Exhibit 3

COMMON CAUSE, et al. Plaintiffs, v. DONALD J. TRUMP, et al. Defendants.	No. 1:20-cv-02023-CRC

SUPPLEMENTAL EXPERT DECLARATION OF
DR. CHRISTOPHER WARSHAW

I. INTRODUCTION

1. I have been asked by counsel representing the plaintiffs in this case to respond to several points in the Defendants' Motion to Dismiss and Opposition to Plaintiffs' Motion for Partial Summary Judgment ("Gov Br.").

2. My opinions are based on the knowledge I have amassed over my education, training and experience, including a detailed review of the relevant academic literature. They also follow from a statistical analysis that I describe in detail below.

3. The opinions in this declaration are my own, and do not represent the views of George Washington University.

II. SUMMARY

4. The analysis in my initial Declaration considered the impact of excluding all undocumented immigrants from the apportionment base, because that's what I understand the Memorandum directs the Census Bureau to do.

5. I understand that the Government now suggests that it might exclude fewer than all undocumented immigrants. Gov. Br. 12.

6. Even if the Census Bureau and the President were to exclude fewer than all undocumented immigrants, based on the examples provided in the Memorandum and the Government's brief, if millions of undocumented immigrants are excluded, that is still extremely likely to change the Congressional apportionment and result in at least one state losing a Congressional representative.

III. ANALYSIS

7. The President's Memorandum states that, "For the purpose of the reapportionment of Representatives following the 2020 census, it is the policy of the United States to exclude from the apportionment base aliens who are not in a lawful immigration status … to the maximum extent feasible and consistent with the discretion delegated to the executive branch."[1] I took this to mean that the Memorandum directs the Census Bureau to exclude all undocumented immigrants from the apportionment base. As a result, that is what my analysis focused on.

8. The Presidential Memorandum itself implies that it anticipates that all undocumented immigrants would be excluded from the apportionment base. For instance, it states that, "Current estimates suggest that one State is home to more than 2.2 million illegal aliens, constituting more than 6 percent of the State's entire population. Including these illegal aliens in the population of the State for the purpose of apportionment could result in the allocation of two or three more congressional seats than would otherwise be allocated."[2]

9. The only state that meets this description is California. The main analysis in my original declaration indicated that there is a 72% probability that California would lose at least one congressional seat if approximately 2,066,000 undocumented immigrants are excluded from the apportionment base in that state and 10.7 million undocumented immigrants are excluded nationwide. *See* Tables 6 and 7 in my opening declaration.

---

[1] *See* https://www.whitehouse.gov/presidential-actions/memorandum-excluding-illegal-aliens-apportionment-base-following-2020-census/.
[2] *See* https://www.whitehouse.gov/presidential-actions/memorandum-excluding-illegal-aliens-apportionment-base-following-2020-census/.

Accordingly, if—as the Memorandum suggests—2.2 million undocumented immigrants are excluded from the population in California, there is a greater than 72% probability that California would lose at least one seat. This is true even if the Census Bureau excluded all 10.7 million undocumented immigrants nationwide. If it excluded only the 2.2 million undocumented immigrants in California and none from the rest of the country, there would be a nearly-100% probability that California would lose at least one seat (and likely more).

10. I understand that the Government now suggests that it might exclude fewer than all undocumented immigrants. Gov. Br. 12. The Government's brief mentions the possibility of excluding "aliens who have been detained for illegal entry and paroled into the country pending removal proceedings, or who are subject to final orders of removal." Gov. Br. 32. In a footnote, the Government says, "ICE's non-detained docket surpassed 3.2 million cases in fiscal year 2019, a population large enough to fill more than four congressional districts under the 2010 apportionment." *Id.* n.5.

11. Undocumented immigrants are not evenly distributed across the country. *See* Table 6 in my opening declaration. As such, even if Defendants exclude fewer than all undocumented immigrants, the effect of any such exclusion is highly likely to disproportionately affect those states with the largest undocumented immigrant populations. In fact, I estimate that if the Defendants excluded just 3.2 million immigrants from the apportionment base, as opposed to all 10.7 million—assuming that those 3.2 million people are distributed across the 50 states in same proportions as

undocumented immigrants overall[3]—then there is a 71% probability that Texas would lose a seat and significant chances that California, Florida, and New York would lose seats.[4] In this scenario, I estimate there is a 93% chance that at least one of these four states would lose a seat.

[3] It is difficult or impossible to determine the states of residence for the roughly 3.2 million people on ICE's non-detained docket as of 2019. In the absence of more precise information concerning the geographic distribution of this population, it is reasonable to assume that this population would be distributed proportionally with the general population for undocumented immigrants in my analysis.

[4] Specifically, I estimate there is a 14% probability that California would lose a seat, a 36% probability that Florida would lose a seat, and a 38% chance that New York would lose a seat.

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

Executed on September 15, 2020 in Bethesda, Maryland.

Christopher Warshaw