Exhibit 65

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

STATE OF NEW YORK, et al., Plaintiffs, v. DONALD J. TRUMP, *in his official capacity as President of the United States*, et al., Defendants.	20-CV-5770 (JMF)
NEW YORK IMMIGRATION COALITION, et al., Plaintiffs, v. DONALD J. TRUMP, *in his official capacity as President of the United States*, et al., Defendants.	20-CV-5781 (JMF)

Expert Reply Declaration of Matthew A. Barreto, Ph.D.

I. Overview

1. I submitted a declaration in this case on August 7, 2020 ("Declaration"). I have read the expert disclosures by Dr. John M. Abowd, dated August 19, 2020 ("Abowd Decl.") and Albert E. Fontenot, Jr., dated August 19, 2020 ("Fontenot Decl.") as well as the Memorandum of Law in Support of Defendants' Motion to Dismiss and in Opposition to Plaintiffs' Motion for Partial Summary Judgment or Preliminary Injunction, dated August 19, 2020 ("Defendants' Brief") and am prepared to offer rebuttal points on behalf of the Plaintiffs.

2. Below, I address comments directed at, or related to my report from the Abowd Decl., Fontenot Decl., and Defendants' Brief. Where there is overlap, I have made clear which document I am referring to and attempted to use paragraph and page numbers where appropriate.

II. Abowd Declaration

3. Dr. Abowd begins his expert opinion in paragraph 12 by noting that the 2020 Census data collection has been hampered by COVID-19. There is no doubt that COVID-19 has presented many challenges to American life and for 2020 Census outreach. However, these challenges are completely distinct from the effect the Presidential Memorandum ("PM") is having and will continue to have on efforts by the Census Bureau and its partners to encourage immigrant communities to respond to the 2020 Census. Indeed, while COVID-19 has contributed to a challenging environment for the enumeration, the PM adds new, significant challenges to an accurate and high-quality count because it sends a signal of exclusion and threat to the immigrant community which discourages them from responding to the Census. The PM's negative signal is an added and unnecessary one to send to the immigrant community while the Census Bureau is in a critical stage of the enumeration.

4. At any moment, a survey instrument such as the Census may face a variety of challenges to response rates; however, the existence of a greater or more broadly applicable threat to the response rate, such as COVID-19, does not negate the independent effect that a more targeted threat, such as the PM, may have a particular subgroup of respondents. Dr. Abowd does not account for this distinction. The Decennial Census is a singularly large survey instrument and, according to Mr. Fontenot (Fontenot Decl. ¶ 7), as of August 18, approximately 36% of U.S. households, amounting to over 50 million households, have yet to respond. The impact that any specific threat may have on response rates remains significant. For example, a potential respondent, such as a grocery store employee or farmworker who has reported to work in-person every day of the pandemic, may be undeterred from responding to the Census due to COVID-19; however, they may be deterred by the PM's signal of threat and exclusion based on their own immigration status or the status of other household members. Although COVID-19 may have

significant negative effects on outreach efforts and response rates, response rates can still suffer additional reductions as a result of new threats against immigrant communities that create more fear and confusion over their participation in the Census.

5. In paragraph 13 of his declaration, Dr. Abowd opines that the Census Bureau's own pilot study of the citizenship question in June-August 2019 ("2019 Census Test") did not return statistically significant evidence of reduced response rates due to the inclusion of a citizenship question on the questionnaire. However, this opinion is not entirely accurate. Dr. Abowd's opinion focuses solely on the overall response rate and fails to mention that the Census Bureau's 2019 Census Test did show statistically significant decreases in response rates in areas with significant non-citizen, Hispanic, and Asian populations. In an article summarizing the results of the 2019 Census Test published on the Census Bureau's web site, Dr. Victoria A. Velkoff, the Census Bureau's Associate Director for Demographic Programs, wrote "there was a statistically significant difference in the proportion of respondents who identified as Hispanic between the forms"[1] with the form including a citizenship question reducing Hispanic participation. Thus, even in the preliminary analysis of the 2019 Census Test, the Census Bureau found that there were significantly disparate response rates by different communities when the Census implicated citizenship status. The full report issued by Census Bureau in January 2020, revealed further, and more significant differences. The Census Bureau wrote: "in some areas and for some subgroups, there were statistically significant lower self-response rates for the test questionnaire with the citizenship question than for the test questionnaire without the citizenship question."[2] In particular, the 2019 Census Test report found lower response rates due to the citizenship questions in areas designated bilingual, high numbers of noncitizens, high density Hispanic and

