From: Olson, Stephanie (Federal) [SOlson@doc.gov]
Sent: 8/18/2020 8:40:35 PM
To: Kourkoumelis, Aristidis (Federal) [AKourkoumelis@doc.gov]; Cannon, Michael (Federal) [MCannon@doc.gov]; Heller, Megan (Federal) [MHeller@doc.gov]; Sharma, Sapna (Federal) [SSharma@doc.gov]
CC: DiGiacomo, Brian (Federal) [bDiGiaco@doc.gov]; Melissa L Creech (CENSUS/PCO FED) [Melissa.L.Creech@census.gov]; DiGiacomo, Brian (Federal) [bDiGiaco@doc.gov]
Subject: RE: SDNY draft brief
Attachments: (b) (5) [redacted]

(b) (6), (b) (5) [redacted]

From: Kourkoumelis, Aristidis (Federal)
Sent: Tuesday, August 18, 2020 1:25 PM
To: Cannon, Michael (Federal) <MCannon@doc.gov>; Olson, Stephanie (Federal) <SOlson@doc.gov>; Heller, Megan (Federal) <MHeller@doc.gov>; Sharma, Sapna (Federal) <SSharma@doc.gov>
Cc: DiGiacomo, Brian (Federal) <bDiGiaco@doc.gov>; Creech, Melissa L <melissa.l.creech@census.gov>; DiGiacomo, Brian (Federal) <bDiGiaco@doc.gov>
Subject: RE: SDNY draft brief

(b) (5) [redacted]

Thanks,
Aris

Aristidis (Aris) Kourkoumelis | Senior Counsel
Office of the General Counsel
U.S. Department of Commerce
M: (b) (6) [redacted]

From: Cannon, Michael (Federal) <MCannon@doc.gov>
Sent: Tuesday, August 18, 2020 10:44 AM
To: Olson, Stephanie (Federal) <SOlson@doc.gov>; Heller, Megan (Federal) <MHeller@doc.gov>; Sharma, Sapna (Federal) <SSharma@doc.gov>
Cc: Kourkoumelis, Aristidis (Federal) <AKourkoumelis@doc.gov>; DiGiacomo, Brian (Federal) <bDiGiaco@doc.gov>; Creech, Melissa L <melissa.l.creech@census.gov>; DiGiacomo, Brian (Federal) <bDiGiaco@doc.gov>
Subject: (b) (5) [redacted]

CUI//PRIVILEGE/AWP//FED ONLY

(b) (5) [redacted]

Mike

Michael A. Cannon
Chief Counsel for Economic Affairs
Office of the General Counsel

From: John Maron Abowd (CENSUS/ADRM FED) [john.maron.abowd@census.gov]
Sent: 8/19/2020 1:52:56 AM
To: Ron S Jarmin (CENSUS/DEPDIR FED) [Ron.S.Jarmin@census.gov]
CC: Victoria Velkoff (CENSUS/ADDP FED) [Victoria.A.Velkoff@census.gov]; Enrique Lamas (CENSUS/DEPDIR FED) [Enrique.Lamas@census.gov]; Christa D Jones (CENSUS/DEPDIR FED) [Christa.D.Jones@census.gov]; PCO DSEP (CENSUS/ OTHER) [pco.dsep@census.gov]
Subject: COB -2:10
Attachments: (b) (5) [redacted]

Here is the draft DSEP paper for Thursday. Tori has not reviewed yet. Other two attachments are draft parts of the DSEP packet.

I am simultaneously getting DAS and PM reviews.

Mike Castro, you may start editing too.

As always, COB = 11:59pm.

Thanks,

John M. Abowd, PhD, Associate Director and Chief Scientist
Research and Methodology
U.S. Census Bureau
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From: John Maron Abowd (CENSUS/ADRM FED) [john.maron.abowd@census.gov]
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To: Daniel Kifer (CENSUS/CES CTR) [daniel.kifer@census.gov]; Philip Leclerc (CENSUS/CDAR FED) [philip.leclerc@census.gov]; Simson L Garfinkel (CENSUS/ADRM FED) [simson.l.garfinkel@census.gov]; Michael B Hawes (CENSUS/CED FED) [michael.b.hawes@census.gov]
CC: Teresa Sabol (CENSUS/CED FED) [teresa.sabol@census.gov]; Robert Sienkiewicz (CENSUS/CED FED) [robert.sienkiewicz@census.gov]; John A Fattaleh (CENSUS/CED FED) [john.a.fattaleh@census.gov]
Subject: Draft DSEP paper for review
Attachments: (b) (5) [redacted]

CC list for SA.

I need your comments by 10:00am. You are excused from morning DAS meetings to prepare those comments.

Thanks very much,

John M. Abowd, PhD, Associate Director and Chief Scientist
Research and Methodology
U.S. Census Bureau
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From: John Maron Abowd (CENSUS/ADRM FED) (b) (6) [redacted]
(b) (6) [redacted]
Sent: 8/19/2020 1:58:59 AM
To: Gary Linus Benedetto (CENSUS/CED FED) [Gary.Linus.Benedetto@census.gov]; Mark E Asiala (CENSUS/DSSD FED) [Mark.E.Asiala@census.gov]
CC: Cassandra Ingram (CENSUS/CED FED) [cassandra.ingram@census.gov]
Subject: Draft DSEP paper for Thursday
Attachments: (b) (5) [redacted]

I need your comments by 10:00am. Please vet the discussions of permissible methods on pages 2 and 3 and rounding on page 5.

Sorry for the rush. I got told to produce this by COB today in draft yesterday.

Thanks,

John M. Abowd, PhD, Associate Director and Chief Scientist
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From: John Maron Abowd (CENSUS/ADRM FED) (b) (6) [redacted]
(b) (6) [redacted]
Sent: 8/19/2020 2:02:07 AM
To: Melissa L Creech (CENSUS/PCO FED) [Melissa.L.Creech@census.gov]
Subject: Draft DSEP paper for Thursday
Attachments: (b) (5) [redacted]

I hate to do this to you, but I need comments by 10:00am. Assign-out if necessary.

Thanks,

John M. Abowd, PhD, Associate Director and Chief Scientist
Research and Methodology
U.S. Census Bureau
O: 301-763-5880 (b) (6) [redacted]
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(b) (5)

From: Sara A Rosario Nieves (CENSUS/ADDC FED) [Sara.A.Rosario.Nieves@census.gov]
Sent: 9/18/2020 12:31:32 PM
To: Michael Niosi (CENSUS/DCMD FED) [Michael.Niosi@census.gov]
CC: Deidre C Hicks (CENSUS/DCMD FED) [Deidre.C.Hicks@census.gov]; James L Dinwiddie (CENSUS/ADDC FED) [James.L.Dinwiddie@census.gov]; Gerell L Smith (CENSUS/ADDC FED) [gerell.l.smith@census.gov]; Britney L Dockett (CENSUS/ADDC FED) [britney.l.dockett@census.gov]
Subject: Re: 2020 Census Portfolio and Program Risk & Issue Documents for GAO/OIG - September 2020
Attachments: (b) (5) [redacted]

Good morning Michael,

Thanks for sending. Could you identify the risk documents that contain redistricting and apportionment information on GAO's delivery? These will need to be added to the separate clearance packet for DOC/OGC.

(b) (5) [redacted]

Thanks,
Sara

Sara A. Rosario Nieves
Chief, Strategic Planning and Portfolio Management | Decennial
U.S. Census Bureau | Office 301.763.2941 | Room (b) (6) | Cell: (b) (6) [redacted]
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From: Michael Niosi (CENSUS/DCMD FED) <Michael.Niosi@census.gov>
Sent: Thursday, September 17, 2020 6:18 PM
To: Sara A Rosario Nieves (CENSUS/ADDC FED) <Sara.A.Rosario.Nieves@census.gov>; Britney L Dockett (CENSUS/ADDC FED) <britney.l.dockett@census.gov>
Cc: Deidre C Hicks (CENSUS/DCMD FED) <Deidre.C.Hicks@census.gov>
Subject: (b) (5) [redacted]

Sara and Britney,

Attached are two zip files containing the risk and issue related documents for GAO for both the 2020 Census portfolio and program levels. Also attached is the program level risk and issue registers for OIG.

Let me know if there are any questions.

Thank you.

Michael Niosi, 2020 Census Risk and Issue Process Manager
Decennial Census Management Division/Decennial Program Management Office
U.S. Census Bureau
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(b) (5)

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(b) (5)

(b) (5)

(b) (5)

(b) (5)

(b) (5)

(b) (5)

From: Christa D Jones (CENSUS/DEPDIR FED) [Christa.D.Jones@census.gov]
Sent: 9/18/2020 1:57:51 PM
To: Victoria Velkoff (CENSUS/ADDP FED) [Victoria.A.Velkoff@census.gov]; Robin Wyvill (CENSUS/DEPDIR FED) [Robin.L.Wyvill@census.gov]
CC: John Maron Abowd (CENSUS/ADRM FED) [john.maron.abowd@census.gov]
Subject: Re: Need assistance
Attachments: 20200903 Overview Process to DOC FINAL.pdf; 20200903 Overview Process to DOC FINAL.pptx

I think so, this is what we have.

Christa D Jones, Chief of Staff
Office of the Director
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From: Victoria Velkoff (CENSUS/ADDP FED) <Victoria.A.Velkoff@census.gov>
Sent: Friday, September 18, 2020 9:55 AM
To: Christa D Jones (CENSUS/DEPDIR FED) <Christa.D.Jones@census.gov>; Robin Wyvill (CENSUS/DEPDIR FED) <Robin.L.Wyvill@census.gov>
Cc: John Maron Abowd (CENSUS/ADRM FED) <john.maron.abowd@census.gov>
Subject: Need assistance

Do either of you have the final version of the slides that John and I presented to the secretary and the dep sec for August 31 and September 3?

Thanks

Victoria Velkoff, PhD
Associate Director for Demographic Programs
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(b) (5)

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(b) (5)

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(b) (5)

(b) (5)

From: Sara A Rosario Nieves (CENSUS/ADDC FED) [Sara.A.Rosario.Nieves@census.gov]
Sent: 8/19/2020 10:59:18 AM
To: James L Dinwiddie (CENSUS/ADDC FED) [James.L.Dinwiddie@census.gov]
CC: Britney L Dockett (CENSUS/ADDC FED) [britney.l.dockett@census.gov]; Gerell L Smith (CENSUS/ADDC FED) [gerell.l.smith@census.gov]
Subject: Fw: 2020 Census Risk and Issue Deliverables for GAO & OIG - August 2020
Attachments: 2020 Census Portfolio Risk and Issue Documents August 2020 GAO.zip; 2020 Census Program Risk and Issue Documents August 2020 GAO.zip; 2020 Census Program Risk and Issue Registers August 2020 OIG.zip

Good morning Jim,

Attached are the files (risk registers) for delivery to OIG and GAO. Please, let us know if/when ready to send out. Holding off for now.

Thanks, Sara

Sara A. Rosario Nieves
Chief, Strategic Planning and Portfolio Management | Decennial
U.S. Census Bureau | Office 301.763.2941 | Room (b) (6) | Cell: (b) (6)
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From: Michael Niosi (CENSUS/DCMD FED) <Michael.Niosi@census.gov>
Sent: Tuesday, August 18, 2020 6:32 PM
To: Sara A Rosario Nieves (CENSUS/ADDC FED) <Sara.A.Rosario.Nieves@census.gov>; Britney L Dockett (CENSUS/ADDC FED) <britney.l.dockett@census.gov>
Cc: Deidre C Hicks (CENSUS/DCMD FED) <Deidre.C.Hicks@census.gov>
Subject: 2020 Census Risk and Issue Deliverables for GAO & OIG - August 2020

Sara and Britney,

Attached are two zip files containing the risk and issue related documents for GAO for both the 2020 Census portfolio and program levels. Also attached is the program level risk and issue registers for OIG.

Let me know if there are any questions.

Thank you.

Michael Niosi, 2020 Census Risk and Issue Process Manager
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From: Steven Dillingham (CENSUS/DEPDIR FED) [steven.dillingham@census.gov]
Sent: 9/10/2020 10:28:11 PM
To: Nathaniel Cogley (CENSUS/DEPDIR FED) [nathaniel.cogley@census.gov]; Benjamin A Overholt (CENSUS/DEPDIR FED) [benjamin.a.overholt@census.gov]; Steven K Smith (CENSUS/DEPDIR FED) [steven.k.smith@census.gov]; Michael John Sprung (CENSUS/DEPDIR FED) [michael.j.sprung@census.gov]; Ali Mohammad Ahmad (CENSUS/ADCOM FED) [ali.m.ahmad@census.gov]
Subject: Fwd: SDNY Opinion/Order from 3-judge court
Attachments: Census (SDNY) - Opinion and Order.pdf; ATT00001.htm; 165 - Court's Final Judgment and Injunction - NY v. Trump (10 Sept 2020).pdf; ATT00002.htm

(b) (5)

[redacted]

(b) (5)

[redacted]

UNITED STATES DISTRICT COURT
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 (RCW) (PWH) (JMF)

OPINION AND ORDER

Before: RICHARD C. WESLEY, United States Circuit Judge
PETER W. HALL, United States Circuit Judge
JESSE M. FURMAN, United States District Judge

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PER CURIAM.

The Constitution provides that "Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State." U.S. Const. amend. XIV, § 2. To enable that apportionment, it mandates that an "actual Enumeration" be conducted "every . . . ten Years, in such Manner as [Congress] shall by Law direct," an effort commonly known as the decennial census. *Id.* art. I, § 2, cl. 3. Congress has delegated the task of conducting the census to the Secretary of Commerce, who is required to

report "[t]he tabulation of total population by States" to the President. 13 U.S.C. § 141(a)-(b). The President, in turn, is required to transmit to Congress "a statement showing the whole number of persons in each State . . . as ascertained under the . . . decennial census of the population, and the number of Representatives to which each State would be entitled" using a mathematical formula "known as the method of equal proportions." 2 U.S.C. § 2a(a). Throughout the Nation's history, the figures used to determine the apportionment of Congress — in the language of the current statutes, the "total population" and the "whole number of persons" in each State — have included every person residing in the United States at the time of the census, whether citizen or non-citizen and whether living here with legal status or without.

On July 21, 2020, however, the President announced that this long-standing practice will no longer be the case. In a Presidential Memorandum issued on that date (and entered into the Federal Register two days later), the President declared that, "[f]or the purpose of the reapportionment of Representatives following the 2020 census" — which, as of today, is still ongoing — "it is the policy of the United States to exclude from the apportionment base aliens who are not in a lawful immigration status." Excluding Illegal Aliens From the Apportionment Base Following the 2020 Census, 85 Fed. Reg. 44,679, 44,680 (July 23, 2020) (ECF No. 1-1) (the "Presidential Memorandum").[1] To implement this new policy, the President ordered the Secretary of Commerce (the "Secretary") to provide him two sets of numbers for each State: first, the total population as determined in the 2020 census and, second, the total population as determined in the 2020 census minus the number of "aliens who are not in a lawful immigration status." *Id.* The President left it to the Secretary of Commerce to figure out how to calculate the number of "aliens who are not in a lawful immigration status" in each State. But one thing is

[1] Unless otherwise noted, all docket references are to 20-CV-5770.

clear: that number would not come from the census itself, as the 2020 census is not collecting information regarding citizenship status, let alone legal immigration status in this country, and the 2020 census will count illegal aliens according to where they reside.

In these consolidated cases, filed only three days after the Presidential Memorandum, two sets of Plaintiffs — one, a coalition of twenty-two States and the District of Columbia, fifteen cities and counties, and the United States Conference of Mayors (the "Governmental Plaintiffs") and the other, a coalition of non-governmental organizations (the "NGO Plaintiffs") — challenge the decision to exclude illegal aliens from the apportionment base for Congress on the ground that it violates the Constitution, statutes governing the census and apportionment, and other laws. On August 7, 2020, they filed a motion for summary judgment or, in the alternative, a preliminary injunction. Plaintiffs allege that the Presidential Memorandum will cause, or is already causing, two forms of irreparable harm. First, noting that the Presidential Memorandum itself identifies a State — believed to be California — that would stand to lose two or three seats in the House of Representatives if illegal aliens are excluded from the apportionment base, they argue that the Memorandum will result in the loss of seats in the House. Second, they argue that the Presidential Memorandum is having an immediate impact on the census count — which is still ongoing — and that that, in turn, is resulting, and will result, in various forms of injury. Defendants — the President, Secretary of Commerce Wilber L. Ross, Jr., Director of the U.S. Census Bureau Steven Dillingham (the "Director"), the United States Department of Commerce (the "Department"), and the Bureau of the Census (the "Census Bureau") — oppose Plaintiffs' motion and filed a cross-motion to dismiss, arguing that the Court lacks jurisdiction to entertain Plaintiffs' claims and that the exclusion of illegal aliens from the apportionment base is a lawful

exercise of the President's discretion with respect to the conduct of the census and apportionment.

For the reasons that follow, Plaintiffs are entitled to summary judgment. The Presidential Memorandum violates the statutes governing the census and apportionment in two clear respects. First, pursuant to the virtually automatic scheme established by these interlocking statutes, the Secretary is mandated to report a single set of numbers — "[t]he tabulation of total population by States" under the decennial census — to the President, and the President, in turn, is required to use the same set of numbers in connection with apportionment. By directing the Secretary to provide two sets of numbers, one derived from the decennial census and one not, and announcing that it is the policy of the United States to use the latter in connection with apportionment, the Presidential Memorandum deviates from, and thus violates, the statutory scheme. Second, the Presidential Memorandum violates the statute governing apportionment because, so long as they reside in the United States, illegal aliens qualify as "persons in" a "State" as Congress used those words.

On those bases, we declare the Presidential Memorandum to be an unlawful exercise of the authority granted to the President by statute and enjoin Defendants — but not the President himself — from including in the Secretary's report to the President any information concerning the number of aliens in each State "who are not in a lawful immigration status under the Immigration and Nationality Act." Presidential Memorandum, 85 Fed. Reg. at 44,680. Because the President exceeded the authority granted to him by Congress by statute, we need not, and do not, reach the overlapping, albeit distinct, question of whether the Presidential Memorandum constitutes a violation of the Constitution itself.

The merits of the parties' dispute are not particularly close or complicated. Before getting to the merits, however, we must confront a question that is closer: whether we have jurisdiction to even consider the merits.

It is axiomatic that federal courts are courts of limited jurisdiction and may consider the merits of a case only if the case is of the sort traditionally amenable to, and resolvable by, the judicial process. That requires a plaintiff seeking relief in federal court to demonstrate that it has "standing" to bring suit and that its claims are ripe for decision. Here, if the sole harm that Plaintiffs alleged were the harm to their apportionment interests, they might not satisfy the requirements of standing and ripeness, as the Secretary has not yet taken any public action in response to the Presidential Memorandum and could conceivably conclude that it is not feasible (or lawful) to exclude illegal aliens from the apportionment base. But Plaintiffs allege — and have proved — that they are suffering, and will suffer, more immediate and certain injuries by virtue of the harm that the Presidential Memorandum is causing to the accuracy of the census count itself. In light of those injuries, we conclude that we have jurisdiction to grant Plaintiffs the relief they are seeking.

BACKGROUND

The following background facts, drawn from the admissible materials submitted by the parties and materials of which the Court may take judicial notice, are undisputed except where noted. *See, e.g.*, *Vt. Teddy Bear Co. v. 1-800 Beargram Co.*, 373 F.3d 241, 244 (2d Cir. 2004).[2]

A. The Constitutional and Statutory Scheme

Article I of the Constitution requires that an "actual Enumeration" of the population, known as the decennial census, be conducted "every . . . ten Years, in such Manner as [Congress]

---

[2] We discuss facts relevant to the issues of standing and ripeness below.

shall by Law direct." U.S. Const. art I, § 2, cl. 3. The primary purpose of this enumeration was to apportion congressional representatives among the States "according to their respective Numbers." *Id.* The number of Representatives apportioned to each State determines, in turn, that State's share of electors in the Electoral College. *See id.* art. II, § 1, cl. 2; *see also* 3 U.S.C. § 3. For the first eighty years of the Nation's history, the States' "respective Numbers" were calculated according to the formula set forth in the Constitution's infamous "Three-Fifths Clause," which provided that the "actual Enumeration" established by the census would be arrived at by "adding to the whole Number of free Persons . . . , and excluding Indians not taxed, three fifths of all other Persons" — "all other Persons" being people then held as slaves. U.S. Const. art I, § 2, cl. 3. In 1868, that provision was modified by the Fourteenth Amendment, which provides that "Representatives shall be apportioned among the several States according to their respective numbers, *counting the whole number of persons in each State*, excluding Indians not taxed." U.S. Const. amend. XIV, § 2 (emphasis added).[3]

The modern census is governed by the Census Act, which Congress most recently amended in 1976. *See* Act. of Oct. 17, 1976 (the "Census Act" or the "Act"), Pub. L. No. 94-521, 90 Stat. 2459 (codified in scattered sections of 13 U.S.C.). Section 141(a) of the Act broadly delegates to the Secretary the duty to "take a decennial census of population as of the first day of April of such year . . . in such form and content as he may determine." 13 U.S.C. § 141(a). The Act then mandates that "[t]he tabulation of total population by States under subsection (a) of this section as required for the apportionment of Representatives in Congress among the several States shall be completed within 9 months after the census date" — in this

[3] For practical purposes, the "Indians not taxed" proviso was rendered moot by the Indian Citizenship Act of 1924, Pub. L. No. 68-175, 43 Stat. 253 (codified as amended at 8 U.S.C. § 1401(b)), which declared that all Native Americans born in the United States are citizens.

case, January 1, 2021 — "and reported by the Secretary to the President of the United States." *Id.* § 141(b). Within a short time thereafter — in this case, between January 3 and January 10, 2021 — "the President shall transmit to the Congress a statement showing the whole number of persons in each State, excluding Indians not taxed, as ascertained under the . . . decennial census of the population, and the number of Representatives to which each State would be entitled under an apportionment of the then existing number of Representatives by the method known as the method of equal proportions, no State to receive less than one Member." 2 U.S.C. § 2a(a). The Clerk of the House of Representatives must, in turn, "send to the executive of each State a certificate of the number of Representatives to which such State is entitled" within fifteen days of the President's statement. *Id.* § 2a(b). With limited exceptions not relevant here, the Census Act strictly prohibits disclosure — even to other federal agencies — of any data or information concerning individual respondents to the census. *See* 13 U.S.C. §§ 8-9; *New York v. U.S. Dep't of Commerce*, 351 F. Supp. 3d 502, 523 (S.D.N.Y.), *aff'd*, 139 S. Ct. 2551 (2019).

