Exhibit 36

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)

DECLARATION OF THEO OSHIRO

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

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

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

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

4. The Decennial Census is a critical and constitutionally-mandated data-gathering instrument, used to distribute hundreds of billions of dollars in federal resources and to apportion political power at the federal, state, and local levels. MRNY has an ongoing commitment to

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

5. I have co-led MRNY's strategy and work around the 2020 Census including our education and outreach programs. To develop programs that achieve MRNY's goals of encouraging greater Census participation in the communities we serve, I have gained familiarity with the importance of data gathered from the Census in apportioning political representation and the allocation of some government funding sources. I am familiar with the concerns of our members and the communities we serve around the Census for the purpose of developing effective Census communications directed at immigrant communities. I am also familiar with how the communities we serve would be impacted by an undercount toward the end of designing communications and organizing strategies that address those concerns and increase their civic engagement, and Census participation in particular.

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

7. Our education and outreach efforts to encourage our members and people in the communities we serve to respond to the Census emphasizes two essential purposes of the headcount: (1) Determining political apportionment, including the number of representatives each state will have in Congress, the number of electors per state in the electoral college, and the boundaries and composition of Congressional districts; and (2) Determining how much government funding communities will receive for matters such as education, public housing, transportation, and health care. Our education and outreach efforts also emphasize that the Census counts every resident of the United States, regardless of age, citizenship status, or ability to vote. This message is important because it affirms the humanity and dignity of all Americans and the responsibility that all Americans, including undocumented Americans, bear for responding to the Census and ensuring that their home states and communities are allocated their fair share of political power and government funding. An example of one of our Census education and outreach

documents is attached as Exhibit 1, and is also available in both English and Spanish, at the following link: https://maketheroadny.org/census2020/.

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

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

consulates abroad, which disproportionately affects immigrants of color and has dramatically increased fear among immigrant and mixed-status families; referring to some undocumented immigrants as "animals"; and attempting to include a citizenship question on the Census. MRNY has consistently fought these efforts to intimidate and marginalize immigrants of color in the courts, in the streets, and at the ballot box.

10. Based on my experience as an MRNY staff member regularly in contact with our members, our organizing staff, our communications staff, and the media, the July 21, 2020 Presidential Memorandum to the Secretary of Commerce on the subject of "Excluding Illegal Aliens from the Apportionment Base Following the 2020 Census" ("Presidential Memorandum") is making our efforts to encourage Census participation more difficult. The Presidential Memorandum is sowing fear and confusion about the Census among the communities we serve. Individuals contacted by our census team since the Presidential Memorandum have stated that they no longer believed they needed to complete the census and even in some cases fear and concern that their completion of the census already may now expose them to penalties. The fear and confusion are not unique to undocumented immigrants or non-citizens with documented legal status, but also to mixed-status households in which individuals are fearful that the census invades their privacy and exposes their family, friends, and neighborhoods to profiling by the law enforcement agencies of an administration hostile to immigrants of color. When MRNY's census team encourages these individuals to complete the Census despite these fears, we now confront questions about what the point is to taking this risk—given that immigrants without lawful status will now not be counted regardless.

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

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

Coordinators has done over half a dozen Spanish-language media interviews to address the confusion and deterrent effect created by the Memorandum.

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

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

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

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

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

18. The shortening of the census self-response deadline from October 31 to September 30, 2020 also negatively impacts MRNY because we anticipate it will cause a further undercount of the immigrant communities that we serve and from which our membership is drawn. This

change will also force MRNY to attempt to conduct more outreach and media work in a shorter period of time, straining our staff capacity and diverting staff time from other priorities at a crucial time in the electoral calendar.

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

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

21. Another MRNY member who will suffer injury due to the Administration's decision to exclude undocumented immigrants from the apportionment base is Yatziri Tovar. In

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

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

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

Theo Oshiro