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[1] Victoria A. Velkoff, *2019 Census Test Preliminary Results*, U.S. Census Bureau, Oct. 31, 2019, https://www.census.gov/newsroom/blogs/random-samplings/2019/10/2019_census_testpre.html.
[2] Poehler, Elizabeth A., Dorothy A. Barth., Lindsay Longsine, Sarah K Heimel, *2019 Census Test Report*, U.S. Census Bureau, at ix-x, Jan. 3, 2020, https://www2.census.gov/programs-surveys/decennial/2020/program-management/census-tests/2019/2019-census-test-report.pdf (*2019 Census Test Report*).

higher density Asian. Additionally, the Census study found statistically higher rates of disconnect, and discontinuing responses in the Internet sample for the version containing the citizenship question, noting that "breakoffs occurred during the collection of person demographics at a higher rate for the treatment with the citizenship question." Thus, it is clear that the 2019 Census Test indicates that increasing threat over immigration status leads to withdrawal and declining participation for immigrant communities.

6. Further, the 2019 Census Test only examined self-response rate—it did not investigate how inquiring into citizenship status affects the success of NRFU nor did the Test examine imputation. These are both items the Test could have studied if the Census Bureau wanted to fully understand the impact of linking the Census to citizenship issues, but it did not. As the 2019 Census Test report readily admits, the study was designed to understand staffing needs for the 2020 Census, not to scientifically evaluate the full and total response and non-response rates by race, ethnicity and immigration status.

7. The 2019 Census Test cited by Dr. Abowd cannot account for the more direct targeting of undocumented immigrants by the PM. The study Dr. Abowd cites cannot provide a complete picture of the immigrant response rate in the presence of an official Presidential policy statement targeting the removal of undocumented persons from the census count. While the citizenship status question would have been threatening (as reflected in the reduced participation reported in the 2019 Census Test), the PM is more explicit in calling for "excluding these illegal aliens." To this point, the Census Bureau wrote that "the environment in which [the 2019 Census Test] was conducted will differ from the 2020 Census environment in terms of advertising and media attention."[3] Indeed, they are correct, there has been widespread media attention to the PM which will reduce participation in immigrant communities.

8. Finally, the 2019 Census Test was conducted to analyze participation during the self-response period of the census, not during the NRFU period. The PM was issued during the

[3] *2019 Census Test Report*, at 12.

NRFU period of the 2020 Census, in which the deterrent effects of the PM are likely to be magnified compared to the self-response period. The result is that the conclusions about response rates during the initial self-response period that Dr. Abowd relies upon are less relevant in understanding the effect of the PM at this juncture of the enumeration during NRFU. The Census Bureau writes of its 2019 Census Test: "The focus of this analysis is to understand how the citizenship question affects self-response rates *prior to* the NRFU operation. As such, the results of this test are *limited* to the self-response timeframe prior to the start of NRFU. The self-response rates discussed in this analysis do not try to mimic the final overall self-response of a census, which includes self-response received during NRFU and other field operations."[4]

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

[4] *2019 Census Test Report*, at 12.

10. Original Table 12 from 2019 Census Test Report[5]

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

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

Source: U.S. Census Bureau, 2019 Census Test; DRB Approval Number: CBDRB- FY20-ACSO002-B0002

Note: Minor additive discrepancies are due to rounding. Standard errors are in parentheses. An asterisk (*) indicates a statistically significant result. Significance was tested based on a two-tailed t-test at the α=0.1 level.

11. Original Table 9 from 2019 Census Test Report

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

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

Source: U.S. Census Bureau, 2019 Census Test; DRB Approval Number: CBDRB- FY20-ACSO002-B0002

Note: Minor additive discrepancies are due to rounding. Standard errors are in parentheses. An asterisk (*) indicates a statistically significant result. Significance was tested based on a two-tailed t-test at the α=0.1 level.