B. The Use of Census Data

Although the "initial" — and core — "constitutional purpose" of the census was to "provide a basis for apportioning representatives among the states in the Congress" (and, in turn, allocating members of the Electoral College), the census has long "fulfill[ed] many important and valuable functions for the benefit of the country." *Baldrige v. Shapiro*, 455 U.S. 345, 353 (1982). As the Supreme Court has observed, it "now serves as a linchpin of the federal statistical system by collecting data on the characteristics of individuals, households, and housing units throughout the country." *Dep't of Commerce v. U.S. House of Representatives*, 525 U.S. 316, 341 (1999) (internal quotation marks and citation omitted). Indeed, "[t]oday, policy makers at all levels of government, as well as private businesses, households, researchers, and nonprofit

organizations, rely on an accurate census in myriad ways that range far beyond the single fact of how many people live in each state." *New York v. Dep't of Commerce*, 351 F. Supp. 3d at 519 (citation omitted). Among other things, the data are now used not only for apportionment, but also "for such varied purposes as computing federal grant-in-aid benefits, drafting of legislation, urban and regional planning, business planning, and academic and social studies." *Baldrige*, 455 U.S. at 353 n.9.

In *New York v. Department of Commerce*, the court described many of the varied uses beyond congressional apportionment to which the federal, state, and local governments put census data, which Plaintiffs reiterate in this case. *See* 351 F. Supp. 3d at 596-99, 610-13. To provide a few examples here:

- The federal government relies on census data to allocate vast sums of money among and within States. In fiscal year 2016, for example, at least 320 such programs allocated about $900 billion using census-derived data. *See id.* at 596.

- State governments — including those among the Governmental Plaintiffs here — mandate the use of census data to draw intrastate political districts. *See id.* at 594-95, 612; *House of Representatives*, 525 U.S. at 333 n.4, 334; *see also, e.g.*, ECF No. 76-11 ("Brower Decl."), ¶ 16-18 (Minnesota); ECF No. 76-37 ("Rapoza Decl."), ¶ 5 (Rhode Island).

- State law requires the use of census data for various purposes, ranging from the allocation of governmental resources and imposition of expenses among local governments to the setting of utility fees and official salaries. *See New York v. Dep't of Commerce*, 351 F. Supp. 3d at 612-13 (citing various state statutes).

- State and local governments — including those among the Governmental Plaintiffs here — rely on census data, including granular local-level "characteristic data," to perform essential government functions. New York City, for example, makes important decisions about how to allocate public services in reliance on demographic data derived from the census, as when its Department of Education redraws school zone boundary lines, ECF No. 76-21, ("Salvo Decl."), ¶ 15; when its Department of Health deploys resources based on its best understanding of the age, race, and Hispanic origin characteristics within particular communities, *id.* ¶ 14; and when its Population Division uses age data to target services for aged individuals, *id.* ¶ 16.

Thus, inaccuracies in federal census data would affect state and local governments — and, by extension, their residents — in many ways, only some of which would be measurable. Critically, in many instances, that would be true even if the total population counts were not materially affected — because of the importance of accuracy at the local or subgroup level.[4]

C. The Citizenship Question Litigation and Its Aftermath

This is not the first time issues relating to the 2020 census have been brought in this District. On March 22, 2018, the Secretary announced that he had decided to include "a question about citizenship on the 2020 decennial census questionnaire," claiming "that he was acting at the request of the Department of Justice (DOJ), which sought improved data about citizen voting-age population for purposes of enforcing the Voting Rights Act." *Dep't of Commerce v. New York*, 139 S. Ct. 2551, 2562 (2019). Shortly thereafter, two groups of plaintiffs — including most, if not all, Plaintiffs here — filed suit in this District, alleging that the decision to include the citizenship question violated the Constitution and the Administrative Procedure Act ("APA"), 5 U.S.C. §§ 701 *et seq.* On January 15, 2019, after an eight-day bench trial, Judge Furman issued detailed findings of fact and conclusions of law, holding that the Secretary's decision was arbitrary and capricious, contrary to law, and pretextual. *New York v. Dep't of*

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[4] Although less relevant here, accurate census data is also critical to others, including scholars and private-sector businesses. *See, e.g.*, Br. of *Amici Curiae* 16 Businesses & Business Organizations at 3, ECF No. 103-1 ("Businesses Amicus") ("The Census provides critical data that informs decision-making in both the private and public sectors. . . . Consequently, government action that threatens the accuracy of Census data directly harms the businesses nationwide that rely on that data."); MARGO J. ANDERSON, THE AMERICAN CENSUS: A SOCIAL HISTORY 260-61 (2d ed. 2015) (describing how "[s]ocial scientists in university settings, in businesses, or in stand-alone research organization [have become] the market" for census data in the modern era). For instance, businesses rely on census data "to make a variety of decisions, including where to put new brick-and-mortar locations, how to market their products, and how to predict which products will be successful in a given market. . . . All of these things depend on the availability of accurate Census data." Businesses Amicus 2.

Commerce, 351 F. Supp. 3d at 516; *see id.* at 635-64. He vacated the Secretary's decision and enjoined its implementation. *See id.* at 671-80. The defendants filed a notice of appeal and a petition for certiorari before judgment in the Supreme Court. The Supreme Court granted their petition and then affirmed on the ground that the Secretary's stated rationale was pretextual. *See Dep't of Commerce v. New York*, 139 S. Ct. at 2573-76. Thereafter, on consent, Judge Furman entered a permanent injunction barring the Secretary from asking persons about citizenship status as part of the 2020 decennial census. *See* Order at 2, ECF No. 653, *New York*, No. 18-CV-2921 (JMF) (S.D.N.Y. Aug. 7, 2019).

Shortly after the Supreme Court affirmed Judge Furman's judgment, the President responded with an Executive Order aimed at "compil[ing]" citizenship data "by other means." Collecting Information About Citizenship Status in Connection With the Decennial Census, Exec. Order No. 13,880 § 1, 84 Fed. Reg. 33,821, 33,821 (July 16, 2019). The Executive Order directed "all executive departments and agencies" to provide to the Department "the maximum assistance permissible, consistent with law, in determining the number of citizens and non-citizens in the country, including by providing any access that the Department may request to administrative records." *Id.* § 3 at 33,824. The Executive Order explained that data identifying citizens would, among other things, "help . . . generate a more reliable count of the unauthorized alien population in the country," which "would," in turn, "be useful . . . in evaluating many policy proposals." *Id.* § 1 at 33,823. Noting that the Supreme Court's decision in *Evenwel v. Abbott*, 136 S. Ct. 1120 (2016), had "left open the question whether 'States may draw districts to equalize voter-eligible population rather than total population,'" the Executive Order also explained that citizenship data could be used by states "to design State and local legislative districts based on the population of voter-eligible citizens." *Id.* § 1 at 33,823-24. The Executive

Order said nothing about using citizenship data for purposes of congressional apportionment. Similarly, in remarks he made when announcing the Executive Order, the President made no mention of using citizenship data in connection with congressional apportionment. *See* Remarks on Citizenship and the Census, 2019 DAILY COMP. PRES. DOC. 465 (July 11, 2019), https://www.govinfo.gov/content/pkg/DCPD-201900465/pdf/DCPD-201900465.pdf.

D. The 2020 Census

On February 8, 2018 the Census Bureau promulgated the "Residence Rule" establishing the residence criteria for the 2020 census. *See* Final 2020 Census Residence Criteria and Residence Situations, 83 Fed. Reg. 5525 (Feb. 8, 2018) (the "Residence Rule" or the "Rule"). "The residence criteria are used to determine where people are counted during each decennial census." *Id.* at 5526. "[G]uided by the constitutional and statutory mandates to count all residents of the several states," the Rule explains, "[t]he state in which a person resides and the specific location within that state is determined in accordance with the concept of 'usual residence,' which is defined by the Census Bureau as the place where a person lives and sleeps most of the time. . . . This concept of 'usual residence' is grounded in the law providing for the first census, the Act of March 1, 1790, expressly specifying that persons be enumerated at their 'usual place of abode.'" *Id.* Applying these criteria, the Rule explains that all "[c]itizens of foreign countries living in the United States" are to be "[c]ounted at the U.S. residence where they live and sleep most of the time," with the exception of "[c]itizens of foreign countries living in the United States who are members of the diplomatic community" (who are counted at the embassy, consulate, United Nations' facility, or other residences where diplomats live) and "[c]itizens of foreign countries visiting the United States, such as on a vacation or business trip" (who are not counted at all). *Id.* at 5533. Notably, during the notice-and-comment process, the

Census Bureau considered a comment "express[ing] concern about the impact of including undocumented people in the population counts for redistricting because these people cannot vote." *Id.* at 5530. But the Census Bureau decided to "retain the proposed residence situation guidance for foreign citizens in the United States," reiterating that "[f]oreign citizens are considered to be 'living' in the United States if, at the time of the census, *they are living and sleeping most of the time at a residence in the United States*." *Id.* (emphasis added).

The Census Bureau relies on various means to obtain census data, beginning with a questionnaire to which households are asked to self-respond and ending with a set of procedures known as "Non-Response Follow-Up" operations. *See New York v. Dep't of Commerce*, 351 F. Supp. 3d at 521. The 2020 census count "officially began in the rural Alaskan village of Toksook Bay" on January 21, 2020. U.S. Census Bureau, *Important Dates*, U.S. CENSUS 2020, https://2020census.gov/en/important-dates.html (last visited September 7, 2020). Census operations were in full swing by mid-March, when the Census Bureau was confronted with the unprecedented challenge of the COVID-19 pandemic. On April 13, 2020, the Secretary and the Director announced that, due to the pandemic, the Census Bureau would temporarily suspend field data collection activities; seek a 120-day extension from Congress of the deadline "to deliver final apportionment counts"; and "extend the window for field data collection and self-response to October 31, 2020, which will allow for apportionment counts to be delivered to the President by April 30, 2021." *U.S. Department of Commerce Secretary Wilbur Ross and U.S. Census Bureau Director Steven Dillingham Statement on 2020 Census Operational Adjustments Due to COVID-19*, U.S. CENSUS BUREAU (Apr. 13, 2020), https://www.census.gov/newsroom/press-releases/2020/statement-covid-19-2020.html. In the following months, representatives of

the Census Bureau reiterated on multiple occasions that additional time was required to complete the apportionment count and deliver it to the President.[5]

The Census Bureau resumed field operations in May 2020. *See* U.S. Census Bureau, *2020 Census Operational Adjustments Due to COVID-19* ("*Census Operations Adjustments*"), U.S. CENSUS 2020, https://2020census.gov/en/news-events/operational-adjustments-covid-19.html (last visited Sept. 9, 2020). Despite the Census Bureau's earlier statements indicating the need for more time to complete the census, Director Dillingham announced on August 3, 2020, that the Census Bureau would end field operations on September 30, 2020, a month earlier than the previously announced deadline of October 31, 2020. *See Statement from U.S. Census Bureau Director Steven Dillingham: Delivering a Complete and Accurate 2020 Census Count*, U.S. CENSUS BUREAU (Aug. 3, 2020), https://www.census.gov/newsroom/press-releases/2020/delivering-complete-accurate-count.html; *see also* ECF No. 62 ("NGO Pls. Compl."), ¶¶ 10 & n.3, 114, 174 n.69. As of today, therefore, the census is still ongoing — with enumerators conducting in-person Non-Response Follow-Up work to ensure that any household that did not self-respond to the census is nonetheless counted as part of the "actual Enumeration." *See Census Operations Adjustments*; *see also* ECF No. 34 ("Gov't Pls.' Compl."), ¶ 130 & n.20. In fact, there is some doubt about the date on which these efforts will end and the counting will

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[5] *See, e.g.*, U.S. CENSUS BUREAU, OPERATIONAL PRESS BRIEFING – 2020 CENSUS UPDATE 21 (July 8, 2020), https://www.census.gov/content/dam/Census/newsroom/press-kits/2020/news-briefing-program-transcript-july8.pdf (statement of Albert Fontenot, Assoc. Dir. for Decennial Census Programs) (explaining that the Bureau was "past the window of being able" to produce the apportionment count by December 31, 2020); *see also, e.g.*, Nat'l Conf. of Am. Indians, 2020 Census Webinar: American Indian/Alaska Native, YOUTUBE (May 26, 2020), https://www.youtube.com/watch?v=F6IyJMtDDgY&feature=youtu.be&t=4689 (statement of Tim Olson, Assoc. Dir. For Field Operations) (explaining that "[w]e have passed the point where [the Bureau] could even meet the current legislative requirement of December 31. We can't do that anymore. We've passed that for quite a while now.").

stop. On September 5, 2020, the Honorable Lucy H. Koh, United States District Judge for the Northern District of California, entered a temporary restraining order enjoining the Census Bureau from "implementing the August 3, 2020 [plan] or allowing to be implemented any actions as a result of the shortened timelines in the August 3, 2020 [plan]." *Nat'l Urban League v. Ross*, No. 20-CV-5799 (LHK), 2020 WL 5291452, at *4 (N.D. Cal. Sept. 5, 2020). A preliminary injunction hearing is scheduled in that case for September 17, 2020. *See id.*

E. The Presidential Memorandum

In the meantime — that is, with the census count still being conducted — on July 21, 2020, the President issued the Presidential Memorandum, titled "Excluding Illegal Aliens From the Apportionment Base Following the 2020 Census." Presidential Memorandum, 85 Fed. Reg. at 44,679. In it, the President declared that, "[f]or 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." *Id.* at 44,680. "Excluding these illegal aliens from the apportionment base," the President posited, "is more consonant with the principles of representative democracy underpinning our system of Government. Affording congressional representation, and therefore formal political influence, to States on account of the presence within their borders of aliens who have not followed the steps to secure a lawful immigration status under our laws undermines those principles." *Id.* Additionally, the President asserted that "[i]ncreasing congressional representation based on the presence of aliens who are not in a lawful immigration status would also create perverse incentives encouraging violations of Federal law" and that "States adopting policies that encourage illegal aliens to enter this country and that hobble Federal efforts to enforce the

immigration laws passed by the Congress should not be rewarded with greater representation in the House of Representatives." *Id.* Referring to one State with "more than 2.2 million illegal aliens" — apparently California, *see* ECF No. 75 ("Pls.' Rule 56.1 Statement"), ¶ 4 — the Presidential Memorandum noted that "[i]ncluding 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." Presidential Memorandum, 85 Fed. Reg. at 44,680.

To implement this new "policy of the United States," the President directed the Secretary to provide him with two sets of data. First, the Presidential Memorandum mandates that, "[i]n preparing his report to the President under section 141(b) of title 13, United States Code, the Secretary shall take all appropriate action, consistent with the Constitution and other applicable law, to provide information permitting the President, to the extent practicable, to exercise the President's discretion to carry out the policy." *Id.* Second, "[t]he Secretary shall *also* include in that report information tabulated according to the methodology set forth in *Final 2020 Census Residence Criteria and Residence Situations*, 83 FR 5525 (Feb. 8, 2018)." *Id.* (emphasis added). In other words, to the extent "feasible" or "practicable," the Secretary is now required to include *two* sets of numbers for each State in his report to the President under Section 141(b) of the Census Act: first, the total population as determined in accordance with the Residence Rule, which includes citizens of foreign countries "living in the United States," without regard for the legal status of such persons in this country, Residence Rule, 83 Fed. Reg. at 5533; and second, the total population *minus* the number of "aliens who are not in a lawful immigration status." Presidential Memorandum, 85 Fed. Reg. at 44,680.

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F. This Litigation

On July 24, 2020 — only three days after the Presidential Memorandum — both the Governmental Plaintiffs and the NGO Plaintiffs filed their initial complaints. *See* ECF No. 1; 20-CV-5781, ECF No. 1.[6] In their now-amended Complaints, Plaintiffs contend that the Presidential Memorandum violates the Constitution's Enumeration Clause, as modified by the Fourteenth Amendment; is motivated by discriminatory animus toward Hispanics and immigrant communities of color, in violation of the equal protection component of the Fifth Amendment's Due Process Clause; coerces state and local governments and denigrates the equal sovereignty of the States in violation of the Tenth Amendment; violates the constitutional separation of powers by usurping the authority Congress delegated to the Secretary; constitutes an *ultra vires* violation of 2 U.S.C. § 2a and 13 U.S.C. § 141; violates the APA; and violates the Census Act's prohibition on the use of statistical sampling for purposes of congressional apportionment, *see* 13 U.S.C. §§ 141, 195. They seek a declaration that the Presidential Memorandum is unlawful, an injunction prohibiting Defendants from taking any action to implement or further the Memorandum, and writs of mandamus compelling the Secretary and the President to transmit figures that do not exclude illegal aliens based on immigration status.

The cases were initially assigned to Judge Furman alone, who consolidated them pursuant to Rule 42(a)(2) of the Federal Rules of Civil Procedure. ECF No. 43, at 1. On August 5, 2020, Judge Furman held an initial pretrial conference by telephone. During the conference,

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[6] At least six other cases in four other Districts have been filed challenging the Presidential Memorandum. *See* Compl., *Common Cause v. Trump*, No. 20-CV-2023 (D.D.C. July 23, 2020); Compl., *Haitian-Ams. United, Inc. v. Trump*, No. 20-CV-11421 (D. Mass. July 27, 2020); Compl., *City of San Jose v. Trump*, No. 20-CV-5167 (N.D. Cal. July 27, 2020); Compl., *California v. Trump*, No. 20-CV-5169 (N.D. Cal. July 28, 2020); Compl., *Useche v. Trump*, No. 20-CV-2225 (D. Md. July 31, 2020); Second Am. Compl., *La Union Del Pueblo Entero v. Trump*, No. 19-CV-2710 (D. Md. Aug. 13, 2020).

Plaintiffs advised that they intended to immediately file a motion for summary judgment (or, in the alternative, a preliminary injunction), and Defendants advised that they intended to file a motion to dismiss. ECF No. 79 ("Aug. 5, 2020 Tr."), at 11, 27, 36-38; *see also* ECF No. 37 ("Joint Pre-Conference Ltr."), at 6. Noting that Plaintiffs disclaimed the need for any discovery in connection with their motion for summary judgment or a preliminary injunction, Judge Furman set an expedited schedule and cautioned that, "[i]f defendants believe[d]" upon seeing Plaintiffs' motion papers "that there is any need for discovery," they were required "to confer" with Plaintiffs "immediately and then submit a joint letter." Aug. 5, 2020 Tr. at 46.

At Plaintiffs' request, and without objection from Defendants, Judge Furman filed a formal request on August 7, 2020, for the appointment of a three-judge district court pursuant to 28 U.S.C. § 2284(b). *See* ECF No. 68; *see also* ECF Nos. 58, 65. On August 10, 2020, the Honorable Robert A. Katzmann, then the Chief Judge of the Second Circuit, designated Judges Wesley and Hall to serve as the other members of a three-judge panel to hear these cases. *See* ECF No. 82. Thereafter, the panel adopted the scheduling order previously entered by Judge Furman alone. *See* ECF No. 86.

Pursuant to that scheduling order, Plaintiffs filed their motion on August 7, 2020. *See* ECF No. 74. Plaintiffs seek summary judgment (or, in the alternative, a preliminary injunction) on only some of their claims, namely that the Presidential Memorandum violates the Enumeration Clause and Fourteenth Amendment and constitutes an *ultra vires* violation of the statutes governing the census and apportionment. *See* ECF No. 77 ("Pls.' Mem."), at 10-40. Plaintiffs' motion is supported by declarations of both fact and expert witnesses. *See* ECF No. 76 ("Colangelo Decl."); ECF No. 149 ("Goldstein Decl.").

