the 2010 Census in the 2020 Census. This increase will directly increase the number and quality of partnerships and should have a beneficial impact on the enumeration of hard to count populations, including African Americans.

37. Dr. Doms also makes the mistake of disregarding or failing to appreciate the impact of the communications program in their focus on partnerships. Not only will the

communications program be larger than it was for the 2010 Census on a dollar for dollar basis—a point grudgingly acknowledged by Dr. Doms, although he under-reports the expected increase in advertising funding by at least \$100 million—it will also be significantly more effective as a result of the innovations I described above, including the ability to micro-target our messages to specific populations.

38. In short, the IPC is not only larger than ever before in terms of the actual amount spent and staffing devoted to outreach, it is also far more sophisticated than in past censuses. There is no reasonable basis to assume that changes to the communications program since the 2010 Census will result in any increase in a differential undercount.

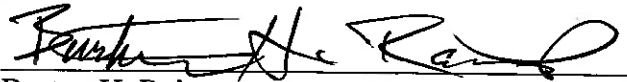
V. Response to Dr. Doms on the 2020 Census Operational Design

39. Between 2012 and 2014, when I served at the Census Bureau as the Chief of the 2020 Census Research and Planning Office, I regularly briefed Dr. Doms on our plans for researching, testing and developing a new design for the 2020 Census. He was very supportive of our work, and while he asked clarifying questions, he did not object to any of the innovations we were pursuing. He also supported our work on the Lifecycle Cost Estimate that we developed in 2014. In fact, he sponsored a Silver Medal Award that I received as part of the team of budget and subject matter experts that built the original Lifecycle Cost Estimate. That team included the Chief Financial Officer of the Economic and Statistics Administration (ESA), former component of the Department of Commerce that was overseen by Dr. Doms.

40. In October, 2014 I moved into a position in ESA. As an integral member of the staff, I joined Dr. Doms in many meetings and discussions on this program and it appeared from every indication I observed that he relied on my knowledge of the 2020 Census Program. In this capacity I participated in the meetings that Deirdre Bishop discusses in her declaration. Again,

while Dr. Doms asked questions and offered insights into the development of the 2020 Census operational design, he never objected to any of the innovations the Census Bureau was exploring, and he offered his unqualified support for the Operational Plan that Ms. Bishop presented in July 2015.

Executed on this 21st day of February, 2020.

A handwritten signature in black ink, appearing to read "Burton H. Reist", written over a horizontal line.

Burton H. Reist
Assistant Director, Communications Directorate
Bureau of the Census