12. Original Table 8 from 2019 Census Test Report

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

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

Source: U.S. Census Bureau, 2019 Census Test; DRB Approval Number: CBDRB- FY20-ACSO002-B0002

Note: Minor additive discrepancies are due to rounding. Standard errors are in parentheses. An asterisk (*) indicates a statistically significant result. Significance was tested based on a two-tailed t-test at the α=0.1 level.

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

13. Moreover, because the 2019 Census Test only examined self-response rate, it did not investigate the success of NRFU, nor did it examine imputation.[6] As the Census Bureau report readily admits, the pilot study was designed to understand staffing needs for the Census, not to scientifically evaluate the full and total response and non-response rate by race, ethnicity and immigration status.[7]

14. The PM is potentially even more disruptive than a citizenship question because of its timing. When taking a survey, the researcher generally wants to avoid introducing any unnecessary, extraneous conditions during the response period that may bias respondents or harm response rates. The Census Bureau began its promotion of the 2020 Census in July 2019, inviting most U.S. households to respond to the Census starting on March 12, 2020 and, as of the date the PM was published on July 21, 2020, the Census Bureau planned to continue the response period until October 31. That means that the PM was introduced 131 days from the start of the count and 102 days from the end of the count—and only days before the start of critical Non-Response Follow-Up ("NRFU") operations. The PM remains in effect while Census enumerators are in the field, visiting households for in-person interviews as well as on-going NRFU. Given the PM's explicit connection to the 2020 Census and its direct contradiction of the core messaging of the outreach efforts conducted by the Census Bureau itself and the non-governmental organizations, particularly in immigrant communities and communities of color, it would be anathema to sound survey research to publish such a document during the response period. Notwithstanding that the PM only purports to affect the count <u>after</u> the close of the enumeration period, the timing of the PM's release will likely lead to significant declines in Census response rates because households in immigrant communities will be deterred from responding now, and will not wait to find out whether they are actually excluded from the apportionment count later on.

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[6] According to the report, at p. x, "Note that this test did not include the Nonresponse Followup operation, so we are not able to measure the impact of a citizenship question for the completeness and accuracy of 2020 Census overall."

[7] *See* 2019 Census Test Report, at x, 30-31.

15. As I note in my Declaration at page 4, paragraph 15 "there was widespread coverage, particularly within Spanish-language news media," of the July 21 PM, which is to be expected given such a major announcement by the President.[8] Despite extensive news coverage, the Census has no plans to change its field outreach to reassure immigrants of their participation. According to Mr. Fontenot, at paragraph 12 of his declaration, the PM has had "no impact on the design of field operations for decennial census, or on the Census Bureau's commitment to count each person in their usual place of residence."

16. In paragraph 15 of his report, Dr. Abowd states that the Census Bureau was not currently prepared to assess how the PM would be implemented and coordinated with data teams at the Census Bureau. Dr. Abowd's statement is consistent with testimony from the Director of the Census Bureau that he was entirely unaware of the PM prior to its release.[9] The failure to notify the Census Bureau or test the effect of the PM on Census response rates, notwithstanding the PM's relationship to the 2020 Census, shows that the announcement of the PM on July 21, 2020, in the heart of the enumeration period, was not done in accordance with the Census Bureau's practices and may have been timed to contravene those practices. Dr. Abowd opines that it is impossible to predict the effects of the PM on apportionment at this time; however, he does not dispute that the PM will have a chilling-effect on Latino and immigrant participation right now, during the response period and during NRFU.

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

[9] Tara Bahrampour, House Democrats grill Census director on Trump order to exclude undocumented immigrants from apportionment, Wash. Post, July 29, 2020, https://www.washingtonpost.com/local/social-issues/house-democrats-grill-census-director-on-trump-order-to-exclude-undocumented-immigrants-from-apportionment/2020/07/29/9c7da852-d1e1-11ea-8c55-61e7fa5e82ab_story.html ("Bureau Director Steven Dillingham told the House Oversight Committee that he had no advance notice of President Trump's memorandum, which directs the Commerce Department to exclude undocumented immigrants from being counted next year when Congress reapportions a decade's division of House seats.").