In response, Defendants did not ask to depose Plaintiffs' declarants or request discovery of any kind; nor did they seek a hearing. Instead, on August 19, 2020, they filed their opposition to Plaintiffs' motion and a cross-motion to dismiss. *See* ECF No. 117. To the extent relevant here, they argue that the Court lacks jurisdiction to hear Plaintiffs' claims because they are unripe and Plaintiffs lack standing; that the Enumeration Clause and *ultra vires* claims fail because the decision to exclude illegal aliens from the apportionment base is a lawful exercise of the President's discretion with respect to the census and apportionment; that Plaintiffs are not entitled to injunctive relief because they cannot show irreparable harm; and that the President is not a proper defendant. *See* ECF No. 118 ("Defs.' Mem."). On August 28, 2020, the motions became fully briefed, *see* ECF No. 154 ("Defs.' Reply"), and on September 3, 2020, the Court held oral argument by telephone.

SUMMARY JUDGMENT STANDARD

Summary judgment is appropriate where the admissible evidence and pleadings demonstrate "no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a); *see also Johnson v. Killian*, 680 F.3d 234, 236 (2d Cir. 2012) (per curiam). A dispute over an issue of material fact qualifies as genuine "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986); *accord Roe v. City of Waterbury*, 542 F.3d 31, 35 (2d Cir. 2008). The initial burden of establishing that no genuine factual dispute exists rests upon the party seeking summary judgment. *See Chambers v. TRM Copy Ctrs. Corp.*, 43 F.3d 29, 36 (2d Cir. 1994). If the moving party shows a *prima facie* entitlement to summary judgment,

"the burden shifts to the nonmovant to point to record evidence creating a genuine issue of material fact." *Salahuddin v. Goord*, 467 F.3d 263, 273 (2d Cir. 2006).

In ruling on a motion for summary judgment, a court must view all evidence "in the light most favorable to the non-moving party," *Overton v. N.Y. State Div. of Mil. & Naval Affs.*, 373 F.3d 83, 89 (2d Cir. 2004), and must "resolve all ambiguities and draw all permissible factual inferences in favor of the party against whom summary judgment is sought," *Sec. Ins. Co. of Hartford v. Old Dominion Freight Line, Inc.*, 391 F.3d 77, 83 (2d Cir. 2004). To defeat a motion for summary judgment, the non-moving party must advance more than a "scintilla of evidence," *Anderson*, 477 U.S. at 252, and demonstrate more than "some metaphysical doubt as to the material facts," *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). The non-moving party "cannot defeat the motion by relying on the allegations in [its] pleading, or on conclusory statements, or on mere assertions that affidavits supporting the motion are not credible." *Gottlieb v. County of Orange*, 84 F.3d 511, 518 (2d Cir. 1996) (internal citation omitted).

STANDING AND RIPENESS

As noted, Plaintiffs move for summary judgment on two grounds: that Defendants' decision to exclude illegal aliens from the apportionment base violates the Enumeration Clause and the Fourteenth Amendment of the Constitution; and that it exceeds the authority granted by Congress in the statutes that govern the census and congressional apportionment. *See* Pls.' Mem. 10-40. Before reaching the merits of either argument, however, we must address Defendants' contention that we lack jurisdiction. *See, e.g.*, *Steel Co. v. Citizens for a Better Env't*, 523 U.S.

83, 88-89 (1998) (noting that subject-matter jurisdiction cannot be assumed and is a "threshold question that must be resolved . . . before proceeding to the merits").

Defendants argue and move to dismiss on the ground that we lack jurisdiction for two reasons: because Plaintiffs fail to establish that they have standing to sue and because their claims are not yet ripe. Where, as here, the question is whether a plaintiff's injury is sufficiently "real and concrete rather than speculative and hypothetical, the ripeness inquiry merges almost completely with standing." *Thomas v. Anchorage Equal Rights Comm'n*, 220 F.3d 1134, 1138-39 (9th Cir. 2000) (citation omitted); *accord Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 157 n.5 (2014); *Nat'l Org. for Marriage, Inc. v. Walsh*, 714 F.3d 682, 688 (2d Cir. 2013) (quoting *Simmonds v. INS*, 326 F.3d 351, 357 (2d Cir. 2003). Thus, courts often address them together under the single umbrella term of "standing," *see, e.g.*, *Susan B. Anthony List*, 573 U.S. at 157 n.5; *Nat'l Org. for Marriage*, 714 F.3d at 689 n.6, and we will do the same here. But there is a second, arguably distinct form of ripeness doctrine that Defendants invoke: prudential ripeness, which concerns whether a case that might qualify as a bona fide case or controversy is nevertheless better decided later. *See, e.g.*, *Stolt-Nielsen S.A. v. AnimalFeeds Int'l Corp.*, 559 U.S. 662, 670 n.2 (2010) ("Ripeness reflects constitutional considerations that implicate Article III limitations on judicial power, as well as prudential reasons for refusing to exercise jurisdiction." (internal quotation marks and citation omitted)). We will begin with the issue of standing — the toughest issue in this case — and then turn briefly to prudential ripeness.

A. The Law of Standing

Article III of the Constitution limits the "judicial Power" of the United States to "Cases" and "Controversies." *See* U.S. Const. art. III, § 2. This means that all suits filed in federal court must be "cases and controversies of the sort traditionally amenable to, and resolved by, the

judicial process." *Steel Co.*, 523 U.S. at 102. One way courts implement that requirement is by ensuring that "at least one plaintiff" in any federal case has "standing." *Dep't of Commerce v. New York*, 139 S. Ct. at 2565; *see also Rumsfeld v. Forum for Acad. & Institutional Rights, Inc.*, 547 U.S. 47, 52 n.2 (2006) (noting that, in a case with multiple plaintiffs, "the presence of one party with standing is sufficient to satisfy Article III's case-or-controversy requirement"). Standing, in turn, is measured by a "familiar three-part test," which requires a plaintiff to show (1) "an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision." *Gill v. Whitford*, 138 S. Ct. 1916 (2018) (quoting *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547 (2016)). The plaintiff must make this showing "in the same way as any other matter on which the plaintiff bears the burden of proof, *i.e.*, with the manner and degree of evidence required at the successive stages of the litigation." *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561 (1992). To prevail on a motion for summary judgment, therefore, "mere allegations of injury are insufficient. Rather, a plaintiff must establish that there exists no genuine issue of material fact as to justiciability . . . ." *House of Representatives*, 525 U.S. at 329; *see Lujan*, 504 U.S. at 561 (stating that, on summary judgment, a plaintiff "can no longer rest on such 'mere allegations,'" as at the pleading stage, "but must 'set forth' by affidavit or other evidence 'specific facts'" that demonstrate standing. (quoting Fed. R. Civ. P. 56(e)).

Injury in fact is "the first and foremost of standing's three elements." *Spokeo*, 136 S. Ct. at 1547 (internal quotation marks, alterations, and citation omitted). "To establish injury in fact, a plaintiff must show that he or she suffered an invasion of a legally protected interest that is concrete and particularized and actual or imminent, not conjectural or hypothetical." *Id.* at 1548 (internal quotation marks and citation omitted). Significantly, an injury "need not be actualized"

to satisfy Article III. *Davis v. Fed. Election Comm'n*, 554 U.S. 724, 734 (2008). Instead, a "future injury" can suffice, so long as it is "certainly impending, or there is a substantial risk that the harm will occur." *Susan B. Anthony List*, 573 U.S. at 157 (internal quotation marks and citation omitted); *see also Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 414 n.5 (2013) (noting that plaintiffs need not "demonstrate that it is literally certain that the harms they identify will come about"); *House of Representatives*, 525 U.S. at 332-33 (finding standing "on the basis of the expected effects . . . on intrastate redistricting" — namely, that certain jurisdictions were "substantially likely . . . [to] suffer vote dilution"). Ultimately, the injury-in-fact requirement is meant to "ensure that the plaintiff has a personal stake in the outcome of the controversy." *Susan B. Anthony List*, 573 U.S. at 158 (internal quotation marks and citation omitted).

The second element requires proof that the plaintiff's injury is "fairly traceable" to the defendant's challenged conduct. Put differently, "there must be a causal connection between the injury and the conduct complained of — the injury has to be fairly traceable to the challenged action of the defendant, and not the result of the independent action of some third party not before the court." *Lujan*, 504 U.S. at 560 (internal quotation marks, alterations, and citation omitted). Importantly, "[p]roximate causation is *not* a requirement of Article III standing, which requires only that the plaintiff's injury be *fairly traceable* to the defendant's conduct." *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 134 n.6 (2014) (emphases added); *see also Rothstein v. UBS AG*, 708 F.3d 82, 91 (2d Cir. 2013) ("[T]he 'fairly traceable' standard is lower than that of proximate cause."). Accordingly, "Article III 'requires no more than *de facto* causality.'" *Dep't of Commerce v. New York*, 139 S. Ct. at 2566 (quoting *Block v. Meese*, 793 F.2d 1303, 1309 (D.C. Cir. 1986) (Scalia, J.)). Relatedly, for an injury to be "fairly traceable" to a defendant's conduct, that conduct need not be "the very last step in the chain of

causation." *Bennett v. Spear*, 520 U.S. 154, 168–69 (1997). Indeed, as the Supreme Court explained in finding that the plaintiffs challenging the decision to add a citizenship question to the census had standing, when a "theory of standing" relies "on the predictable effect of Government action on the decisions of third parties," traceability is satisfied. *Dep't of Commerce v. New York*, 139 S. Ct. at 2566. This may be so "even when the decisions are illogical or unnecessary." *New York v. U.S. Dep't of Homeland Sec.*, 969 F.3d 42, 59 (2d Cir. 2020).

Third and finally, a plaintiff's injury must be "redressable" by the relief sought — that is, "it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision." *Lujan*, 504 U.S. at 561 (internal quotation marks and citation omitted). "[T]he very essence of the redressability requirement" is that a request for "[r]elief that does not remedy the injury suffered cannot bootstrap a plaintiff into federal court." *Steel Co.*, 523 U.S. at 107. But if there is "a likelihood that the requested relief will redress the [plaintiff's] injury," the requirement is satisfied. *Id.* at 103; *see also Friends of the Earth, Inc. v. Laidlaw Env't Servs. (TOC), Inc.*, 528 U.S. 167, 185-86 (2000) ("[F]or a plaintiff who is injured or faces the threat of future injury due to illegal conduct ongoing at the time of suit, a sanction that effectively abates that conduct and prevents its recurrence provides a form of redress."). Notably, the redressability requirement does not require a plaintiff to show that the relief sought will remedy all injuries alleged. Instead, "'the relevant inquiry is whether . . . the plaintiff has shown *an* injury to himself that is likely to be redressed by a favorable decision.' In other words, a plaintiff satisfies the redressability requirement when he shows that a favorable decision will relieve a discrete injury to himself. He need not show that a favorable decision will relieve his *every* injury." *Larson v. Valente*, 456 U.S. 228, 243 n.15 (1982) (citations omitted) (quoting

Simon v. E. Ky. Welfare Rights Org., 426 U.S. 26 (1976)). Nor need the plaintiff prove that judicial relief will remedy an injury entirely. It is enough that the "risk [of the alleged harm] would be reduced to some extent if [the plaintiffs] received the relief they seek." *Massachusetts v. E.P.A.*, 549 U.S. 497, 526 (2007); *cf. Church of Scientology of Cal. v. United States*, 506 U.S. 9, 13 (1992) ("Even though it is now too late to prevent, or to provide a fully satisfactory remedy for, the [injury], a court does have power to effectuate a partial remedy.").

B. Facts Relevant to Standing

Plaintiffs press two categories of harm: (1) "harms stemming from the exclusion of undocumented immigrants in the apportionment count"; and (2) "harms caused by the Memorandum's deterrent effect on census participation." Pls.' Reply 29. With respect to the first category, the Presidential Memorandum's express goal is to stop "[a]ffording congressional representation, and therefore formal political influence, to States on account of" their illegal alien population. Presidential Memorandum, 85 Fed. Reg. at 44,680. In particular, the Memorandum itself anticipates that excluding illegal aliens from the apportionment count could reduce the number of representatives in States with large immigrant populations, noting explicitly that in "one State . . . home to more than 2.2 million illegal aliens," *id.* — apparently, California, *see* Pls.' Rule 56.1 Statement ¶¶ 3-4 — the inclusion of illegal aliens could "result in the allocation of two or three more congressional seats than would otherwise be allocated," Presidential Memorandum, 85 Fed. Reg. at 44,680. In addition to the Memorandum itself, Plaintiffs proffer an expert analysis that concludes that the wholesale exclusion of illegal aliens from the apportionment base "is likely to have substantial effects on the population counts of each state" and, more specifically, "will almost certainly lead Texas to lose a seat in Congress"; would "likely . . . lead California and New Jersey to lose a congressional seat"; and "could lead other

states, such as Arizona, Florida, New York, or Illinois, to lose seats." ECF No. 76-58 ("Warshaw Decl."), ¶ 11.

With respect to the second category of harm, Plaintiffs submit a number of declarations — uncontested by Defendants — demonstrating the Presidential Memorandum's deterrent effect on participation in the decennial census, particularly among noncitizens, immigrants, and their family members, and, in turn, the adverse consequences that are likely to flow from that deterrent effect.[7] The Presidential Memorandum deters census participation for at least two distinct reasons. First, the Presidential Memorandum engenders fear and distrust among illegal aliens

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[7] Although Defendants do not dispute the facts in Plaintiffs' declarations, they argue that the declarations are "impermissibly conjectural, conclusory, and hearsay." Defs.' Mem. 12. Defendants are correct to point out that we "may consider affidavits and other materials beyond the pleadings to resolve the jurisdictional issue," but "may not rely on conclusory or hearsay statements contained in the affidavits." *New York v. U.S. Dep't of Commerce*, 315 F. Supp. 3d 766, 780 (S.D.N.Y. 2018) (internal quotation marks omitted). But Plaintiffs' declarations are not conclusory insofar as they describe with concrete detail the specific experience of various non-governmental and governmental entities. By way of example, several NGO Plaintiffs give specific and concrete evidence of the ways in which their operations have shifted to respond to the Memorandum. *See, e.g.*, ECF No. 76-18 ("Espinosa Decl."), ¶ 14; ECF No. 76-14 ("Choi Decl."), ¶¶ 17, 20-21; ECF No. 76-26 ("Khalaf Decl."), ¶ 15; ECF No. 76-36 ("Oshiro Decl."), ¶ 12; ECF No. 76-47 ("Torres Decl."), ¶¶ 22-23.

Furthermore, although the declarations do contain some inadmissible hearsay (e.g., where they report information secondhand), Defendants are incorrect in suggesting that, without it, the declarations are insufficient to support a showing that "the Presidential Memorandum would have an appreciable effect on the participation of illegal aliens" in the census. Defs.' Mem. 14-15. Many of the statements in Plaintiffs' declarations recount comments made by immigrants in response to the Presidential Memorandum, *see, e.g.*, ECF No. 76-17 ("Cullinane Decl."), ¶ 8; ECF No. 149-3 ("Espinosa Supp. Decl."), ¶ 5, which are admissible to prove state of mind, *see* Fed. R. Evid. 803(3). Additionally, references in the declarations to third-party statements are admissible to demonstrate the effect that these statements had on others — for example, that NGO Plaintiffs diverted resources in response to deterred census participation. *See, e.g.*, *United States v. Reed*, 639 F.2d 896, 907 (2d Cir. 1981). Finally, the declarations also contain information about the general atmosphere of fear, confusion, and apathy towards the census in various communities, information that is based on declarants' personal experiences working with and in those communities; this information is not a "statement" and, thus, not hearsay. *See* Fed. R. Evid. 801(a). In the discussion that follows, we rely on the declarations only to the extent they are admissible.

and their families (and, more broadly, all noncitizens and their families), and deters these groups from participating in the census out of fear of providing the federal government with information by which their citizenship status may be ascertained (and any resulting adverse consequences). Second, because the Presidential Memorandum announces that it is United States policy "to exclude from the apportionment base aliens who are not in a lawful immigration status," Presidential Memorandum, 85 Fed. Reg. at 44,680 — the "primary purpose of the census," *New York v. Dep't of Commerce*, 351 F. Supp. 3d at 561 — illegal aliens may decide not to participate in the census on the theory that they do not count for any purpose or on the theory that there is little upside to being counted.

Several agency and non-profit organization leaders in charge of census outreach programs attest that many illegal aliens have expressed concern over, or outright refused to participate in, the census as a result of the Presidential Memorandum, both because they are apprehensive that the data will be used in immigration enforcement and because they perceive their participation as ultimately futile in light of the President's explicit exclusion of illegal aliens for the purposes of apportionment. *See, e.g.*, ECF No. 76-4 ("Baldwin Decl."), ¶ 8; ECF No. 76-5 ("Banerji Decl."), ¶ 5; Brower Decl. ¶ 11; Cullinane Decl. ¶ 8. Other immigrant respondents have expressed concern that "the Trump Administration would punish undocumented persons who filled out the Census by tracking and deporting them." *See, e.g.*, ECF No. 76-30 ("Matos Decl."), ¶¶ 9-13 (describing Delaware-based census advocacy program's increased need to quell community fears that, in light of the Presidential Memorandum, responding to the census will result in deportation or bar Latinos from obtaining citizenship).

Notably, Plaintiffs' evidence indicates that the effects of the Presidential Memorandum are likely to be felt beyond the *illegal* alien population. "Excluding undocumented immigrants

from the apportionment base will deter Census participation among the broader immigrant community, including family and household members of undocumented immigrants who are actually citizens or non-citizens with legal status." Espinosa Decl. ¶ 11; *see also* Khalaf Decl. ¶ 12 ("[S]ignificant fear and increased distrust about the Census . . . [is] not limited to undocumented immigrants or other non-citizens, but also to family, household members, friends, and community members of non-citizens, people for whom the new policy articulated in the Memorandum has generated fear about responding at all . . . ."). Of particular concern is the response in "mixed status households" — that is, households consisting of illegal aliens and residents with lawful status — where concerns about the security of identifying information being shared with the federal government are prevalent. *See, e.g.*, Espinosa Decl. ¶ 12 (describing a fear among individuals from mixed status households that "the Presidential Memorandum's exclusion of people 'not in lawful immigration status' from the census base count indicates that the Administration will use information from the census to attempt to identify undocumented immigrants for deportation or other adverse consequences"). "Even U.S.-born citizen Puerto Rican residents are confused" by the Presidential Memorandum. ECF No. 76-16 ("Colón Decl."), ¶ 11.

In addition to this extensive — and undisputed — record of fact witness testimony, Plaintiffs provide expert analyses describing the fear and confusion generated by the Presidential Memorandum among hard-to-count communities and the resultant chilling effect on census participation. *See* ECF No. 76-56 ("Barreto Decl."), ¶ 14 (surveying research on the impact of media messages on immigrant communities' trust in government and the impact of those communities' trust on census response rates and concluding that "the July 21 [Presidential Memorandum] will reduce participation in the 2020 census, and ultimately will reduce the

accuracy of the 2020 census"); ECF No. 76-57 ("Thompson Decl."), ¶ 3 (concluding that the Presidential Memorandum "will significantly increase the risk of larger total and differential undercounts, relative to previous censuses, for the hard-to-count populations, including immigrant communities").[8]

In short, the record supports a conclusion that the Presidential Memorandum has created, and is likely to create, widespread confusion among illegal aliens and others as to whether they should participate in the census, a confusion which has obvious deleterious effects on their participation rate. *See* ECF No. 76-1 ("Alvarez Decl."), ¶ 10 (reporting "an increase in confusion amongst immigrant communities after" Memorandum was issued); *see also* Baldwin Decl. ¶ 8; ECF No. 76-9 ("Bird Decl."), ¶ 9. As John Thompson, the former Director of the Census Bureau, predicts, "the effects of the Memorandum on the current macro environment are *likely to be as great if not greater than the addition of a citizenship question*." Thompson Decl. ¶ 23 (emphasis added); *see also* Barreto Decl. ¶ 29. And the Census Bureau's own advertising

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[8] Defendants fault Dr. Barreto for failing to consider a 2019 study conducted by the Census Bureau, ELIZABETH A. POEHLER ET AL., U.S. CENSUS BUREAU, 2019 CENSUS TEST REPORT: A NEW DESIGN FOR THE 21ST CENTURY (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"), which found "no statistically significant difference in overall self-response rates" resulting from the inclusion of a citizenship question on the census questionnaire. *Id.* at ix; *see* Defs.' Mem. 13. But that study, which is not directly relevant to the issues before us, is less useful for Defendants than their arguments suggest, as there are findings that both sides can and do point to in support of their positions. In fact, the same study did find statistically significant drops in response rates "in some areas and for some subgroups," including "[t]racts with greater than 4.9 percent noncitizens," "[t]racts with greater than 49.1 percent Hispanic residents," "[t]racts with between 5.0-20.0 percent Asian residents," and "[h]ousing units within the Los Angeles Regional Census Center and New York Regional Census Center boundaries." *Id.* at ix-x. Furthermore, "the results of this [study] [we]re limited to the self-response timeframe prior to the start of" Non-Response Follow-Up operations, *id.* at 12, and there is reason to believe that each of Non-Response Follow-Up's steps would replicate or exacerbate the effects of the net differential decline in self-response rates among noncitizen households, *see New York v. Dep't of Commerce*, 351 F. Supp. 3d at 583.

initiatives will struggle to ward off these effects even with "messag[ing] that respondent information is confidential" and that "[t]he Census Bureau will not share it with any outside entities, including law and immigration enforcement." Thompson Decl. ¶ 21.

These deterrent effects have far-reaching ramifications, including increasing costs for census outreach programs run by NGOs and governments. Indeed, the NGO Plaintiffs have already diverted resources from their other important programs to shore up their census engagement efforts. For example, Plaintiff FIEL "has recently had to refocus its programming and commit additional resources to its Census work," and "expects that it will need to interact with its constituents multiple times to answer questions and try to convince them to participate in the 2020 Census." Espinosa Decl. ¶ 14; *see also* ECF No. 76-44, ("Sivongxay Decl."), ¶ 18 ("[A]dditional one-on-one conversations and relational outreach are necessary to maintain trust among communities and census partners to ensure confidence that census information will remain confidential and that there are still important benefits to responding to the census, such as ensuring receipt of critical federal funding."). Because the Presidential Memorandum "dilutes the efficacy" of the efforts by Plaintiff New York Immigration Coalition ("NYIC") to ensure immigrants are counted in the census, NYIC will have "to divert resources from other programmatic areas to conduct additional education and outreach to get the same number of people to respond to the Census questionnaire." Choi Decl. ¶ 17. Specifically, NYIC has had to "make new materials"; "conduct new outreach"; "engage[] in member updates, press releases, [and] press briefings"; "develop[] messaging and social media campaigns"; and "respond to inquiries from local media . . . to assure people" that every person should respond to the Census. *Id.* In other words, "NYIC expects that it will need to interact with its constituents more times than previously planned to try to convince them to participate in the 2020 census" as a result of

the Presidential Memorandum. *Id.* ¶ 20. It estimates that the organization "will have to increase staff time and spending devoted to its Census education and outreach efforts by approximately 20% percent over previously anticipated levels." *Id.* ¶ 21.

Plaintiffs American-Arab Anti-Discrimination Committee ("ADC") and ADC Research Institute ("ADRCI") have also had to divert resources away from other programmatic areas, including critical programs responding to COVID-19 issues. Khalaf Decl. ¶ 15. In response to the Presidential Memorandum's messaging, ADC and ADRCI will "increase staff time and spending devoted [to] its Census education and outreach efforts by approximately 25[] percent over current levels," *id.* ¶ 14, while the national president of both organizations reports that he "personally spent at least 35 hours on Census-related work since the release of the [Presidential] Memorandum" that he would have otherwise spent on other tasks related to the operation and mission of both organizations, *id.* ¶ 15. Plaintiff Ahri similarly will increase staff time and spending devoted to census education and outreach by approximately fifteen percent in response to the chilling effects of the Presidential Memorandum. ECF No. 76-43 ("Seon Decl."), ¶ 17. According to Theo Oshiro, Deputy Director at the non-profit Make the Road New York ("MRNY), the Presidential Memorandum also "dilutes the efficacy of [MRNY's] existing materials and programming, which requires MRNY to divert resources from other programmatic areas to strategize around how to make [its] education and outreach effective and to get the same number of people to respond to the Census questionnaire" as they would have absent the Memorandum. Oshiro Decl. ¶ 12. Finally, Plaintiff CASA also has had to "devote additional resources to addressing the confusion and fear that have resulted" from the Presidential Memorandum, including having "to reorganize its communication team, reassign staff to Census outreach and education, and revise and redistribute messaging materials." Torres Decl. ¶¶ 22-23.

The Governmental Plaintiffs have also had to divert resources from other programs to mitigate the confusion caused by the Presidential Memorandum. Plaintiff Illinois, for example, has already had to spend funds on digital ads specifically designed to address misinformation about the census, has created printed materials to be distributed, and has produced social media videos and other digital communications to reassure the immigrant community about the importance of the census. Alvarez Decl. ¶ 12. Plaintiff Vermont, through its 2020 Complete Count Committee, has — in direct response to the Presidential Memorandum — provided "mini-grants" to increase outreach to hard-to-count communities, conducted additional open educational meetings, provided additional multilingual public service announcements, and otherwise promoted census participation. ECF No. 76-10 ("Broughton Decl."), ¶ 7. Plaintiff Monterey County will "have to dedicate significant resources to ensure participation without fear" so that the County receives its proper census-based funding. ECF No. 76-28 ("Lopez Decl."), ¶ 18; *see also* ECF No. 76-12 ("Bysiewicz Decl."), ¶ 11 (describing efforts by Plaintiff Connecticut to encourage full census participation after the Presidential Memorandum caused "confusion").

The Memorandum's chilling effect on census participation will likely also degrade the census data, harming state and local governments that rely on the data to carry out their public functions. As Dr. Joseph Salvo, Chief Demographer of New York City, explained, "the July 21, 2020 Presidential memorandum is likely to make the Census Bureau resort to less-reliable methods, including statistical imputation, more frequently in immigrant communities than it otherwise would." Salvo Decl. ¶ 12. Specifically, when individuals fail to participate in the census themselves, the Census Bureau will sometimes rely on "proxy respondents," like neighbors, landlords, and postal workers. *See* GLENN WOLFGANG ET AL., U.S. CENSUS BUREAU,

ANALYSIS OF PROXY DATA IN THE ACCURACY AND COVERAGE EVALUATION 1 (2003), https://www.census.gov/pred/www/rpts/O.5.PDF. Reliance on proxy responses "degrade[s] the quality of the data" and its usability, since proxy respondents often leave some questions unanswered and report information less accurately than household respondents. Brower Decl. ¶¶ 12-13 (discussing, for example, the phenomenon of "age heaping" where data on the age of individuals tends to be reported in numbers ending in 5 or 0 when a proxy is the respondent because the proxy merely estimates the age of the individual). Further, if census data are not available through proxy responses, demographers are forced to resort to data imputation, which itself is reliable only when calculated using a sufficiently high self-response rate. *See* ECF No. 76-21 ("Hardcastle Decl."), ¶ 5. Lower response rates also increase the margins of error in statistical calculations, degrading the utility of census response data and restricting Plaintiffs' ability to rely on the data for, *inter alia*, governmental planning purposes. *See* ECF No. 76-25 ("Kaneff Decl."), ¶¶ 3-5.

Indeed, degraded census data jeopardizes various sovereign interests in allocating funds and administering public works through programs that rely on quality census data. Connecticut, for example, relies on accurate characteristic data, meaning data on subgroups within the population, for a wide variety of purposes, including deciding where to locate COVID-19 testing sites, the evaluation of requests for school construction funds, the promulgation of affirmative action plans for state agencies using data-driven goals and benchmarks, effective forecasting for public transit planning, and others. *See* ECF No. 76-31 ("McCaw Decl.") ¶¶ 4-7. Similarly, Dr. Salvo explains that "[t]he decennial census is the statistical backbone of our country" and that, like Connecticut, New York City relies on accurate characteristic data about subgroups to make

decisions about public health programs and education investments, as well as emergency preparedness planning and provision of targeted services for the elderly. Salvo Decl. ¶¶ 13-17.

Other examples abound in the record. In Monterey County, California, for example, the Department of Social Services is responsible for administering cash and non-cash programs that, among other things, provide supplemental food assistance, California's Medicaid program, foster care, adoption and aging assistance, and temporary assistance to needy families. ECF No. 76-32 ("Medina Decl."), ¶ 2. That department relies on accurate census data in making its funding allocation decisions. *Id.* ¶ 4. Any undercounting of undocumented immigrants caused by the Presidential Memorandum will not only "impact the formulas used for funding allocations" for these basic living assistance programs, but will also result in the loss of federal funding, "which, in turn, will add extra financial burden on local governments, resulting in even fewer available resources to assist families with food, housing, health, and other support and safety net services." *Id.*; *see also, e.g.*, ECF No. 76-33 ("Mohammed Decl."), ¶¶ 5-6 (describing how the census directly impacts funding for the City of Pittsburgh and "provides the most reliable and complete data for research, decision making and planning in City government"); ECF No. 76-39 ("Rodriguez Decl."), ¶ 3 (describing how Illinois's Workforce Innovation and Opportunity Act Program, which provides services to help certain populations overcome barriers to employment, depends on accurate census data to identify the targeted population levels); ECF No. 76-46 ("Sternesky Decl."), ¶ 5 ("Census data deeply influences the way that [the New Jersey Housing and Mortgage Finance Agency] designs and plans for the allocation of housing funds across the state. For example, the Agency uses income, poverty, employment, housing density, and housing vacancy data from the Census to direct its annual $20 million to $25 million allocation of federal 9% Low-Income Housing Tax Credits (LIHTC). These credits are then used to

leverage roughly a ten-fold influx of private investment into equity for development costs to both high-opportunity and high-need areas of New Jersey."); ECF No. 76-50 ("Wortman Decl."), ¶¶ 3, 6 (describing how Illinois determines funding for each county based on an "index of need" and how "[u]nderrepresentation of areas with a higher percentage of immigrants will result in disproportionate levels of funding being allocated to counties with less demographic diversity").

Plaintiff Washington State will also be negatively impacted if it is forced to use inaccurate census data. Washington allocates $200 million "of state shared revenues . . . to counties and cities on a per capita basis annually" and uses decennial census data for its demographic estimates and annual population forecasts. Baldwin Decl. ¶¶ 14, 17. "[B]ad data will certainly lead to inaccurate distribution of funding within Washington, impacting all levels of government for a decade." *Id.* ¶ 15. "Poor quality census data will [also] harm Washington's ability to carry out the population data functions required by law both in the short term and the long term." *Id.* ¶ 28. In particular, Washington annually creates a *thirty*-year population forecast, meaning that the 2020 census data will be used in forecasting until at least the 2050 census data is available, if not longer. *See id.* ¶ 25. Because "many estimate and forecast models rely on information about changes in trends over time," "[a]n inaccurate census this year will change the relationships in the data between censuses and make all future estimates and forecasts based on these trends less accurate." *Id.*

Finally, the undisputed facts in the record also reflect that judicial relief invalidating the Presidential Memorandum would likely reduce the confusion felt by immigrant communities and therefore alleviate some of the injuries being felt by Plaintiffs. For example, Plaintiff FIEL anticipates that "a court order that stops the exclusion of undocumented immigrants from the census would make [its] efforts to encourage census participation easier by allowing [FIEL] to

clarify the confusion and help ease the fear caused by" the Presidential Memorandum, and that "it would take FIEL less time and fewer resources to convince" the community "to participate in the census." Espinosa Supp. Decl. ¶ 3. Relief would also help Plaintiff MRNY "conduct more efficient and effective census outreach" because MRNY could clarify to community members that everyone should, in fact, be counted. ECF No. 194-4 ("Oshiro Supp. Decl."), ¶ 5. And relief from this Court would also allow Plaintiff Ahri to "publicize the Court's order to encourage [its] community to open their doors to census outreach workers, rather than hiding out of confusion or fear and avoiding the census completely." ECF No. 194-5 ("Seon Supp. Decl."), ¶¶ 6-7.

C. Standing Analysis

As noted, Plaintiffs allege two types of harm: apportionment harms stemming directly from the exclusion of illegal aliens from the apportionment base and harms caused by the deterrent effect on census participation. We have considerable doubt that the former suffices to establish jurisdiction. To be sure, if any Plaintiff could show that, as a result of the Presidential Memorandum, it was likely to lose one or more seats in the House of Representatives, it would surely have standing. *See, e.g.*, *House of Representatives*, 525 U.S. at 331 (holding that the loss of a seat or seats in the House of Representatives "undoubtedly satisfies the injury-in-fact requirement of Article III standing"). But as of today, it is not known whether that harm will come to pass, as the Secretary has not yet determined how he will calculate the number of illegal aliens in each State or even whether it is "feasible" to do so at all. Oral Arg. Tr. 35-37. In the absence of that information, Plaintiffs' first theory of harm is likely "too speculative for Article III purposes." *Clapper*, 568 U.S. at 409 (internal quotation marks omitted). Nor, for these purposes, would there be any harm in waiting until January 2021, when the impact, if any, of the

Presidential Memorandum would be known, as the Supreme Court has held that an illegal apportionment can be remedied even after the apportionment process has taken place. *See Utah v. Evans*, 536 U.S. 452, 462-63 (2002).

Ultimately, however, we need not, and do not, decide the issue because we conclude that Plaintiffs' second theory of harm — that the Presidential Memorandum will have and, indeed, is already having, an effect on the census count itself — suffices to establish standing. Critically, this theory of harm does not depend on what, if anything, the Secretary does *in the future* to implement the President's mandate in the Presidential Memorandum. Instead, it is based on Plaintiffs' undisputed evidence that the Presidential Memorandum is affecting the census count *in the present*. That is, while the apportionment harms may well be too remote and hypothetical to support standing, the harms to the census count are "certainly impending" and do not depend on "a highly attenuated chain of possibilities." *Clapper*, 568 U.S. at 410. Notably, Defendants do not argue otherwise. Instead, they contend that Plaintiffs' second theory of harm is too "speculative" in a different sense: because Plaintiffs' evidence is inadequate to prove that the Presidential Memorandum has caused (or will cause) anyone to opt out of participating in the census or that judicial relief would redress that harm. *See* Defs.' Mem. 11-19. In defense counsel's view, Plaintiffs should be required "to identify some subset of people who would not have been chilled . . . from answering the census between April 1st and July 21st, then became chilled on July 21st after the memorandum was issued, and then will be unchilled in [the time remaining before the census ends] by an order of this Court." Oral Arg. Tr. 38; *see also* Defs.' Mem. 52 (citing lack of "rigorous survey[s] or statistical stud[ies] measuring whether [the Presidential Memorandum] . . . has any effect on response rates within immigrant communities").

Defendants' vastly overstate Plaintiffs' burden. The law does not require Plaintiffs to submit a randomized control trial or other rigorous statistical analysis demonstrating beyond peradventure that there are people who would have participated in the census but for the Presidential Memorandum and who would participate again if we were to grant Plaintiffs the relief they seek. Nor do Plaintiffs need to submit declarations specifically identifying such people, let alone submit declarations from such people. Instead, Plaintiffs need only demonstrate that "there is no genuine dispute as to any" fact material to the standing analysis. Fed. R. Civ. P. 56(a). Notably, in determining whether this standard has been met, we may rely not only on the declarations submitted by Plaintiffs in support of their motion, but also on common sense, basic economics, and reasonable inferences. *See, e.g.*, *Friends of the Earth*, 528 U.S. at 183-85 (determining that "sworn statements . . . adequately documented injury in fact" where the proposition they were offered for was "entirely reasonable"); *Citizens for Responsibility & Ethics in Wash. v. Trump (CREW)*, 953 F.3d 178, 198 (2d Cir. 2019) (noting that a court may rely on "common sense and basic economics" in evaluating standing (internal quotation marks omitted)); *Nat. Res. Def. Council v. Nat'l Highway Traffic Safety Admin.*, 894 F.3d 95, 104-05 (2d Cir. 2018) (relying on the defendant agency's "own pronouncements," as well as "[c]ommon sense and basic economics," to find standing (internal quotation marks omitted)); *Carpenters Indus. Council v. Zink*e, 854 F.3d 1, 6 (D.C. Cir. 2017) (Kavanaugh, J.) ("When performing that inherently imprecise task of predicting or speculating about causal effects [in standing analysis], common sense can be a useful tool."); *Texas v. United States*, 809 F.3d 134, 156 (5th Cir. 2015) (finding that Texas had established the necessary causal connection between the Deferred Action for Parents of Americans and Lawful Permanent Residents ("DAPA") program and a future injury because DAPA would have "enable[d]" third parties "to apply for driver's licenses" and

there was "little doubt that many would do so"), *aff'd by an equally divided Court*, 136 S. Ct. 2271 (2016) (per curiam).

Requiring Plaintiffs to do more would be particularly inappropriate here for two reasons. First, "the integrity of the census is a matter of national importance. As noted, the population count has massive and lasting consequences. And it occurs only once a decade, with no possibility of a do-over if it turns out to be flawed." *New York v. Dep't of Commerce*, 351 F. Supp. 3d at 517; *see* Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1998 ("1998 Appropriations Act"), § 209(a)(8), Pub. L. No. 105-119, 111 Stat. 2440, 2480-81 (1997) ("Congress finds that . . . the decennial enumeration of the population is a complex and vast undertaking, and if such enumeration is conducted in a manner that does not comply with the requirements of the Constitution or laws of the United States, it would be impracticable for the States to obtain, and the courts of the United States to provide, meaningful relief after such enumeration has been conducted."). Second, Defendants' *own conduct* has forced Plaintiffs' hands. That is, for reasons that are unclear, the President waited until July 21, 2020, when the census was in full swing, to issue his Presidential Memorandum. Compounding matters, Defendants announced less than two weeks later that they were ending the census earlier than previously planned. The combination of the two meant that Plaintiffs had to rush to court and seek immediate relief; had they waited to develop more rigorous proof of their standing, their arguments about harms to the census count itself would have become moot. Between the sheer enormity of what is at stake and the fact that Defendants' own conduct gave Plaintiffs only a narrow window in which to seek effective relief, it would be the height of unfairness to hold Plaintiffs to the heightened burden of proof that Defendants endorse.

In light of the undisputed facts in the record, common sense, and basic economics, we are

satisfied that — with their second theory of harm — Plaintiffs adequately show injury in fact, traceability, and redressability and that we have before us an actual case or controversy "of the sort traditionally amenable to, and resolved by, the judicial process." *Steel Co.*, 523 U.S. at 102. Moreover, Defendants "have failed to set forth any specific facts showing that there is a genuine issue of standing for trial." *House of Representatives*, 525 U.S. at 330.

1. Injury in Fact

To begin, Plaintiffs have proved that, in the wake of the Presidential Memorandum, some number of people will not participate in, and thus not be counted in, the census. As of August 3, 2020 — the day the Census Bureau announced that field operations would end a month earlier than previously planned, and approximately two weeks after the Presidential Memorandum was issued — the Census Bureau had counted only about sixty-three percent of households in the 2020 census. *See Statement from U.S. Census Bureau Director Steven Dillingham: Delivering a Complete and Accurate 2020 Census Count*, U.S. CENSUS BUREAU (Aug. 3, 2020), https://www.census.gov/newsroom/press-releases/2020/delivering-complete-accurate-count.html. Many of those not counted are undoubtedly in the "hard to count" population, which includes immigrant and Hispanic populations as well as illegal aliens. *See New York v. Dep't of Commerce*, 351 F. Supp. 3d at 577. The record in the citizenship question litigation and the declarations here make clear that this population is even "harder" to count during this census due to widespread concerns, fueled by the policies and rhetoric of this Administration, that census data will be used for immigration enforcement purposes. *See id.* at 562, 579-83; Colón Decl. ¶ 11; Oshiro Decl. ¶¶ 12, 14; Seon Decl. ¶ 16; Barreto Decl. ¶¶ 60-62. Plaintiffs' uncontested declarations and common sense indicate that the Presidential Memorandum has compounded, and will compound, these concerns, and that some number of people in these communities will choose not to

participate in the census and take steps to avoid being counted. *See, e.g.*, Cullinane Decl. ¶ 8; Espinosa Supp. Decl. ¶ 5. To be sure, on the present record, the Court cannot calculate with precision the number of people that will be so affected. But there is no doubt that that number is greater than zero, and there is a substantial likelihood that an appreciable number of people will be dissuaded from participating in the census. *See* Barreto Decl. ¶¶ 60-65.

From these ongoing and direct effects on the census flow several forms of injury to Plaintiffs and their members or citizens. First, insofar as Plaintiffs include or represent high concentrations of immigrant and Hispanic populations, the effects on the census undoubtedly create a risk of a net differential undercount that could result in the loss of political power and federal funds, two classic forms of Article III injury. *See New York v. Dep't of Commerce*, 351 F. Supp. 3d at 607-08; *Carey v. Klutznick*, 637 F.2d 834, 838 (2d Cir. 1980) (per curiam); Barreto Decl. ¶¶ 70-71; Thompson Decl. ¶¶ 13-17. Given the time sensitivities inherent in their claims of census-related injuries — there were little more than two months remaining for census operations when the President issued the Presidential Memorandum and, less than two weeks later, Defendants shortened that period by a full month — Plaintiffs have obviously not had an opportunity to perform any sort of empirical study on the size of the likely effects on the census that would reveal the likelihood of such injuries. In any event, the likelihood of two other forms of injury are more certain on the current record: degradation of the quality of, and ability to have confidence in, census data and diversion by the NGO Plaintiffs of organizational resources.

a. Degradation of Census Data

First, if a portion of the population does not participate in the census count, it will inevitably degrade the quality and accuracy of census data, even if only at the subgroup or local level. Salvo Decl. ¶¶ 8-12. That is particularly true if, as is the case here, the people who are not

counted are not evenly distributed across the population, but are concentrated, either geographically or demographically. *See* Barreto Decl. ¶ 83; Thompson Decl. ¶¶ 15-17, 23. The degradation of census data, in turn, harms the Governmental Plaintiffs' ability to allocate resources, such as educational and public health resources, efficiently and effectively. *See* McCaw Decl. ¶¶ 3-6; Medina Decl. ¶¶ 2-4; Baldwin Decl. ¶¶ 15-28. Separate and apart from that, it harms confidence in the census data. *See* Kaneff Decl. ¶ 5 ("The lower the response rate, the larger the margin of error in the demographic characteristics."). Crucially, these harms will occur *whether or not there is a net differential undercount* — meaning that this theory of injury does not depend on connecting the deterrent effect of the Presidential Memorandum on immigrant households and the like to a net differential undercount of people who live in such households. *See New York v. Dep't of Commerce*, 351 F. Supp. 3d at 610-11; Salvo Decl. ¶¶ 14-18.