17. With respect to whether media coverage related to the Census can impact response rates, the Census Bureau agrees that media coverage of Census news can and does impact the general public—including coverage of court decisions related to the Census. The 2019 Census Test was conducted between June 13 and August 15. The U.S. Supreme Court decision concerning the validity of the citizenship question was issued on June 27 and there was media coverage of the issue both before and after the decision. In the full report on the 2019 Census Test, the Census Bureau wrote that "media coverage related to the Supreme Court decision on whether or not to include a citizenship question on the 2020 Census questionnaire *may have affected respondent behavior during this test*. There was media coverage on the citizenship question both before and after the Supreme Court decision was made public on June 27, 2019. *Public opinion on the topic may have influenced response behavior for this test*. The degree to which public awareness and public opinion is different between this test and the 2020 Census may influence how applicable the results of this test are to the 2020 Census. The impact of media coverage may have also affected the treatments differently."[10]

18. In paragraph 16 of his declaration, Dr. Abowd reiterates his concerns about the impact of COVID-19. I have responded to this above, however, it bears reiterating that there is no evidence that the significant challenge of conducting the Census during the pandemic subsumes entirely the negative effect on response rates of the PM or any other phenomena. Dr. Abowd does not address decades of published research, including Census Bureau studies, that find reduced participation by immigrant communities in the face of new threats, which the PM represents.

19. In paragraph 17 of his declaration, Dr. Abowd opines that a randomized trial would be the best way to assess the effects of removing threats to immigration status on response rates. First, in our 2018 study – for which Dr. Abowd does not dispute the substantive results – we did rely on randomization and experimental survey research to assess the effect of including or

[10] *2019 Census Test Report*, at 12 (emphasis added).

excluding a citizenship question.[11] Survey respondents were randomized and one-half were given a condition in which they were told a citizenship question would in fact be included on the census; while the second-half of respondents was randomly assigned to a condition in which they were told the citizenship question would not be included. This follows the exact same principle of randomized control trials that Dr. Abowd recommends. In that 2018 study, as described in paragraph 68 on page 11 of my Declaration, we observed a large and statistically significant increase in response rate in the condition without the citizenship question. In particular, Latino respondents who had previously indicated a desire to not respond, registered a 41.2 point increase in response rate once the citizenship question was removed. While the sample size of our 2018 study is not as large as the 2019 Census Test, the results of our 2018 study are significant and the patterns are consistent with the Census Bureau's own research from their 2019 pilot study.

20. Dr. Abowd has offered no such randomized trial study to demonstrate that the PM will *not* cause response rates to decline. Instead, the only randomized control trial that Dr. Abowd cites shows the opposite, i.e., A) media coverage of census citizenship issues can affect response rates; and B) the citizenship question significantly reduced immigrant and Latino response rates. Indeed, in my August 7 Declaration, I cite dozens of published academic and Census Bureau studies on the topic of perceived threat and participation among immigrants which point to a chilling effect and withdrawal (Montoya 1992; Stepick 1992; Velasco 1992; De La Puente 1995; Berk & Schur 2001; Arbona 2010; Abrego 2011; Menjivar 2011; Yoshikawa 2011; Szkupinski et al 2014; Watson 2014; Dreby 2015; Vargas 2015; O'Hare et al 2016; Kissam 2017; Pedraza and Osorio 2017; Terry et al 2017; Cruz-Nichols, LeBrón, and Pedraza 2018; Michelson and Montforti 2018; Amuedo-Dorantes & Arenas-Arroyo 2019; Desai 2019; Garcia 2019; Kissam 2019; Asad 2020). Without exception, every single research study finds that when a new threat emerges, immigrants, especially the most vulnerable, will withdraw and reduce civic

[11] Barreto, Matt 2018. "Expert Report of Matthew A. Barreto, Ph.D" in *State of New York v. U.S. Dep't of Commerce* (Sept. 7, 2018).

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

21. In paragraph 18 of his declaration, Dr. Abowd explains that later in the NRFU process, enumerators may seek to get a simple total person count of a household, and not full characteristics of each household member, and suggests that during such interactions, households do not have the same incentives to avoid responding or misrepresenting the number of people in the household. However, Dr. Abowd's opinion misses three key points. First, the PM provides household members in undocumented or mixed-status households with a reduced incentive to give federal Census enumerators *any* information at all because the President has just declared that their numbers will be not counted for the core purpose of the Census—apportionment. As a result, they will be less likely to open the door in the first place to cooperate with *any* interview. While the enumerator might only be looking for a population count, the household member does not know this. Instead, the only relevant recent information they may have is news about the PM attempting to exclude certain immigrant communities from the Census count. This is consistent with decades of research including de la Puente, the Census's own ethnographer, who has clear and consistent findings about how undocumented communities avoid the Census when they have concerns about immigration status (de la Puente 1995, 2004). According to de la Puente (2004): "individuals with an insecure immigration status were much less likely to trust the government and specifically less likely to fill out the Census questionnaire. Undocumented immigrants have long been a concern for the Census Bureau. This research demonstrated that respondents with irregular immigration statuses are unlikely to directly cooperate with the Census."

22. Second, research by Kissam (2019) is clear that immigrant households under-report non-immediate family members who may not be documented. Even when a simple count is requested, the immigrant household is far more likely to misreport household size when they believe the government is monitoring or checking about immigration status. The PM reinforces this concern. Finally, Dr. Abowd predicates an opinion on the assumption that NRFU will be full and complete as originally planned and not impacted by the PM; however, Dr. Abowd's

point is speculative, and based on no empirical evidence that NRFU will reach the required level of completeness.

23. In paragraphs 19 and 20 of his declaration, Dr. Abowd discusses imputation and opines that COVID-19 pandemic will make it very difficult to predict which neighborhoods will need more, or less imputation. However, the unpredictability reinforces the point about imputation being prone to problems when there is a low or unequal response rate to the Census. Extensive published literature discusses the difficulty of accurate imputation when response rates are low and uneven. Again, while acknowledging the significant and widespread difficulty that COVID-19 presents, the pandemic does not subsume and/or negate the impact of all other factors on the enumeration. The PM will make the enumeration even more difficult, with increasing non-response in specific communities – not at random – and the imputation models will not be able to see inside invisible households. It is clear that non-responding households are larger in size and more likely to be immigrant (Kissam 2019). Thus, when imputation models – which are based on <u>responding</u> households – are applied, they will under-count the number of people who live in non-responding households. Research indicated the inclusion of a citizenship question was also likely to have a negative impact on the accuracy of imputation, and the logical effect of the PM on imputation is the same. The new PM introduces a perceived threat in the immigrant community which leads to differential non-response which greatly undermines imputation. In effect, the PM serves to weaken the imputation model, because in the final phase of NRFU, households that may have responded pre-PM are not responding because of immigration concerns, and at differential rates than the general public. While the challenge of COVID-19 may affect Census participation regardless of the race or immigration status of a household, it is Latino and immigrant households which face the new and additional challenge presented by the PM, which has targeted the immigrants from being excluded from the Census apportionment.

III. Fontenot Declaration

24. Albert E. Fontenot, Jr. is Associate Director for Decennial Census Programs and primarily offered information about operations in his report. Mr. Fontenot did not directly respond to any of the claims or evidence in my Declaration. However, some of Mr. Fontenot's points support the conclusion that the PM introduces a new variable into the equation which the Census Bureau is not taking into account.

25. In paragraph 5 of his declaration, Mr. Fontenot describes the current plans for the Census in the final critical weeks of field data collection. He states that the Census Bureau will send more enumerators into the field during the remaining response period; however, in paragraph 12, he states that the PM "has had no impact on the design of field operations for decennial census." Thus, Mr. Fontenot indicates that the Census Bureau will not be adding any new training related to discussing concerns in the immigrant community related to the PM. In prior census research, Census Bureau ethnographer de la Puente has explained that it is important to a successful enumeration to understand immigrant community concerns about responding to the census, and to equip Census enumerators with information to reassure vulnerable populations that their participation is safe. In this case, the PM creates a new reason for concern in immigrant communities, yet Mr. Fontenot makes clear that the Census Bureau has made no changes to their outreach to account for the PM and its effects. The decision not to make any changes to field operations to address the PM is a major shortcoming, and not consistent with best practices recommended by their own internal published research.

26. In paragraph 7 of his declaration, Mr. Fontenot states that the initial phase of the Census returned a 64 percent self-response rate. To date, the initial NRFU increased response rate to 71 percent of all households. These data indicate that among the 36 percent of households that did not respond, 7 percent did respond to NRFU (64+7=71) and that 29 percent of households have not responded to NRFU to date. These results indicate a very low response rate during initial NRFU of 19.4 percent (7 / 36 = 19.4). While COVID-19 is again cited as a difficulty, the introduction of the new PM adds even more difficulty, particularly in immigrant communities.