As explained in *New York v. Department of Commerce*, the degradation of census data is a legally cognizable form of injury sufficient to support standing. *See* 351 F. Supp. 3d at 610-15. In particular, a State or local government that relies on the information provided by the federal government under an existing statutory arrangement suffers a sufficiently "concrete" and "particularized" injury for purposes of Article III when the federal government degrades the quality of that information. States are sovereign entities with sovereign interests in the making and enforcement of their own laws. *See Alfred L. Snapp & Son, Inc. v. Puerto Rico ex rel. Barez*, 458 U.S. 592, 601 (1982); *cf. Maryland v. King*, 567 U.S. 1301 (2012) (Roberts, C.J., in chambers) (concluding that Maryland suffered an injury to its "law enforcement and public safety interests" from a lower-court order preventing the State from utilizing DNA samples for law enforcement purposes pursuant to a state statute). But they frequently do so in collaboration

with, or in reliance on, the federal government — such is the genius of the federal system, which has historically embraced various creative models of "cooperative federalism." *See, e.g.*, *New York v. United States*, 505 U.S. 144, 167-69 (1992); *Hodel v. Va. Surface Mining & Reclamation Ass'n, Inc.*, 452 U.S. 264, 286-89 (1981). States have long relied on federal decennial census data for countless sovereign purposes, and indeed many of the State Plaintiffs here even *require* the use of such data by law; in some instances, it is written into their state constitutions. *See, e.g.*, Rapoza Decl. ¶ 5 (explaining that the Rhode Island Constitution mandates using census data to establish the House and Senate districts); Brower Decl. ¶¶ 17, 22-23 (explaining that Minnesota law requires the use of census data to determine funding for roads and education).

Meanwhile, by virtue of the Constitution and the Census Act, it is, of course, the federal government's job to collect and distribute accurate federal decennial census data. *See* U.S. Const. art. I, § 2, cl. 3; *see also Evans*, 536 U.S. at 478 (explaining that the Framers had a "strong constitutional interest in [the] accuracy" of the census); *Wisconsin v. City of New York*, 517 U.S. 1, 20 (1996) (holding that the conduct of the census must bear a "reasonable relationship to the accomplishment of an actual enumeration of the population, keeping in mind the constitutional purpose of the census," namely, obtaining an accurate count of the population in each State); 1998 Appropriations Act, Pub. L. No. 105-119, § 209(a)(6), 111 Stat. at 2481 ("Congress finds that . . . it is essential that the decennial enumeration of the population be as accurate as possible, consistent with the Constitution and laws of the United States . . . ."). When the federal government degrades the quality of that data, it therefore inflicts a cognizable injury on the sovereign interests of reliant States.[9]

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[9] That does not mean that, in every case, a State will have a "right" to such data — or a right to data of a certain quality — sufficient to support a valid cause of action to obtain it. But it

An example may be helpful in illustrating the point. Suppose a State were to premise certain of its policies on a person's lawful presence in the United States — for example, suppose that it chose to deny certain benefits to undocumented immigrants or required its law-enforcement officials to inquire into the immigration status of any person detained in state custody for any reason. "The accepted way" for States "to perform [such] status checks" — and surely the most reliable — is to contact the DHS's Immigration and Customs Enforcement ("ICE"), the federal agency that accepts and responds to such inquiries from interested States. *Arizona v. United States*, 567 U.S. 387, 411 (2012). Now suppose that ICE were to degrade the quality of its data set, thereby undermining its usefulness to the State as a tool for implementing its policy priorities. If this hypothetical State were to challenge the decisions causing the degradation in immigration-status data, the federal agency could certainly defend its actions on the grounds that they were lawful. But could it seriously deny that the State had suffered a cognizable injury for purposes of standing? Surely not.

Indeed, ample case law supports the proposition that a State has a strong sovereign interest in conducting its own policy, the burdening of which causes an injury in fact for Article III purposes. One such sovereign interest is a State's "exercise of sovereign power over individuals and entities within [its] jurisdiction — this involves the power to create and enforce a legal code, both civil and criminal." *Alfred L. Snapp & Son*, 458 U.S. at 601. Another such sovereign interest — which, in light of the frequent prohibition on *parens patriae* suits against the federal government, *see Massachusetts v. Mellon*, 262 U.S. 447, 485-86 (1923), is "distinct from . . . the general well-being of its residents" — is a State's "interest in securing observance

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does mean that a State suffers a concrete and particularized injury when the federal government degrades important tools of sovereignty — or takes those tools away altogether.

of the terms under which it participates in the federal system," *Alfred L. Snapp & Son*, 458 U.S. at 607-08; *cf. Maine v. Taylor*, 477 U.S. 131, 137 (1986) ("[A] State clearly has a legitimate interest in the continued enforceability of its own statutes."); *Diamond v. Charles*, 476 U.S. 54, 65 (1986) ("Because the State alone is entitled to create a legal code, only the State has the kind of 'direct stake' . . . in defending the standards embodied in that code.").

The Fifth Circuit's decision in *Texas v. United States*, 809 F.3d 134, is instructive on this front. In that case, Texas led a coalition of States in a challenge to the Obama Administration's DAPA program. The Court held that the States had suffered a cognizable injury for purposes of standing because DAPA would have entitled its recipients to obtain driver's licenses under existing state law and providing those licenses would have come at a financial cost to Texas. *See id.* at 155-56. In denying a stay of the district court's preliminary injunction pending appeal, the Fifth Circuit cited *Alfred L. Snapp & Son*, explained that Texas possessed a sovereign interest in the maintenance of its own legal code, and held that "Texas's forced choice between incurring costs and changing its laws is an injury because those laws exist for the administration of a state program, not to challenge federal law, and Texas did not enact them merely to create standing." *Texas v. United States*, 787 F.3d 733, 749 (5th Cir. 2015). The court reasoned that "if pressure to change state law in some substantial way were not injury, States would have no standing to challenge *bona fide* harms because they could offset most financial losses by raising taxes or fees." *Id.* Several months later, the Fifth Circuit affirmed the preliminary injunction on the merits, reiterating and confirming its conclusions as to standing. The court held that "states may have standing based on . . . federal interference with the enforcement of state law, at least where the state statute at issue regulates behavior or provides for the administration of a state program and does not simply purport to immunize state citizens from federal law." *Texas*, 809 F.3d at

153 (alterations, footnotes, and internal quotation marks omitted). Such "intrusions," the court explained, "are analogous to pressure to change state law." *Id.*

Like the state plaintiffs in *Texas*, many Governmental Plaintiffs here have enacted their reliance on federal census data into law — in some cases, as noted, even into their constitutions. Moreover, as in *Texas*, "there is no allegation," let alone proof, that those jurisdictions enacted their laws or ratified their constitutions "to manufacture standing" in these cases. *Id.* at 159. If the census data is degraded (or even perceived to be degraded), these Plaintiffs will be subjected to a forced choice: They can use the degraded data, resulting in worse policy; they can spend money to compensate for the damage; or they can change their laws to relieve themselves of the legal obligation to use federal census data in making and enforcing their laws (which would presumably necessitate the expenditure of additional resources to collect data of their own anyway). Such "pressure[] to change state law constitutes an injury" within the meaning of Article III. *Texas*, 787 F.3d at 749; *see Texas*, 809 F.3d at 153. Accordingly, most, if not all, of the Governmental Plaintiffs have proved an imminent injury to their sovereign interests due to the degradation in quality of census data.

b. Diversion of Resources

Additionally, the risk that some hard to count population will not participate in census results in another form of injury: the diversion of resources. In *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 379 (1982), the Supreme Court held that an organization can establish Article III injury in fact by proving "concrete and demonstrable injury to [its] activities — with the consequent drain on [its] resources." *See also id.* at 379 n.21 (holding that an organization that proves it "has indeed suffered impairment" in its activities has proved an Article III injury); *Nnebe v. Daus*, 644 F.3d 147, 157 (2d Cir. 2011); *Ragin v. Harry Macklowe Real Estate Co.*, 6

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F.3d 898, 904-06 (2d Cir. 1993). In particular, "a nonprofit organization establishes an injury-in-fact if . . . it establishes that it spent money to combat activity that harms its organization's core activities." *Centro de la Comunidad Hispana de Locust Valley v. Town of Oyster Bay*, 868 F.3d 104, 111 (2d Cir. 2017) (internal quotation marks omitted). "An organization need only show a 'perceptible impairment' of its activities in order to establish injury in fact." *New York v. U.S. Dep't of Homeland Sec.*, 969 F.3d at 61 (quoting *Ragin*, 6 F.3d 898 at 905).

As they did in *New York v. U.S. Department of Commerce*, Defendants appear to suggest that *Havens Realty* recognizes Article III injuries arising from organizational expenditures only where those expenditures are made in response to injuries that are themselves sufficiently imminent and impending to satisfy Article III. *See* Defs.' Reply 3; Oral Arg. Tr. 42-43; *see also New York v. Dep't of Commerce*, 351 F. Supp. 3d at 616. Organizations asserting standing based on the diversion-of-resources theory do indeed need to "show that both the anticipated expenditures and ensuing harm to their organizations' activities are 'certainly impending,'" *Knife Rights, Inc. v. Vance*, 802 F.3d 377, 389 (2d Cir. 2015) (quoting *Clapper*, 568 U.S. at 409), lest these plaintiffs be permitted to "manufacture standing merely by inflicting harm on themselves based on their fears of hypothetical future harm," *Clapper*, 568 U.S. at 416. But that standard does not mean that a plaintiff must allege a second form of independently adequate injury in fact, which "would render the category of plaintiffs that could establish standing under a *Havens Realty* theory a null set" and make *Havens Realty* a dead letter. *New York v. Dep't of Commerce*, 351 F. Supp. 3d at 616. Instead, however "inexact" the standard may be, "courts are inclined to find standing if it can be said that there is no better time to resolve the issues raised by the parties — that is, when they will be in no better position later than now." *Young Advocates for Fair Educ. v. Cuomo*, 359 F. Supp. 3d 215, 237 (E.D.N.Y. 2019) (internal quotation marks omitted).

Plaintiffs satisfy these standards. First, Defendants do not dispute, and the Court has little trouble concluding, that the impairment alleged by NGO Plaintiffs goes to their core activities. *See, e.g.*, *Common Cause Ind. v. Lawson*, 937 F.3d 944, 955 (7th Cir. 2019) ("The Organizations in this case have shown that Act 442's effect on their work goes far beyond 'business as usual.' They have done so through concrete evidence showing that Act 442 is already disrupting their operations . . . ."); *OCA-Greater Hous. v. Texas*, 867 F.3d 604, 610 (5th Cir. 2017) ("The undisputed summary-judgment evidence established that [the plaintiff's] primary mission is voter outreach and civic education, particularly 'getting out the vote' among its members."). Each of the NGO Plaintiffs is primarily dedicated to serving and advocating for communities that have traditionally been undercounted by the census, and each is dedicated to promoting census participation in these communities. *See* Choi Decl. ¶¶ 3-6; Oshiro Decl. ¶¶ 2-5; Espinosa Decl. ¶¶ 2, 5-7; Khalaf Decl. ¶¶ 4-8; Seon Decl. ¶¶ 2-6; Torres Decl. ¶¶ 1, 5-11. In fact, several NGO Plaintiffs partner with the Census Bureau and/or state and local governments to promote census participation within these communicates. *See, e.g.*, Torres Decl. ¶ 11; Espinosa Supp. Decl. ¶ 6.

Second, Plaintiffs' uncontested declarations demonstrate that the NGO Plaintiffs have diverted resources in response to the Presidential Memorandum's chilling effects on participation in the census and the risks that poses for their members and their core activities. *See* Choi Decl. ¶¶ 14-27; Espinosa Decl. ¶¶ 14-17; Khalaf Decl. ¶¶ 8-16; Oshiro Decl. ¶¶ 15-17; Seon Decl. ¶¶ 17-19; Torres Decl. ¶¶ 2, 21-23; ECF No. 149-1 ("Awadeh Decl."), ¶¶ 4-5; Espinosa Supp. Decl. ¶¶ 7-8; Oshiro Supp. Decl. ¶¶ 2, 4; Seon Supp. Decl. ¶ 4.[10] For example, Steven Choi, the

[10] Plaintiffs provide evidence of similar resource diversions by similarly situated organizations, albeit not Plaintiffs here. *See* Banerji Decl. ¶¶ 5-6; Matos Decl. ¶¶ 9-14; Sivongxay Decl. ¶¶ 16-20, 23-24; ECF No. 76-51 ("Aranda-Yanoc Decl."), ¶ 8.

executive director of Plaintiff New York Immigration Coalition ("NYIC"), states that his organization had to develop new messaging and social media campaigns, and issue new member updates and press releases, to counter the Presidential Memorandum's contradiction of themes that had previously been core to NYIC's census outreach efforts. Choi Decl. ¶ 17. NYIC expects to increase staff time and spending by twenty percent over previously anticipated levels to achieve its census outreach and advocacy goals. *See id.* ¶ 21. Similarly, Plaintiff Ahri had to develop entirely new outreach materials, train staffers with new scripts, and respond to media inquiries; it expects to increase staff time and spending devoted to these efforts by fifteen percent as a result of the Presidential Memorandum. *See* Seon Decl. ¶¶ 17-19. Meanwhile, Plaintiffs ADC and ADRCI anticipate increasing staff time and spending devoted to Census efforts by approximately twenty-five percent as a result of the Memorandum, *see* Khalaf Decl. ¶ 14, and Plaintiff FIEL "anticipates having to divert approximately $5,000 from other mission critical programs and services to the 2020 Census education and outreach as a result of the Presidential Memorandum," Espinosa Decl. ¶ 15.

These resource diversions may not be large in absolute terms, but they constitute a "perceptible impairment" of the NGO Plaintiffs' activities and thus qualify as injuries in fact. *New York v. U.S. Dep't of Homeland Sec.*, 969 F.3d at 61 (internal quotation marks omitted); *see OCA-Greater Hous.*, 867 F.3d at 612 ("[T]he injury alleged as an Article III injury-in-fact need not be substantial; it need not measure more than an identifiable trifle." (internal quotation marks omitted)). In short, the NGO Plaintiffs "are dedicated to providing an array of legal and social services to non-citizens and they have expended significant resources to mitigate the [Presidential Memorandum's] impact on those they serve. In so doing, they have diverted resources that would otherwise have been available for other programming, a perceptible

opportunity cost that suffices to confer standing." *New York v. U.S. Dep't of Homeland Sec.*, 969 F.3d at 61 (internal quotation marks omitted); *see also Common Cause Ind.*, 937 F.3d at 952 ("According to the evidence put forward by the Organizations, Act 442 has created a culture of voter confusion, and it has already inflicted costs on them."); *OCA-Greater Hous.*, 867 F.3d at 612 ("[The plaintiff] went out of its way to counteract the effect of Texas's allegedly unlawful voter-interpreter restriction . . . with a view toward . . . mitigating its real-world impact on [the plaintiff's] members and the public . . . an undertaking that consumed its time and resources in a way they would not have been spent absent the Texas law. Hence, the Texas statutes at issue 'perceptibly impaired' OCA's ability to 'get out the vote' among its members.").

2. Traceability

Next, we have little trouble finding that these injuries in fact are fairly traceable to the Presidential Memorandum. Once again, the uncontested record and common sense satisfy Plaintiffs' burden. Plaintiffs demonstrate that the Presidential Memorandum's chilling effect on immigrant census participation is at least partially responsible for a degradation in the quality of census data. *See, e.g.*, ECF No. 76-24 ("Jimenez Decl."), ¶¶ 3-5 (explaining that the Memorandum's deterrence effect on immigrant household census participation will cause an undercount and a subsequent reduction in federal healthcare, infrastructure, and education funding for Plaintiff Monterey County); Salvo Decl. ¶ 12 (noting that the Presidential Memorandum "is likely to make the Census Bureau resort to less-reliable methods, including statistical imputation, more frequently in immigrant communities than it otherwise would" which will "result[] in poorer quality (less accurate) data both in terms of demographic characteristics as well as the actual count of persons"). NGO Plaintiffs have also made clear that the Presidential Memorandum is responsible for their diversion of resources; in other words, they are

expending resources they would not otherwise precisely because of the Presidential Memorandum. *See, e.g.*, Choi Decl. ¶¶ 20-21; Khalaf Decl. ¶¶ 14-15; Seon Decl. ¶ 17; Oshiro Supp. Decl. ¶¶ 3-4; Torres Decl. ¶¶ 22-23; Espinosa Supp. Decl. ¶ 4. This undisputed evidence satisfies Plaintiffs' burden to demonstrate the "*de facto* causality" that Article III demands. *Dep't of Commerce v. New York*, 139 S. Ct. at 2566 (internal quotation marks omitted).

In arguing otherwise, Defendants point out that Plaintiffs' theory of causation relies in part on the intervening actions of third-party actors, such as Spanish-language media disseminating information about the Presidential Memorandum. *See* Defs.' Mem. 16. "It makes little sense," they argue, "for Plaintiffs to attribute whatever harm is caused by those independent actors to the Memorandum itself, particularly if their messages convey the incorrect impression that the Memorandum increases the risk of individuals' information being linked to immigration records and those individuals facing immigration enforcement." *Id.* (internal quotation marks and alterations omitted). More broadly, they assert that Plaintiffs' injuries are traceable to the "macro environment" of fear in the immigrant and Hispanic communities that predated the Presidential Memorandum, not to the Memorandum itself. *Id.* at 15-19.

These arguments are unpersuasive. For one thing, they ignore entirely Plaintiffs' evidence that the Presidential Memorandum has deterred, and will continue to deter, people from participating in the census because they conclude "that they don't see a benefit in filling out the census form if they will not be counted." Pls.' Mem. 43 (internal quotation marks and alterations omitted); *see, e.g.*, Choi Decl. ¶ 17; Cullinane Decl. ¶ 9; Matos Decl. ¶¶ 11, 13; Oshiro Decl. ¶¶ 10-12; ECF No. 76-38 ("Roche Decl."), ¶ 9; Torres Decl. ¶ 19; Espinosa Supp. Decl. ¶¶ 5-6. For such people, the chain of causation between the Presidential Memorandum and non-participation has only a single link. Thus, Plaintiffs need not and do not rely on the

dissemination of information by third parties to establish that certain illegal aliens will plausibly — even rationally — decide not to participate based *directly* on a correct understanding of the Presidential Memorandum's import.

Second, as noted above, the Supreme Court has long made clear that the defendant's conduct need not be "the very last step in the chain of causation." *Bennett*, 520 U.S. at 169. Indeed, the traceability requirement may be met even where several steps on the causal chain stand between the defendant's conduct and the plaintiff's injury. *Davis v. Federal Election Commission*, 554 U.S. 724, for example, involved a challenge to a campaign finance law that increased campaign contribution limits for any candidate whose opponent's personal campaign expenditures exceeded his own by a certain amount. At the time of filing, the plaintiff was at least three steps away from suffering any concrete harm: He had to spend a sufficient amount of his own money; his opponent had to refrain from a comparable level of self-funding; and his opponent had to then take advantage of the law by accepting heightened contributions. Even so, the Court found that the plaintiff faced a "real, immediate, and direct [injury] . . . when he filed suit." *Id.* at 734. Notably, the Court deemed that assumption valid based on little more than evidence that "*most* candidates who had the opportunity to receive expanded contributions had done so." *Id.* at 735 (emphasis added). Moreover, the Court did not require proof that the government conduct had a coercive effect on the third party's action; evidence that allowed the Court to predict how the third party would likely act in response to the government action was sufficient. *See id.*; *see also Lujan*, 504 U.S. at 562 (noting that, when injury depends on the conduct of third parties, it is sufficient to show "choices have been or *will be* made in such manner as to produce causation and permit redressability" (emphasis added)); *Nat. Res. Def. Council*, 894 F.3d at 104-05 (finding "the agency's own pronouncements," as well as "[c]ommon

sense and basic economics," supported a conclusion that an "increased penalty has the potential to affect [third parties'] business decisions and compliance approaches" in a manner that would result in harm to the petitioners (internal quotation marks omitted)).