There is no indication in Mr. Fontenot's declaration that the Census Bureau is prepared to improve their outreach to vulnerable populations in response to the PM.

27. In paragraph 8 of his declaration, Mr. Fontenot states that the Census Bureau will increase the number of employees and work hours to increase field operations, in light of a shortened calendar period. However, increasing the presence of federal Census enumerators into high density non-citizen communities actually runs the risk of further reducing participation in the face of fear and threat. In my Declaration, I outline clear findings from published social science research reporting that increased perceptions of monitoring leads to reduced participation among immigrants (Berk and Schur 2001; Cruz-Nichols, LeBrón and Pedraza 2018; Kissam 2019; Asad 2020). The PM sends a clear signal of monitoring because it states it is using government administrative records to locate and identify where undocumented immigrants live, and to merge those records with Census data to exclude undocumented immigrants from the final count for purposes of apportionment. While increased enumerators might have helped in an environment without the PM, the new PM changes things by sending a new signal of threat to immigrant communities.

28. In paragraph 10 of his declaration, Mr. Fontenot states that the Census Bureau will keep personally-identifying information confidential. However, when immigrants have concerns over immigration enforcement, even providing those assurances does not help. Extensive social science research documents that immigrants will attempt to conceal their identity, even mis-identify their race on government forms when they have concerns that it could be connected to immigration enforcement (Rodriguez and Hagan 2004). What matters is how immigrant communities perceive the threatening environment, not that Mr. Fontenot understands that the law requires the Census Bureau to keep respondent information confidential—he is not the target of the PM. The PM has deteriorated the trust that Census workers and the Census Bureau's partners—the organizations relied upon to be trusted messengers to immigrant communities and communities of color—have built up since the 2019 Supreme Court ruling which blocked the inclusion of a citizenship question from the 2020 Census questionnaire.

29. In paragraph 35 of my Declaration, I identified reports from the non-governmental organizations who are working in partnership with the Census Bureau to act as trusted messengers for census outreach in the immigrant community which stated that the new PM changes the landscape for encouraging census response for the worse:

> 35. According to Arturo Vargas, the CEO of NALEO, one of the nation's top civic engagement organizations in the Latino and immigrant community, the new PM is a setback that creates fear in the immigrant community. NALEO has been identified by the Census Bureau itself as one of the most important "trusted voices" to earn trust in the Latino community. Vargas stated on Twitter: *"With a successful #NALEOVirtual Conference done, time now to refocus on #Census2020 - which just got even MORE DIFFICULT with @POTUS effort to exclude immigrants from the apportionment numbers and cutting short @uscensusbureau's time to finish the count. Our community is scared."* Vargas went further to note that the new PM was undoing progress made after striking the citizenship question, *"#Census2020 is the most challenging to promote participation I have seen in my career. After @SCOTUS stopped a citizenship question, we had a fighting chance. Now @POTUS has made it much harder by his July 21 memo and by cutting off @uscensusbureau's field work early. @NALEO"*

Given that NALEO has been aligned with the Census Bureau in terms of the importance of encouraging census response by immigrants and Latinos, Mr. Vargas' comment indicates that the PM is actively undermining the Census Bureau's collaborative outreach efforts with its trusted messengers.

30. However, Mr. Fontenot makes clear that the Census Bureau has made no attempt to change its approach and incorporate new training, or new outreach to alleviate fears in the immigrant community as a result of the PM. The overwhelming finding in the published research is that new threats result in new withdrawal and the Census Bureau is not prepared for that.

IV. Defendants' Brief

31. Finally, while the Defendants make reference to the points above by Dr. Abowd and Mr. Fontenot, there are additional criticisms they raise—unsupported by any evidence of their own—which I will address in this section.