In light of these principles and cases, Defendants' arguments are unpersuasive. At the end of the day, they are little more than a rehash of Defendants' arguments in the citizenship question litigation, which were rejected. There, like here, Defendants argued that Plaintiffs' injuries were not "fairly traceable" to their conduct because the injuries depended on the intervening acts of third parties influenced by misinformation — namely, that the federal government could use their census answers for law enforcement and immigration enforcement purposes. *New York v. Dep't of Commerce*, 351 F. Supp. 3d at 623-24. There, like here, Defendants argued that Plaintiffs' injuries were not "fairly traceable" to their conduct because the injuries were attributable to an independently existing macro environment of fear permeating the immigrant and Hispanic communities. *Id.* at 621-22. Yet the Supreme Court rejected those arguments. As that Court reaffirmed, "Article III requires no more than *de facto* causality," a standard that is met where Government action has a "predictable effect . . . on the decisions of third parties." *Dep't of Commerce v. New York*, 139 S. Ct. at 2566 (internal quotation marks omitted). Here, as in the citizenship question litigation, Plaintiffs have proved that their injuries arise from the predictable effects of Government action, however rational or reasonable those effects may be.

3. Redressability

Finally, we conclude that Plaintiffs satisfy the redressability requirement as well. To be sure, Plaintiffs have not proved — and perhaps could not prove — that a favorable ruling would lead everyone who has decided, or will decide, not to participate in the census as a result of the

Presidential Memorandum to change course. But Plaintiffs' burden is not to show that a favorable court ruling would fully remedy the injuries that they have suffered or will suffer. Instead, they need show only that the "risk [of harm] would be reduced *to some extent* if [they] receive[] the relief they seek." *Massachusetts v. E.P.A.*, 549 U.S. at 526 (emphasis added); *see also CREW*, 953 F.3d at 194 (finding the redressability requirement satisfied because "it logically follows that relief would redress [the plaintiffs'] injury — at least to some extent"); *Parsons v. U.S. Dep't of Justice*, 801 F.3d 701, 716 (6th Cir. 2015) ("[I]t need not be likely that the harm will be *entirely* redressed, as partial redress can also satisfy the standing requirement.").

The Supreme Court's decision in *Massachusetts v. E.P.A.* is instructive. There, Massachusetts and other States challenged the EPA's decision not to regulate four greenhouse gases within the United States. On appeal, the Supreme Court held that the States had standing to challenge the EPA's decision based on their showing, through "unchallenged affidavits," that climate change was caused by greenhouse gases and caused various harms. 549 U.S. at 522. The Court did so despite the EPA's contention that there was no "realistic possibility" that the relief sought "would mitigate global climate change and remedy their injuries," particularly "because predicted increases in greenhouse gas emissions from developing nations" were "likely to offset any marginal domestic decrease." *Id.* at 523-24. The Court explained:

> While it may be true that regulating motor-vehicle emissions will not by itself *reverse* global warming, it by no means follows that we lack jurisdiction to decide whether EPA has a duty to take steps to *slow* or *reduce* it. Because of the enormity of the potential consequences associated with manmade climate change, the fact that the effectiveness of a remedy might be delayed . . . is essentially irrelevant. Nor is it dispositive that developing countries . . . are poised to increase greenhouse gas emissions substantially over the next century: A reduction in domestic emissions would slow the pace of global emissions increases, no matter what happens elsewhere.

Id. at 525-26 (citation and footnote omitted). Notably, the Court did not demand empirical proof that the remedy sought would have any marginal effect on global warming. The causal

connection between greenhouse gases and climate change, combined with the EPA's "ardent support for various voluntary emission-reduction programs" (with which the "EPA would presumably not bother . . . if it thought emissions reductions would have no discernable impact on future global warming"), was enough. *Id.* at 526 (internal quotation marks omitted). Because the relief sought would reduce the risk of injury "to some extent," the States had standing. *Id.*

Here too, Plaintiffs' uncontested affidavits show that the relief they seek — a declaration that the Presidential Memorandum is unlawful and an injunction barring any effort to implement it — would reduce "to some extent" their risk of suffering injuries relating to the census. If anything, the record here provides even more support for a finding of redressability than the record in *Massachusetts v. E.P.A.* did. First, as discussed above, Plaintiffs have provided proof that there are likely people who have decided, or will decide, not to participate in the census for the simple reason that, under the Presidential Memorandum, they will not count for apportionment purposes. A court order invalidating the Presidential Memorandum would redress that harm in a straightforward manner. *See, e.g.*, *Carpenters Indus. Council*, 854 F.3d at 6 n.1 (Kavanaugh, J.) ("[I]f a government action causes an injury, enjoining the action usually will redress that injury."). Second, Plaintiffs' uncontested declarations provide evidence supporting a finding of redressability. Plaintiff Ahri, for example, explains that the injunction barring the citizenship question was useful in quelling concerns in the community it serves and that an order granting relief in this case would similarly make its census outreach efforts more efficient and effective. Seon Supp. Decl. ¶¶ 4-7; *see also* Oshiro Supp. Decl. ¶ 5; Espinosa Supp. Decl. ¶ 8. And Plaintiffs submit an expert report noting that injunctions barring implementation of other immigration-related executive actions have had "measurable consequences on promoting trust among immigrant communities and influencing behavioral interactions with various aspects of

government." *See* Barreto Decl. ¶¶ 66-69. In short, we find that Plaintiffs' requested relief would "likely . . . at least diminish further instance of" Plaintiffs' census-related harms. *CREW*, 953 F.3d at 194. Indeed, "[b]ecause Plaintiffs have successfully alleged" that these harms are "ongoing, it logically follows that relief would redress their injury — at least to some extent, which is all that Article III requires." *Id.*

Only two of Defendants' counterarguments warrant further discussion. First, Defendants maintain that Plaintiffs' census-related injuries would not be remedied by a ruling in Plaintiffs' favor because the alleged "'macro environment' of mistrust around immigration" would remain. Defs.' Mem. 19. But that is akin to the argument the EPA made, and the Supreme Court rejected, in *Massachusetts v. E.P.A.*: that granting relief would not remedy the States' injuries because there were other, independent causes for those injuries — namely, the emissions of developing nations — that would persist. *See* 549 U.S. at 524. Put differently, the mere fact that the Presidential Memorandum causes only incremental harms, and that there are other causes of those same harms, does not defeat a finding of redressability. *See id.* ("EPA overstates its case. Its argument rests on the erroneous assumption that a small incremental step, because it is incremental, can never be attacked in a federal judicial forum.").

Second, Defendants suggest that Plaintiffs cannot show redressability because "appellate review would likely last well past the end of the conduct of the census." Defs.' Reply 4. Conspicuously, however, Defendants cite no authority for the novel proposition that the availability of higher court review and the possibility of reversal can render a dispute nonjusticiable. Taken to its logical conclusion, that argument would suggest that a plaintiff could never obtain emergency relief in the face of a looming deadline. Far from rejecting such claims, courts routinely hear them on an expedited basis (as we have done here). *See, e.g.*,

League of Women Voters of N. Carolina v. North Carolina, 769 F.3d 224, 247 (4th Cir. 2014) (noting that in the election context, "once the election occurs, there can be no do-over and no redress" making "injur[ies] to . . . voters real and completely irreparable if nothing is done"). Finally, it bears mentioning that it is *Defendants' own conduct* that has put Plaintiffs in such a precarious position. The President could have issued his Presidential Memorandum well before the census began, in which case Plaintiffs would have had ample time to obtain a definitive ruling on their claims to preempt any chilling effect. Or he could have waited until census operations were over, in which case there would have been no risk of the census-related harms that Plaintiffs seek to remedy. Instead, for unknown reasons, the President waited more than a year after the Supreme Court rejected the citizenship question to issue his Presidential Memorandum, at which point the census was (and still is) in full swing. It would be perverse to conclude that, through their own conduct, Defendants could prevent Plaintiffs from even obtaining a hearing on their claims.

4. Conclusion

In the final analysis, "the gist of the question of standing" (and constitutional ripeness) "is whether [the plaintiffs] have 'such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination.'" *Massachusetts v. E.P.A.*, 549 U.S. at 517 (quoting *Baker v. Carr,* 369 U.S. 186, 204 (1962)). That is, the standing requirement "preserves the vitality of the adversarial process by assuring both that the parties before the court have an actual, as opposed to professed, stake in the outcome, and that the legal questions presented . . . will be resolved, not in the rarified atmosphere of a debating society, but in a concrete factual context conducive to a realistic appreciation of the consequences of judicial action." *Id.* (quoting *Lujan*,

504 U.S. at 581 (Kennedy, J., concurring). Based on our thorough review of the record — including the uncontested declarations submitted in support of Plaintiffs' motion — and the well-established standards for determining whether a plaintiff has standing, we are confident we have jurisdiction to proceed.[11]

D. Prudential Ripeness

As noted, Defendants also invoke the prudential ripeness doctrine. *See* Defs.' Mem. 6-10; Defs.' Reply 1-2. Unlike standing and constitutional ripeness, prudential ripeness does not relate to the Court's jurisdiction. Instead, "when a court declares that a case is not prudentially ripe, it means that the case will be *better* decided later and that the parties will not have constitutional rights undermined by the delay." *Simmonds*, 326 F.3d at 357. The "ripeness requirement is designed 'to prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements over administrative policies, and also to protect the agencies from judicial interference until an administrative decision has been formalized and its effects felt in a concrete way by the challenging parties.'" *Ohio Forestry*

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[11] Defendants do not argue that we should engage in a zone-of-interests analysis, which the Supreme Court has sometimes described as a component of "prudential standing." *Lexmark Int'l*, 572 U.S. at 127 n.3. Accordingly, they have waived the argument. *See Fed. Defs. of N.Y., Inc. v. Fed. Bureau of Prisons*, 954 F.3d 118, 128 (2d Cir. 2020) (holding, after *Lexmark*, that the zone-of-interests test is not jurisdictional); *see also, e.g.*, *Young v. Conway*, 698 F.3d 69, 85 (2d Cir. 2012) ("It is well-settled that non-jurisdictional arguments and defenses may be waived . . . ."). In any event, in light of *Lexmark*'s observation that "the zone-of-interests analysis . . . asks whether this particular class of persons has a right to sue under this substantive statute" and "whether a *legislatively conferred* cause of action encompasses a particular plaintiff's claim," 572 U.S. at 127 (emphasis added) (alterations, citations, and internal quotation marks omitted), we doubt that it has any application here, as the claims on which Plaintiffs move are constitutional and equitable in nature. *See, e.g.*, *Sierra Club v. Trump*, 929 F.3d 670, 700-02 (9th Cir. 2019).

Ass'n, Inc. v. Sierra Club, 523 U.S. 726, 732-33 (1998) (quoting *Abbott Labs. v. Gardner*, 387 U.S. 136, 148-49 (1967)); *see Nat'l Org. for Marriage*, 714 F.3d at 691.[12]

"To determine whether to abstain from a case on prudential ripeness grounds, we proceed with a two-step inquiry," evaluating "both the fitness of the issues for judicial decision and the hardship to the parties of withholding court consideration." *Nat'l Org. for Marriage*, 714 F.3d at 691 (internal quotation marks omitted). The first step of the inquiry "is concerned with whether the issues sought to be adjudicated are contingent on future events or may never occur." *N.Y. Civil Liberties Union v. Grandeau*, 528 F.3d 122, 132 (2d Cir. 2008) (internal quotation marks and alterations omitted). "In assessing th[e] possibility of hardship, we ask whether the challenged action creates a direct and immediate dilemma for the parties." *Id.* at 134 (internal quotation marks omitted). The two-step inquiry requires consideration, in turn, of three factors: "(1) whether delayed review would cause hardship to the plaintiffs; (2) whether judicial intervention would inappropriately interfere with further administrative action; and (3) whether the courts would benefit from further factual development of the issues presented." *Ohio Forestry Ass'n*, 523 U.S. at 733.

Considering these factors here, we conclude that the test for prudential ripeness is "easily satisfied." *Susan B. Anthony List*, 573 U.S. at 167. First, given that Plaintiffs' alleged census-related harms are occurring now, and can be remedied only if we rule on their claims before census operations conclude in a matter of days or weeks, delaying review would cause Plaintiffs

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[12] In recent years, the Supreme Court has cast doubt on the "continuing vitality of the prudential ripeness doctrine," on that ground that it "'is in some tension with . . . the principle that a federal court's obligation to hear and decide cases within its jurisdiction is virtually unflagging." *Susan B. Anthony List*, 573 U.S. at 167 (internal quotation marks omitted). But because neither the Supreme Court nor the Second Circuit has abandoned the doctrine yet, we are bound to consider Defendants' arguments here.

grave hardship. *See Chamber of Commerce of U.S. v. Reich*, 57 F.3d 1099, 1100 (D.C. Cir. 1995) (per curiam) (finding a challenge to an Executive Order announcing a policy of the executive branch ripe where "the injury alleged . . . [is that] the mere existence of the Order alters the balance of bargaining power between employers and employees by creating a disincentive for employers to hire replacement workers"). Justice delayed would indeed be justice denied. Moreover, because there are no do-overs for the census, the adverse consequences of that delay could resonate for a decade, until the next decennial census. Second, although Defendants assert in conclusory fashion that judicial intervention "would inappropriately interfere with the Bureau's ongoing process by hindering agency efforts to refine its policies and to apply its expertise," Defs.' Reply 2 (internal quotation marks omitted), that assertion borders on frivolous. On its face, the Presidential Memorandum does not purport to regulate the actual conduct of the census, *see* Presidential Memorandum, 85 Fed. Reg. at 44,679 ("Excluding Illegal Aliens From the Apportionment Base *Following* the 2020 Census" (emphasis added)), and Defendants themselves concede that it "does *not* affect how the Census Bureau is conducting its remaining enumeration operations," Defs.' Mem. 12. Moreover, as discussed below, relief can be crafted to minimize, if not eliminate, interference with administrative action. And finally, although the standing-related question of whether or to what extent Plaintiffs would suffer apportionment-related harms would benefit from further factual development, the gravamen of Plaintiffs' claims — that the President lacks the authority to exclude illegal aliens from the apportionment base — "presents an issue that is 'purely legal, and will not be clarified by further factual development.'" *Susan B. Anthony List*, 573 U.S. at 167 (quoting *Thomas,* 473 U.S. at 581).

Thus, we conclude there is no basis to defer consideration of Plaintiffs' claims on ripeness ground. The fact that the Presidential Memorandum contains something akin to a "savings clause" — namely, that it is "the policy of the United States to exclude" illegal aliens from the apportionment base "*to the maximum extent feasible and consistent with the discretion delegated to the executive branch*," Presidential Memorandum, 85 Fed. Reg. at 44,680 (emphasis added) — does not alter that conclusion. Where, as here, the President's proclamation "unambiguously commands action" such that "there is more than a 'mere possibility that some agency might make a legally suspect decision,'" such a "savings clause does not and cannot override" the proclamation's "meaning." *City & Cty. of San Francisco v. Trump*, 897 F.3d 1225, 1240 (9th Cir. 2018) (quoting *Bldg. & Const. Trades Dep't, AFL-CIO v. Allbaugh*, 295 F.3d 28, 33 (D.C. Cir. 2002)). Indeed, savings clauses must be "read in their context, and they cannot be given effect when the Court, by rescuing the . . . measure, would override clear and specific language." *Id.* at 1239. In this case, the President explicitly declares that "it is the policy of the United States to exclude" illegal aliens "from the apportionment base," an unambiguous directive that, as discussed above, is having immediate and ongoing effects. Moreover, the Presidential Memorandum mandates that this policy be effected "*to the maximum extent*" feasible and consistent with law. Presidential Memorandum, 85 Fed. Reg. at 44,680 (emphasis added). Given that "a presumption of regularity attaches to the actions of Government agencies," *U.S. Postal Serv. v. Gregory*, 534 U.S. 1, 10 (2001), we must and do presume that the Secretary and the Census Bureau will abide by the President's directives and work diligently to help exclude illegal aliens from the apportionment base to the maximum extent possible. Whether doing so would be a lawful exercise of the President's authority is a pure legal question that can be addressed now.

BC-DOC-CEN-2020-001602-000950

THE MERITS

In their motion, Plaintiffs seek relief on two grounds: first, they argue that the Presidential Memorandum violates Article I and the Fourteenth Amendment to the Constitution; and second, they contend that it constitutes an *ultra vires* violation of the laws governing the census and apportionment. Pls.' Mem. 1-2. On the latter front, Plaintiffs insist that the Presidential Memorandum exceeds the powers delegated by Congress in 13 U.S.C. § 141 and 2 U.S.C. § 2a in at least two ways: (1) because it contemplates calculating apportionment using tabulations other than those produced by the census and (2) because it seeks to exclude illegal aliens from the apportionment base regardless of whether they are "persons in" a "State" as those terms are used in Section 2a(a). *Id.* at 27-36.

Although Plaintiffs urge us to decide both their constitutional claims and their statutory claims, and the parties focus mostly on the constitutional issues, courts have long been admonished not to "pass upon a constitutional question although properly presented by the record, if there is also present some other ground upon which the case may be disposed of." *Ashwander v. TVA,* 297 U.S. 288, 347 (1936) (Brandeis, J., concurring); *accord Slack v. McDaniel*, 529 U.S. 473, 485 (2000); *House of Representatives*, 525 U.S. at 343-44. Accordingly, we begin — and, as it turns out, end — with Plaintiffs' statutory claims. In doing so, of course, "we start with the text of the statute." *Babb v. Wilkie*, 140 S. Ct. 1168, 1172 (2020). "Where the statute's language is plain, the sole function of the courts is to enforce it according to its terms." *United States v. Kozeny*, 541 F.3d 166, 171 (2d Cir. 2008) (internal quotation marks omitted). We may look to legislative history and other tools of statutory construction if the statutory terms are ambiguous or "to corroborate and fortify our

understanding of the text." *Dig. Realty Tr., Inc.* v. *Somers*, 138 S. Ct. 767, 783 (2018) (Sotomayor, J., concurring).

A. Apportionment Must Be Based on the Results of the Census Alone

Plaintiffs' first argument is that the Presidential Memorandum violates the statutes governing the census and apportionment by producing apportionment figures that are not based solely on the decennial census. This argument relies on the interplay between Section 141 and Section 2a. Subsection (a) of the former requires the Secretary to conduct the "decennial census of population." 13 U.S.C. § 141(a). Subsection (b) then requires the Secretary to report to the President "[t]he tabulation of total population by States under subsection (a) of this section" — that is, *under* the "decennial census" — "as required for the apportionment of Representatives in Congress." *Id.* § 141(b). Section 2a(a), in turn, requires the President to transmit to Congress "a statement showing the whole number of persons in each State . . . as ascertained under the . . . decennial census of the population, and the number of Representatives to which each State would be entitled . . . by the method known as the method of equal proportions . . . ." 2 U.S.C. § 2a(a). By its terms, therefore, Section 141 calls for the Secretary to report a single set of numbers — "[t]he tabulation of total population by States" under the "decennial census" — to the President. And Section 2a, in turn, "expressly require[s] the President to use . . . the data from the 'decennial census'" in determining apportionment. *Franklin*, 505 U.S. at 797. That is, once the final decennial census data is in hand, the President's role is purely "ministerial." *Id.* at 799.

Legislative history and the longstanding understanding of the Executive Branch itself confirm that the Secretary's "tabulation," and the President's apportionment calculations, must be based on decennial census data alone. Significantly, the statutes first took their current form

in 1929, after a decade-long stalemate over the method for calculating the reapportionment following the 1920 census. *See id.* at 791-92. Congress responded to this problem by creating an "automatic reapportionment" scheme that would be "virtually self-executing." *Id.* at 792. In particular, the scheme created an "automatic connection between the census and the reapportionment"; indeed, that was "*the* key innovation of the Act." *Id.* at 809 (Stevens, J., concurring in part and concurring in the judgment) (emphasis added). The Senate Report accompanying the bill explained in reference to the next census:

> The census would be taken in November, 1929. One year later, *with these figures in hand*, the President would report *the census figures*, together with a table showing how, *under these figures*, the House would be apportioned . . . pursuant to a purely ministerial and mathematical formula . . . . Precisely the same process would protect reapportionment in each subsequent decennium.

S. Rep. No. 71-2, at 4 (1929). Along similar lines, the House Report explained that, under the bill, "the House is reapportioned in accordance with the tabulation transmitted by the Secretary of Commerce . . . ; the tabulations transmitted to Congress are on the basis of the 1930 census . . . ." H. Rep. No. 70-2010, at 4 (1929); *see also id.* at 7 (explaining that the Secretary, to whom the bill also originally assigned the task of reapportionment later assigned to the President, "is left with no discretionary power. He must use absolutely, without deviation, the population of each State *as gathered and reported by the Director of the Census*." (emphasis added)).[13]

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[13] Although we are wary of relying too heavily on floor statements by members of Congress, it is worth noting that Senator Vandenberg of Michigan, the principal sponsor the bill, reaffirmed that the legislation required the President "to report the result of a census" and to apply the reapportionment formula to "the result of the census." 71 Cong. Rec. 1613 (1929) (statement of Sen. Vandenberg). Elsewhere, he and Senator Walsh of Montana confirmed in a colloquy with Senator Swanson of Virginia "that the President is bound and has no discretion" but "to make the apportionment *according to the census*." *Id.* at 1845 (statement of Sen. Swanson) (emphasis added).