32. On pages 12-13 of their brief, Defendants claim that the extensive evidence and published studies which I rely upon in part to conclude that the PM will create a chilling effect on census participation are not specific to the PM. Designing, testing, conducting and analyzing a randomized control field trial on the effect of the PM on census participation within a month of the PM's publication is an insurmountable task. However, the expansive social science literature, much of which are my own studies and published research, addresses conditions remarkably similar to the PM and is specific to new instances of perceived threat. Tellingly, while demanding an impossible type of new research, neither Defendants, nor Dr. Abowd, nor Mr. Fontenot, cite any studies indicating that the PM will not negatively impact participation. In instances such as this, when we are asked to assess the impact of a new policy without the time required to conduct field research, the best practice in the social sciences is to A) closely examine the policy and place it within the context of other similar policies; and B) to review what happened when other similar policies were enacted. Based on the extensive research I have conducted, I am confident that the research reviewed in my Declaration, which all points to increased perceived threat and withdrawal or decline in participation in immigrant communities, is applicable to the PM.

33. On page 13, Defendants state that I did not consider the results of the 2019 Census Test on the citizenship question. As I reviewed above in paragraphs 5-13 above, findings concerning participation by subgroup in the 2019 Census Test show clear evidence of reduced participation in Latino and immigrant communities.

34. On page 16, Defendants state that my analysis of media coverage of the PM is misguided because "the media, and the community activists they feature, are independent actors," and not part of the Census Bureau. However, the Census Bureau has made clear on several instances that

A) they have a formal partnership with Spanish-language media and Latino community groups; and B) they need close cooperation and cooperation with Spanish-language media and Latino community groups to implement an accurate 2020 Census. Raul E. Cisneros, director of national partnerships for the U.S. Census Bureau wrote on a census.gov website[12] that the Census was planning a "massive effort, a collaboration between Univision and two Census Bureau programs," which included not only Spanish-language media, but also "representatives from major advocacy groups, from the National Association of Latino Elected and Appointed Officials to the League of United Latin American Citizens, along with representatives from Univision affiliates in California." The Census has described Spanish-language media and Latino community groups as "national partners during the 2020 Census." Defendants' cognitive dissonance is astounding; stating on the one hand that Spanish-language media and community groups are the "trusted voices" whose cooperation is integral to their field operations to encourage census participation, and then also claiming that those groups are independent actors with no connection to the Census who are simply fearmongering in their concerns about the PM. As recently as March 2020, the Census Bureau continued to partner with Spanish-language media to promote information about the Census. They are not "independent actors" as Defendants suggest. In fact, the Census Bureau continues to feature its partnership with Univision on its web site.[13]

35. Additionally, with respect to the organizations that Defendants derisively call "community activists," the official field operations plan for the 2020 Census highlights the necessity of working with these "trusted voices" in order to gain trust in the community and improve the likelihood of an accurate count. In his deposition during *N.Y. v. Department of Commerce*, Dr. Abowd stated that part of the Census Bureau's effort to communicate and

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

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

convince the public to fill out the Census included "recruiting partner organizations" and later described community organizations as "a source of advice and outreach to many of the populations that we - that it's important to have partnerships with when you collect the data."[14] Importantly, Dr. Abowd stated these trusted partnerships are important during field operations (i.e., "when you collect the data"), and the Census is currently in field collecting data, which means now is the key time to shore up community partnerships with Latino organizations. In his own expert report submitted in the citizenship question case, Dr. Abowd explained on page 15 that trust can be a barrier in communities with low response rates and that having the so-called *trusted voices* is critical to getting an accurate final count.[15] In this very section of his September 2018 expert report, Dr. Abowd mentions the National Association of Latino Elected Officials (NALEO) as one of the "major organizations" they will need to work with as a trusted voice. The Census Bureau's "trusted voices" in the Latino community, including Spanish-language media and organizations such as NALEO, state clearly that the PM will make data collection more difficult, as explained clearly in paragraph 23 above and paragraph 35 of my August 7 declaration. Indeed, this is consistent with extensive research by Census ethnographer de la Puente (2004) who writes that: "based on this research it appears that Immigrant centered community-based organizations could be important conduits that attract distrustful and growing undocumented populations."

[14] Deposition of Dr. John Abowd in *State of New York v. U.S. Dep't of Commerce*, at 298 (Aug. 29, 2018).
[15] Expert Report of Dr. John Abowd in *State of New York v. U.S. Dep't of Commerce*, at 15 (Sept. 21, 2018).

36. I reserve the right to amend or supplement my opinions if additional information or materials become available. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on August 25, 2020 in Los Angeles, CA.

Matthew A. Barreto

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