Similarly, its position in this litigation notwithstanding, the Department of Justice (the "Justice Department" or "DOJ") has long adhered to the view that the President's statement to Congress regarding apportionment has to be based solely on the tabulation of total population produced by the census. As the Justice Department explained more than forty years ago in *Federation for American Immigration Reform (FAIR) v. Klutznick*, "every inhabitant of a state the Census counts is included in the apportionment base. . . . The total resident population of the states is the apportionment base." Defs.' Reply Mem. & Opp'n at 11, 486 F. Supp. 564 (D.D.C. 1980) (No. 79-CV-3269), 1980 WL 683642, at *7 (citing H.R. Rep. No. 91-1314 (1970)).[14] Along similar lines, the Government acknowledged during oral argument in *Franklin v. Massachusetts* that "[t]he law directs [the President] to apply, of course, a particular mathematical formula to the population figures he receives" and that "[i]t would be unlawful . . . just to say, these are the figures, they are right, but I am going to submit a different statement." Oral Arg. Tr. at 12, *Franklin v. Massachusetts*, 505 U.S. 788 (No. 91-1502). "I think under the law he is supposed to base his calculation on the figures submitted by the Secretary." *Id.* at 13; *see also*, Reply Br. Appellants, *Franklin*, 505 U.S. 788 (No. 91-1502), 1992 WL 672612, at *15 (Apr. 20, 1992) ("[T]he method of equal proportions calls for application of a set mathematical formula to the state population totals *produced by the census*." (emphasis added)).

In short, this history confirms our reading of the statutes' plain terms: The Secretary is required to report a single set of figures to the President — namely, "[t]he tabulation of total

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[14] The House Report to which DOJ cited noted unambiguously that "the enumerated decennial census population is the basis for the apportioning of [the House] among the several States." H.R. Rep. No. 91-1314, at 3 (1970). Elsewhere, it summarized the three "elements" of the President's statement under Section 2a(a): "(1) The population of each State *as determined by the decennial census*; (2) The existing total number of Representatives (435); and (3) The apportionment which results from using a mathematical method known as the method of equal proportions." *Id.* at 2 (emphasis added).

population by States" under the "decennial census" — and the President is then required to use those same figures to determine apportionment using the method of equal proportions.

The Presidential Memorandum deviates from, and thus violates, these statutory requirements. Whereas the statute calls for the Secretary to include only the census figures in his report to the President, the Presidential Memorandum mandates that the Secretary provide a second set of figures as well: namely, the population of each State "exclud[ing]" illegal aliens. Presidential Memorandum, 85 Fed. Reg. at 44,680. The Presidential Memorandum leaves it to the Secretary how to come up with those figures, but they will necessarily be derived from something other than the census itself, as the 2020 census is not gathering information concerning citizenship or immigration status, and the 2020 census itself is counting illegal aliens. *See* Order at 1-2, *New York v. Dep't of Commerce*, 18-CV-2921 (JMF), ECF No. 653 (permanently enjoining the inclusion of a citizenship question on the 2020 census questionnaire); *see also* Presidential Memorandum, 85 Fed. Reg. at 44,680 (noting that "data on illegal aliens . . . relevant for the purpose of conducting the apportionment" may be available as a result of Executive Order 13880, which directed executive agencies "to share information with the Department of Commerce" regarding "the number of citizens, non-citizens, and illegal aliens in the country"). By doing so, the Presidential Memorandum violates Congress's mandate to use the results of the census — and only the results of the census — in connection with the apportionment process and the counting of them in the census pursuant the Residence Rule.

In arguing otherwise, Defendants rely almost exclusively on the Supreme Court's decision in *Franklin*, *see* Defs.' Mem. 40-42; Oral Arg. Tr. 48-54, but that reliance is misplaced. In *Franklin*, the plaintiffs brought two discrete challenges, one a constitutional challenge to the formula used in connection with reapportionment and one a challenge under the Constitution and

the APA to the conduct of the census — specifically, to the Census Bureau's decision to count federal employees serving overseas as residents of the State listed as their home of record in their personnel files. *See Massachusetts v. Mosbacher*, 785 F. Supp. 230, 233 (D. Mass. 1992). A three-judge district court rejected the first challenge, but agreed with the second. *See id.* at 267-68. On appeal from the latter ruling alone, the Supreme Court reversed. With respect to the plaintiffs' constitutional claim, the Court held that the Secretary's judgment "that many federal employees temporarily stationed overseas had retained their ties to the States and could and should be counted toward their States' representation in Congress" was "consonant with, though not dictated by, the text and history of the Constitution." *Franklin*, 505 U.S. at 806. With respect to the plaintiffs' APA claim, the Court held that the decision could not be challenged because the only final action affecting the States was the President's Section 2a(a) statement and the President does not qualify as an "agency" for purposes of the APA. *See id.* at 796-801. The Secretary's Section 141(b) report, the Court explained, "carries no direct consequences for the reapportionment" and, thus, "serves more like a tentative recommendation than a final and binding determination." *Id.* at 798.

While addressing the question of whether the plaintiffs could bring a claim under the APA, the Court described the interplay between Section 2a and Section 141:

> After receiving the Secretary's report, the President is to "transmit to the Congress a statement showing the whole number of persons in each State . . . as ascertained under the . . . decennial census of the population." 2 U.S.C. § 2a(a). Section 2a does not expressly require the President to use the data in the Secretary's report, but, rather, the data from the "decennial census." There is no statute forbidding amendment of the "decennial census" itself after the Secretary submits the report to the President. For potential litigants, therefore, the "decennial census" still presents a moving target, even after the Secretary reports to the President. . . . Moreover, there is no statute that rules out an instruction by the President to the Secretary to reform the census, even after the data are submitted to him. It is not until the President submits the information to Congress

> that the target stops moving, because only then are the States entitled by § 2a to a particular number of Representatives.

505 U.S. at 797-98. The Court acknowledged that the President's role under Section 2a was "admittedly ministerial," but that "d[id] not answer the question whether the apportionment is foreordained by the time the Secretary gives her report to the President." *Id.* at 799. Put simply, the Court concluded, "§ 2a does not curtail the President's authority" — pursuant to "his accustomed supervisory powers over his executive officers" — "to direct the Secretary in making policy judgments that result in 'the decennial census'; he is not expressly required to adhere to the policy decisions reflected in the Secretary's report." *Id.* at 799-800.

Defendants seize on this language to argue that the President has discretion to define who should be considered inhabitants — or "persons in each State," 2 U.S.C. § 2a(a); *see* U.S. Const. Art. I § 2, cl. 3 — for purposes of the census. Presidential Memorandum, 85 Fed. Reg. at 44,679; *see* Defs.' Mem. 40-42; Def. Reply 9-10; Oral Arg. Tr. 47. That may or may not be true — we address it below — but it is beside the point for present purposes. *Franklin* does not suggest, let alone hold, that the President has authority to use something other than the census when calculating the reapportionment; indeed, the Court did not even consider the plaintiffs' challenge to the apportionment. At most, *Franklin* establishes that the President retains his "usual superintendent role" with respect to the conduct of the census — and can direct the Secretary to make "policy judgments *that result in 'the decennial census.'*" *Id.* at 799-800 (emphasis added); *see also id.* at 797-98 (referring to "amendment of the 'decennial census' itself" and "instruction by the President to the Secretary to reform the census").[15] But by

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[15] Thus, defense counsel is wrong in suggesting that the *Franklin* Court blessed the use of a tabulation that was based on both the census and "separate records outside the census." Oral Arg. Tr. 52. The overseas personnel were counted as part of the census itself, resulting in a single "tabulation of total population by States" under the "decennial census." 13 U.S.C. § 141(a)-(b). That they were counted using administrative records rather than a questionnaire is

Defendants' own admission, that is not what the President did here. *See, e.g.*, Joint Pre-Conference Ltr. 5 ("Plaintiffs are not challenging some procedure that will be used in the actual census, but an apportionment number that will be chosen by the President after the census is complete."); Defs.' Mem. 12 ("[T]he Memorandum does *not* affect how the Census Bureau is conducting its remaining enumeration operations . . . ."); ECF No. 120 (Decl. of Albert E. Fontenot, Jr.) ¶ 12 ("The Presidential Memorandum . . . has had no impact on . . . the Census Bureau's commitment to count each person in their usual place of residence, as defined in the [Residence Rule].").

In short, contrary to Defendants' arguments, the statutory scheme enacted by Congress does not give the President authority to "choose" any set of numbers he wants "to plug into the 'method of equal proportions.'" Defs.' Mem. 42. Instead, Congress mandated that the President use a specific set of numbers — those produced by the decennial census itself — for purposes of the reapportionment. By deviating from that mandate, the Presidential Memorandum exceeds the authority of the President and constitutes an *ultra vires* violation of the statutes.

B. The Apportionment Base Cannot Exclude Illegal Aliens Who Reside in a State

The Presidential Memorandum also deviates from Section 2a(a) in defining "the whole number of persons in each State" to categorically exclude illegal aliens residing in each State. Once again, we begin with the plain language of the statute. Defendants do not dispute — in the Presidential Memorandum or in their briefs — that illegal aliens are "persons" within the meaning of the Section 2a(a), and for good reason. The ordinary meaning of the word "person" is "human" or "individual" and surely includes citizens and non-citizens alike. *See Plyler v.*

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of no moment, as Section 141(a) broadly delegates to the Secretary the authority to conduct the census "in such form . . . as he may determine." *Id.* § 141(a).

Doe, 457 U.S. 202, 210 (1982) ("Whatever his status under the immigration laws, an alien is surely a 'person' in any ordinary sense of that term."). Moreover, the U.S. Code is filled with other statutes that use terms that plainly exclude illegal aliens, such as "citizen" or "alien lawfully admitted." *E.g.*, 5 U.S.C. § 552a(a)(2). "Congress thus distinguishes between a 'citizen' and 'any person' when it wishes to do so." *O'Rourke v. U.S. Dep't of Justice*, 684 F. Supp. 716, 718 (D.D.C. 1988) (holding that the phrase "any person" in the Freedom of Information Act, 5 U.S.C. §§ 551 *et seq.*, includes non-citizens); *accord Stone v. Exp.-Imp. Bank of U. S.*, 552 F.2d 132, 136 (5th Cir. 1977); *see also, e.g.*, *Suzlon Energy Ltd. v. Microsoft Corp.*, 671 F.3d 726, 729 (9th Cir. 2011) (holding that "any person" in the Electronic Communications Privacy Act, 18 U.S.C. §§ 2510 *et seq.*, "means any person, including foreign citizens").

Instead, Defendants hang their hats on the four-word phrase "persons in each State." Presidential Memorandum, 85 Fed. Reg. at 44,679; *see* Defs.' Mem. 2, 29-30; Defs.' Reply 11. That phrase, they argue, has been construed to mean "inhabitants" or to turn on "usual residence," terms that are not self-defining and call for "the exercise of judgment." Presidential Memorandum, 85 Fed. Reg. at 44,679. That is true enough. *See Franklin*, 505 U.S. at 803-05 (noting that, since 1790, Congress and the Census Bureau have used words such as "inhabitant" and "[u]sual residence" to "describe the required tie to the State" and that defining the metes and bounds of these terms are not always clear). But it does not follow that illegal aliens — a category defined by legal status, not residence — can be excluded from the phrase. To the contrary, the ordinary definition of the term "inhabitant" is "one that occupies a particular place regularly, routinely, or for a period of time." *See* MERRIAM-WEBSTER'S COLLEGE DICTIONARY 601 (10th ed. 1997). And however ambiguous the term may be on the margins, it surely

encompasses illegal aliens who live in the United States — as millions of illegal aliens indisputably do, some for many years or even decades.[16]

The Presidential Memorandum provides two examples to support its conclusion that "[t]he discretion delegated to the executive branch to determine who qualifies as an 'inhabitant' includes authority to exclude from the apportionment base aliens who are not in a lawful immigration status," Presidential Memorandum, 85 Fed. Reg. at 44,679, but neither is remotely convincing. First, the Memorandum notes that "aliens who are only temporarily in the United States, such as for business or tourism, and certain foreign diplomatic personnel are 'persons' who have been excluded from the apportionment base." *Id.* True enough, but that is not based on their legal status. Instead, it is based on the fact that the United States is not their "usual residence." (Indeed, that is reflected in the Residence Rule.) Second, the Memorandum points to the fact that "overseas Federal personnel have, at various times, been included in" the apportionment base. *Id.* Once again, true enough. (Indeed, that was the issue in *Franklin*.) But that is based on the fact that the terms "usual residence" and "inhabitant" have "been used

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[16] Defendants argue that it is Plaintiffs' burden to show "that there is *no* category of illegal aliens that may be lawfully excluded from the apportionment," Defs.' Mem. 39, and suggest that Plaintiffs cannot meet that burden because some categories of illegal aliens (e.g., aliens residing in a detention facility after being arrested while crossing the border) can be lawfully excluded, *see id.* at 27. But the examples Defendants proffer are arguably excluded (or excludable) based on their "usual residence," not their legal status. In any event, Defendants cite no authority for applying the standards for facial challenges to the constitutionality of statutes to claims, like those here, that the President has exceeded the authority granted to him by Congress. Indeed, that arguably gets it backwards: If the President goes outside the bounds of the authority granted to him by Congress, a court's power to grant relief should not depend on how far outside the bounds he went. Notably, courts considering similar claims have not approached them in the manner Defendants propose. *See, e.g.*, *Hawaii v. Trump*, 878 F.3d 662, 690-92 (9th Cir. 2017) (concluding that a presidential proclamation exceeded the President's delegated authority under the Immigration and Nationality Act), *rev'd and remanded on other grounds*, 138 S. Ct. 2392 (2018); *Chamber of Commerce of U.S. v. Reich*, 74 F.3d 1322, 1324, 1337-39 (D.C. Cir. 1996) (concluding that an executive order announcing a "policy of the executive branch" was *ultra vires* and invalid).

broadly enough to include some element of allegiance or enduring tie to a place" and to "include 'persons absent occasionally for a considerable time on public or private business.'" *Franklin*, 505 U.S. at 804-05 (quoting 2 THE RECORDS OF THE FEDERAL CONVENTION OF 1787, at 217 (Max Farrand ed., rev. ed. 1966) (statement of James Madison)). It is simply a non sequitur to suggest, as the Presidential Memorandum does, that just because the phrase "persons in each State" can be construed to *include* people who are "temporarily stationed abroad" but "retain[] their ties to the States," *id.* at 806, it can also be construed to *exclude* people who indisputably inhabit or reside in a State.

Defendants are on no firmer ground in arguing that illegal aliens can be excluded from "the whole number of persons in each State," as that phrase is used in Section 2a, because they "may be removed from the country at any time." Defs.' Mem. 39. A person living in a State but facing future removal is no less a "person[] in that State," Defs.' Reply 4 (internal quotation marks and alteration omitted), than someone living in the State without the prospect of removal. Moreover, many people in immigration custody or removal proceedings actually have *lawful* immigration status, *see, e.g.*, *Ragbir v. Homan*, 923 F.3d 53, 57-58 (2d Cir. 2019), and their placement in custody or removal proceedings does not necessarily render them unlawfully present. Notably, data reveal that immigration judges ultimately allow many aliens in custody or removal proceedings to remain in the United States. *See Immigration Judges Decide 57 Percent Entitled to Remain in U.S.*, TRAC IMMIGRATION (Aug. 17, 2016), https://trac.syr.edu/immigration/reports/435/. And many people initially designated as "undocumented" — including many intercepted at the border — ultimately obtain lawful status, such as asylum. *See* EXEC. OFFICE FOR IMMIGRATION REVIEW, U.S. DEP'T OF JUSTICE, STATISTICS YEARBOOK FISCAL

YEAR 2018, at 27 (2019), https://www.justice.gov/eoir/file/1198896/download. Nothing in Section 2a turns on such fluctuations and nuances in legal status.

Once again, legislative history and settled practice confirm our conclusion that "persons in each State" turns solely on residency, without regard for legal status. In looking to legislative history, we look not to the history surrounding the framing of the Constitution or the Reconstruction Amendments, even though the words in the statute mirror those in Article I and the Fourteenth Amendment. Instead, we look to 1929, when Section 2a was enacted and the words "whole number of persons in each State" entered the statutory lexicon. *See* Act of June 18, 1929, Pub. L. No. 71-13 § 22, 46 Stat. 21, 26. That is because our task is to interpret the statute itself, and we do so "in accord with the ordinary public meaning of its terms at the time of its enactment." *Bostock v. Clayton Cty.*, 140 S. Ct. 1731, 1738 (2020). That is not to say that the constitutional language is irrelevant to our task: The drafters of Section 2a used the same words as those in the Constitution, so their understanding of the constitutional language sheds light on their understanding — and the "ordinary public meaning" — of the statutory text "at the time of its enactment." *Id.* But it is their *understanding* of the constitutional language, *not* whether their understanding was correct (on which we need and do not opine), that matters. *Cf. Parker Drilling Mgmt. Servs., Ltd. v. Newton*, 139 S. Ct. 1881, 1890 (2019) ("It is a commonplace of statutory interpretation that Congress legislates against the backdrop of existing law." (internal quotation marks omitted)).[17]

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[17] For this reason, we need not and do not delve into the meaning of the terms "inhabitant" and "usual residence" at the time of the Founding or of the Reconstruction Amendments, or consider whether the concept of unlawful status was known to the Framers of Article I or the Fourteenth Amendment. There is no dispute that the concept of "illegal aliens" existed in 1929, when Section 2a was enacted. *See* Defs.' Mem. 36.

Notably, in enacting the 1929 Act that used the phrase "whole number of persons in each State," the Senate and the House both considered and rejected amendments that would have excluded non-citizens from the apportionment base. *See* 71 Cong. Rec. 1907 (1929) (Sen. Sackett proposes amending S.B. 312 to require the President's statement to Congress to show "the whole number of persons in each State, exclusive of aliens and excluding Indians not taxed"); *id.* at 2065 (vote on amendment by Sen. Sackett fails); *id.* at 2360-63 (House adopts alienage exclusion as amendment to the apportionment bill); *id.* at 2448-2455 (House adopts amendment of Rep. Tilson to remove the previously adopted alienage exclusion). What is more, opposition to these amendments was based not only on a view that "the whole number of persons in each State" should include every resident of each State, without regard to legal status; it was based also on a view that the Constitution mandated inclusion of illegal aliens residing in the United States. Senator David Reed, for instance, voiced support for an amendment excluding illegal aliens from the apportionment base as a matter of policy but opposed it on grounds of constitutionality and consistent practice. "Every Congress that acted on that part of Article I of the original Constitution and every apportionment that was made in reliance upon that article," he explained, "included all free persons literally. It excluded Indians not taxed and it excluded slaves, but every apportionment inhabitant[] who" was not a "citizen[] w[as] included." *Id.* at 1958. "That construction," he noted then, "has been continuous and consistent." *Id.*

Further evidence of the understanding of the phrase "whole number of persons in each State" in Section 2a is revealed by the opinion of the Senate's legislative counsel on the issue. "That the fourteenth amendment was framed with the intention of including aliens," he wrote, "is indicated by the rejection by the Congress of proposals to base representation on the number of

citizens and on the number of voters." *Id.* at 1822. Consistent with that understanding, Congress had always included aliens in the apportionment base:

> The practical construction of the constitutional provision by Congress in its apportionment legislation has been uniformly in favor of inclusion of aliens. No exception of noncitizens from the enumeration has been made under any past apportionment. The term "persons" necessarily either includes or excludes aliens; its constitutional meaning can not be changed by Congress; and the fact that it has from the beginning been construed to include aliens should be conclusive if the meaning was open to dispute.

Id. It was "therefore the opinion of [the legislative counsel's] office that there is no constitutional authority for the enactment of legislation excluding aliens from enumeration for the purposes of apportionment of Representatives among the States." *Id.* This prevailing view makes plain that when Congress directed the President to report the "whole number of persons in each State," it understood the phrase to include all who lived in each State, without regard for legal status, and that it did not grant to the President discretion to do by Memorandum what it could not do by statute.[18]

Not for nothing, until the Presidential Memorandum, the Executive Branch had also always taken the view that the 1929 Act, if not the Constitution, prohibited exclusion of illegal aliens from the apportionment base due to legal status alone. In defending against a 1980 challenge to *including* illegal aliens in the apportionment base, for example, the Department of Justice argued that "[t]he plain language of [the Act] maintains the Constitutional requirement of counting all inhabitants of the states, legal and illegal, for purposes of apportionment. . . .

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[18] For what it's worth, later Congresses took similar views. *See FAIR v. Klutznick*, 486 F. Supp. at 576-77 (three-judge court) (describing congressional debates); Stacy Robyn Harold, Note, *The Right to Representation and the Census*, 53 WAYNE L. REV. 921, 923 & n.15 (2007) (collecting congressional debates); *see also, e.g.*, *1980 Census: Counting Illegal Aliens: Hearing on S. 2366 Before the Subcomm. on Energy, Nuclear Proliferation & Fed. Servs. of the S. Comm. on Governmental Affairs*, 96th Cong. 12 (1980) (Senator Javits stating that the Constitution requires "the aggregate number of inhabitants, which includes aliens, legal and illegal").

Moreover, the long-established practice of both Congress and the Census Bureau of reading the Constitution to require the counting of illegal aliens for apportionment purposes ratifies this construction." Defs.' Reply Mem. & Opp. Pls.' Mot. Summ. J. 11, *FAIR*, 486 F. Supp. 564 (citing *Red Lion Broadcasting Co. v. FCC*, 395 U.S. 367, 380-82 (1967)). In 1988, the Justice Department took the position in a letter to Congress that excluding illegal aliens from the census and apportionment base would be unconstitutional, *see* Letter from Thomas M. Boyd, Acting Assistant Attorney Gen., to Rep. William D. Ford (June 29, 1988) (reprinted in U.S. GOV'T PRINTING OFFICE, 1990 CENSUS PROCEDURES AND DEMOGRAPHIC IMPACT ON THE STATE OF MICHIGAN, 240-44 (1988)), a position it reaffirmed one year later, *see* Letter from Carol T. Crawford, Assistant Attorney Gen., to Sen. Jeff Bingaman (Sept. 22, 1989) (reprinted in 135 Cong. Rec. S22,521 (daily ed. Sept. 29, 1989)). And the Census Bureau itself has long "interpreted its constitutional charge *and its statutory mandate* to require counting every person [irrespective of citizenship status] who has a usual residence in any State." *Census Equity Act: Hearing on H.R. 2661 Before the Subcomm. on Census & Population of the H. Comm. on Post Office & Civil Serv.*, 101st Cong. 68 (1989) (statement of Michael R. Darby, Under Sec'y of Commerce for Econ. Affairs) (emphasis added); *accord* Letter from Robert A. Mosbacher, Sec'y of Commerce, to Sen. Jeff Bingaman (Sept. 25, 1989) (reprinted in 135 Cong. Rec. S22,522 (daily ed. Sept. 29, 1989)).

In fact, since 1929 (if not before), the consistent view of both political branches has been that Section 2a, if not the Constitution, requires the inclusion of all residents in the apportionment base, without regard for their legal status. When pressed at oral argument to cite "any instance, any support . . . in the historical record" for the proposition that the President has discretion under Section 2a to exclude illegal aliens from the apportionment base, defense

counsel came up empty. Oral Arg. Tr. 46 ("We have not been able to identify any."). With admirable candor, albeit some understatement, he was compelled to concede that "[P]laintiffs' best argument is history, and that cuts the other way." *Id.* at 47.

With neither text nor history on their side, the only thing Defendants have remaining is their assertion that excluding illegal aliens from the apportionment base is "more consonant with the principles of representative democracy underpinning our system of Government." Presidential Memorandum, 85 Fed. Reg. at 44,680. That is certainly a defensible (though contestable) proposition. But it is also irrelevant. The Constitution gives to Congress the authority to regulate the census and to reapportion the House. In exercising that authority, and delegating responsibility to the Executive Branch, Congress adopted a different theory of Government, in which the House of Representatives represents the whole population, not a subset of the population, and there is "equal representation for equal numbers of people." *Wesberry v. Sanders*, 376 U.S. 1, 14 (1964). The President is not free to substitute his own view of what is most "consonant with the principles of representative democracy" for the view that Congress already chose.

The statutory command to use the "whole number of persons in each State" as the apportionment base does not give the President discretion to exclude illegal aliens on the basis of their legal status, without regard for their residency. In declaring that "it is the policy of the United States" to do so, and commanding the Secretary to take steps to carry out that policy, the Presidential Memorandum deviates from, and thus violates, Section 2a.

C. Conclusion

In sum, the Presidential Memorandum deviates from, and thus violates, the statutory scheme in two independent ways: first, by requiring the Secretary to include in his Section

141(b) report a set of numbers other than "[t]he tabulation of total population by States" under the "decennial census" and contemplating reapportionment based on a set of numbers other than "the whole number of persons in each State . . . as ascertained under the . . . decennial census of the population"; and second, by excluding illegal aliens from the "whole number of persons in each State" that Section 2a(a) requires to be used as the apportionment base.

As Defendants implicitly concede, it follows that Plaintiffs are entitled to summary judgment on their statutory claims pursuant to the *ultra vires* doctrine, a cause of action that "is the creation of courts of equity, and reflects a long history of judicial review of illegal executive action, tracing back to England." *Armstrong v. Exceptional Child Ctr., Inc.*, 575 U.S. 320, 327 (2015). The doctrine provides that "[w]hen an executive acts *ultra vires*," as is the case here, "courts are normally available to reestablish the limits on his authority." *Reich*, 74 F.3d at 1328; *see also Stark v. Wickard*, 321 U.S. 288, 309-10 (1944) ("When Congress passes an Act empowering administrative agencies to carry on governmental activities, the power of those agencies is circumscribed by the authority granted. . . . The responsibility of determining the limits of statutory grants of authority in such instances is a judicial function entrusted to the courts by Congress by the statutes establishing courts and marking their jurisdiction."); *Am. Sch. of Magnetic Healing v. McAnnulty*, 187 U.S. 94, 108 (1902) ("The acts of all [executive branch] officers must be justified by some law, and in case an official violates the law to the injury of an individual the courts generally have jurisdiction to grant relief."); *Mountain States Legal Found. v. Bush*, 306 F.3d 1132, 1136 (D.C. Cir. 2002) ("Courts remain obligated to determine whether statutory restrictions have been violated."). In light of that conclusion, we need not and do not reach Plaintiffs' constitutional claims, let alone the Plaintiffs' claims that did not form the basis

for their motion. Thus, Defendants' motion to dismiss those claims under Rule 12(b)(6) of the Federal Rules of Civil Procedure is moot.

REMEDIES

Having granted Plaintiffs summary judgment on their statutory claims, we turn to the issue of remedies. Plaintiffs seek a permanent injunction prohibiting all Defendants — including the President himself — from implementing the Presidential Memorandum and a declaratory judgment that the Presidential Memorandum is unlawful. *See* Gov't Pls.' Compl. 44-45; NGO Pls.' Compl. 88-89.

A. Injunctive Relief

It is well established that plaintiffs "seeking a permanent injunction must satisfy a four-factor test before a court may grant such relief." *eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388, 391 (2006). Specifically, they must show: (1) that they have suffered an irreparable injury; (2) that remedies available at law, such as monetary damages, are inadequate to compensate for that injury; (3) that, considering the balance of hardships between the plaintiffs and defendants, a remedy in equity is warranted; and (4) that the public interest would not be disserved by a permanent injunction. *See id.* But because "the government's interest is the public interest," where, as here, the government is a party, the last two factors merge. *Pursuing Am.'s Greatness v. FEC*, 831 F.3d 500, 511 (D.C. Cir. 2016); *accord Nken v. Holder*, 556 U.S. 418, 435 (2009).

Plaintiffs easily satisfy each factor and, thus, are entitled to an injunction. First and foremost, as discussed above, the census-related harms that Plaintiffs have demonstrated would be irreparable absent an injunction. That is, because there are no census do-overs, there would be no way to remedy them after the fact. And even if there were a way to correct for them after the fact, the harms, by their nature, are difficult, if not impossible, to measure. *See, e.g.*, *Salinger*

v. Colting, 607 F.3d 68, 81 (2d Cir. 2010) ("Harm might be irremediable, or irreparable, for many reasons, including that a loss is difficult to replace or difficult to measure . . . ."). Making matters worse, the harms caused by an inaccurate census would be felt for at least a decade, until the 2030 decennial census — if not longer. *See, e.g.*, Baldwin Decl. ¶ 25 (explaining that because the State of Washington relies on thirty-year population forecasts, which requires "an indicator that goes back in time as far as you are forecasting forward in time," the "2020 census data will be used in forecasting until at least the 2050 census data is available, and probably longer"). For much the same reason, the remedies available at law would plainly be inadequate. *See, e.g.*, *New York v. Dep't of Commerce*, 351 F. Supp. 3d at 675 (issuing an injunction and finding that "the degradation of information . . . would be irreparable, without any adequate remedy at law").

Finally, the balance of the hardships and the public interest both favor an injunction. Indeed, "[t]here is generally no public interest in the perpetuation of unlawful agency action. To the contrary, there is a substantial public interest in having governmental agencies abide by the federal laws that govern their existence and operations." *League of Women Voters of U.S. v. Newby*, 838 F.3d 1, 12 (D.C. Cir. 2016) (internal quotation marks and citation omitted). Moreover, both the Supreme Court's decision in *Department of Commerce v. House of Representatives* — affirming the Eastern District of Virginia's permanent injunction against the use of statistical sampling to enumerate the population in the 2000 census — and the Second Circuit's holding in *Carey* — affirming a preliminary injunction requiring the Census Bureau to process certain forms and to compare its list of New York City residents against other government records — confirm that the public interest favors an injunction in these cases. *See House of Representatives*, 525 U.S. at 344; *Carey v. Klutznick*, 637 F.2d 834, 839 (2d Cir. 1980).

As the Second Circuit noted in *Carey*, "the public interest . . . requires obedience . . . to the requirement that Congress be fairly apportioned, based on accurate census figures. Furthermore, it is in the public interest that the federal government distribute its funds, when the grant statute is keyed to population, on the basis of accurate census data." *Id.*

Defendants' sole claim of hardship is that an injunction would "interfere with the Bureau's ongoing process by hindering agency efforts to refine its policies and to apply its expertise." Defs.' Reply 2 (internal quotation marks and alterations omitted).[19] They do not elaborate further, but it is plain that they are not referring to the operations of the census itself because, as noted above, they repeatedly concede that the Presidential Memorandum does "not in any way affect the conduct of the actual census." *Id.* Thus, Defendants must be referring to the Census Bureau's ongoing efforts to figure out how, if at all, to implement the President's directive in the Presidential Memorandum in time to meet the statutory deadline for the Secretary's report to the President. *See* 13 U.S.C. § 141(b). But it is against the public interest to comply with an unlawful directive. And any suggestion that, in the event our decision is reversed on appeal, granting an injunction would hinder the Census Bureau's efforts to comply with the Presidential Memorandum by the deadline are undermined by Defendants' repeated

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[19] Referencing a point they made in passing in a footnote in their opening brief, Defendants also argue for the first time in their reply that an injunction prohibiting the Secretary from transmitting information would violate the Opinions Clause of the Constitution, *see* Defs.' Reply 11 (citing Defs.' Mem. 42 n.17), which empowers the President to "require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices," U.S. Const. art. 2, § 2, cl. 1. A party may not raise an argument in a footnote or for the first time in reply, so we deem the argument to be waived. *See, e.g.*, *Norton v. Sam's Club*, 145 F.3d 114, 117 (2d Cir. 1998) ("Issues not sufficiently argued in the briefs are considered waived . . . ."); *Levine v. Lawrence*, No. 03-CV-1694 (DRH) (ETB), 2005 WL 1412143, at *5 (E.D.N.Y. June 15, 2005) ("[F]ailure to adequately brief an argument constitutes waiver of that argument . . . ."). In any event, ensuring that the Secretary complies with the mandates of Section 141(b) — and, by extension, that the President complies with the mandates of Section 2a(a) — does not run afoul of the Opinions Clause.

assertions that "an erroneous or invalid apportionment number can be remedied after the fact." Defs.' Mem. 48. Finally, any such hardship to Defendants can be mitigated, if not eliminated, by crafting the injunction — as we do below — to bar only the inclusion in the Secretary's Section 141 report of data concerning the number of illegal aliens in each State and to allow the Census Bureau to continue its research efforts.

Thus, a permanent injunction is warranted. In an exercise of our discretion, however, we grant injunctive relief against all Defendants other than the President. The parties vigorously dispute whether and under what circumstances a federal court can grant injunctive relief against the President. *Compare* Defs.' Mem. 44-45, *and* Defs.' Reply 14-15, *with* Pls.' Reply 27 & n.13. At a minimum, however, it is plain that the "grant of injunctive relief against the President himself is extraordinary, and should . . . raise[] judicial eyebrows." *Franklin*, 505 U.S. at 802. Thus, "[a]s a matter of comity," if nothing else, "courts should normally direct legal process to a lower Executive official even though the effect of the process is to restrain or compel the President." *Nixon v. Sirica*, 487 F.2d 700, 709 (D.C. Cir. 1973) (en banc) (per curiam). That is particularly true where the court can grant complete relief without enjoining the President, as is the case here. *See, e.g.*, *Franklin*, 505 U.S. at 802 ("[W]e need not decide whether injunctive relief against the President [i]s appropriate, because we conclude that the injury alleged is likely to be redressed by declaratory relief against the Secretary alone."); *accord Evans*, 536 U.S. at 463-64. In fact, if anything, the need to enjoin the President himself is even weaker here than it was in *Franklin* and *Evans*, which were litigated *after* the President had transmitted his apportionment statement to Congress. For the plaintiffs in those cases to obtain meaningful relief, therefore, the President himself would have needed to calculate a new apportionment figure and to then submit a new report to Congress. Here, by contrast, enjoining Defendants

other than the President (and granting a declaratory judgment, as discussed below) would provide Plaintiffs with complete relief, as the President cannot exclude illegal aliens from his apportionment calculations in his statement to Congress unless the Secretary gives him the relevant information in the Section 141 report.

Accordingly, the Court enjoins all Defendants other than the President from including in the Secretary's report to the President pursuant to Section 141(b) any "information permitting the President . . . to exercise the President's discretion to carry out the policy set forth in section 2" of the Presidential Memorandum — that is, any information concerning the number of aliens in each State "who are not in a lawful immigration status under the Immigration and Nationality Act." Presidential Memorandum, 85 Fed. Reg. at 44,680. Instead, consistent with the Census Act, the Secretary's Section 141(b) report shall include only "[t]he tabulation of total population by States under" Section 141(a) "as required for the apportionment of Representatives in Congress among the several States," 13 U.S.C. § 141(b) — that is, "information tabulated according to the methodology set forth in [the Residence Rule]," Presidential Memorandum, 85 Fed. Reg. at 44,680.[20] To be clear, as an exercise of its discretion, the Court does *not* enjoin Defendants from continuing to study whether and how it would be feasible to calculate the number of illegal aliens in each State. That ensures that in the event that a higher court disagrees

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[20] Separately, there is an active debate over the propriety of "nationwide" or "universal" injunctions. *See, e.g.*, *Dep't of Homeland Sec. v. New York*, 140 S. Ct. 599, 600-01 (2020) (Gorsuch, J., concurring); *Trump v. Hawaii*, 138 S. Ct. 2392, 2425-29 (2018) (Thomas, J., concurring); *see also* Memorandum from the Attorney General to Heads of Civil Litigating Components & United States Attorneys, U.S. Dep't of Justice, *Litigation Guidelines for Cases Presenting the Possibility of Nationwide Injunctions* (Sept. 13, 2018), https://www.justice.gov/opa/press-release/file/1093881/download. That debate has no relevance to this case, for many of the same reasons that it had no relevance in the citizenship question litigation. *See New York v. Dep't of Commerce*, 351 F. Supp. 3d at 677-78. Not surprisingly, therefore, Defendants do not even raise the issue.

with our ruling (prior to the Section 141(b) deadline), the Secretary will be able to comply with the Presidential Memorandum in a timely fashion.

B. Declaratory Relief

In addition, we grant Plaintiffs' request for declaratory relief. The Declaratory Judgment Act vests federal courts with discretion to "declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought." 28 U.S.C. § 2201(a); *see Wilton v. Seven Falls Co.*, 515 U.S. 277, 282 (1995). In exercising that discretion, courts must consider (1) whether the judgment will serve a useful purpose in clarifying or settling the legal issues involved; (2) whether a judgment would finalize the controversy and offer relief from uncertainty; (3) whether the proposed remedy is being used merely for procedural fencing or a race to *res judicata*; (4) whether the use of a declaratory judgment would increase friction between sovereign legal systems or improperly encroach on the domain of a state or foreign court; and (5) whether there is a better or more effective remedy. *Dow Jones & Co. v. Harrods Ltd.*, 346 F.3d 357, 359-60 (2d Cir. 2003). "The existence of another adequate remedy does not preclude a declaratory judgment that is otherwise appropriate," Fed. R. Civ. P. 57, and we may grant declaratory relief "whether or not further relief is or could be sought," 28 U.S.C. § 2201(a); *see also Powell v. McCormack*, 395 U.S. 486, 518 (1969) ("[A] request for declaratory relief may be considered independently of whether other forms of relief are appropriate.").

In our view, a declaration that the Presidential Memorandum is unlawful "would serve a useful purpose here, settle the legal issues involved, finalize the controversy, and offer [Plaintiffs] relief from uncertainty." *Niagara Mohawk Power Corp. v. Hudson River-Black River Regulating Dist.*, 673 F.3d 84, 105 (2d Cir. 2012). Indeed, an unambiguous declaration

that the Presidential Memorandum is unlawful because the President does not have the authority to exclude illegal aliens from the apportionment base would serve the further useful purpose of "reasurr[ing] people they will be counted for the purpose of determining . . . congressional seats and electoral votes," Espinosa Supp. Decl. ¶ 8, thereby directly addressing the chilling effect on census participation that the Memorandum has caused. *Cf. Foretich v. United States*, 351 F.3d 1198, 1215 (D.C. Cir. 2003) ("[A] declaration will remove the imprimatur of government authority from [the illegal a]ct . . . ."). Such a declaration is particularly useful given that, for the reasons we discussed above, we decline to enjoin Defendants from taking steps to research whether or how the Presidential Memorandum could be implemented. That is, an unambiguous judicial declaration that the Presidential Memorandum is unlawful would help ensure that the chilling effects on participation in the census are mitigated to the maximum extent possible.

CONCLUSION

There is no dispute that the President has "accustomed supervisory powers over his executive officers," *Franklin*, 505 U.S. at 800, and thus retains some discretion in the conduct of the decennial census and resulting apportionment calculation. Nevertheless, where the authority of the President (or other members of the Executive Branch) to act is derived from statutes passed by Congress, the President must act in accordance with, and within the boundaries of, the authority that Congress has granted. For the reasons discussed above, we conclude that the President did not do so here and that the Presidential Memorandum is an *ultra vires* violation of Congress's delegation of its constitutional responsibility to count the whole number of persons in each State and to apportion members of the House of Representatives among the States according to their respective numbers under 2 U.S.C. § 2a and 13 U.S.C. § 141. Accordingly, Plaintiffs' motion for summary judgment with respect to their statutory *ultra vires* claims is

GRANTED, Defendants (other than the President) are ENJOINED as set forth above, and the Presidential Memorandum is DECLARED unlawful. We need not and do not reach the merits of Plaintiffs' other claims and need not address their request, in the alternative, for a preliminary injunction. Finally, Defendants' motion to dismiss for lack of jurisdiction is DENIED and their motion to dismiss for failure to state a claim is DENIED as moot.[21]

The Clerk of Court is directed to terminate ECF Nos. 74 and 117 and to close this case.

SO ORDERED.

Dated: September 10, 2020
New York, New York

/s/
RICHARD C. WESLEY
United States Circuit Judge

/s/
PETER W. HALL
United States Circuit Judge

/s/
JESSE M. FURMAN
United States District Judge

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[21] We believe that this matter was properly heard by a three-judge panel for the reasons set forth in Judge Furman's request to then-Chief Judge Katzmann for the appointment of such a panel. *See* ECF No. 68. Nevertheless, mindful that the issue is not clear-cut and that the Second Circuit has determined that it is jurisdictional, *see Kalson v. Paterson*, 542 F.3d 281, 286-87 (2d Cir. 2008), we follow the lead of prior three-judge panels by certifying that Judge Furman, to whom these cases were originally assigned, individually arrived at the same conclusions that we have reached collectively. *See Swift & Co. v. Wickham*, 382 U.S. 111, 114 n.4 (1965) (noting with approval that "[t]his procedure for minimizing prejudice to litigants when the jurisdiction of a three-judge court is unclear has been used before" (citing *Query v. United States*, 316 U.S. 486 (1942))); *FAIR v. Klutznick*, 486 F. Supp. at 578 (three-judge court) ("District Judge Gasch additionally certifies that he individually arrived at the same conclusion that we collectively reached . . . out of abundant caution, so that in the event we are mistaken, an appeal can still be expeditiously taken in the appropriate forum." (internal quotation marks and citation omitted)); *cf. Massachusetts v. Mosbacher*, 785 F. Supp. 230, 238 n.6 (D. Mass.) (three-judge court) ("Because the author of this opinion is the single district judge to whom this case was initially assigned, this opinion stands as certification that the author has individually arrived at the conclusions expressed collectively in the opinion and the judgment of this three-judge court."), *rev'd on other grounds sub nom. Franklin v. Massachusetts*, 505 U.S. 788 (1992).

BC-DOC-CEN-2020-001602-000975

UNITED STATES DISTRICT COURT
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 (RCW) (PWH) (JMF)
NEW YORK IMMIGRANT COALITION, et al., Plaintiffs, -v- DONALD J. TRUMP, *in his official capacity as President of the United States*, et al., Defendants.	20-CV-5770 (RCW) (PWH) (JMF) (Consolidated) FINAL JUDGMENT AND PERMANENT INJUNCTION

Before: RICHARD C. WESLEY, United States Circuit Judge
PETER W. HALL, United States Circuit Judge
JESSE M. FURMAN, United States District Judge

Pursuant to the Court's Opinion and Order of September 10, 2020, it is ORDERED, ADJUDGED, and DECREED as follows:

FINAL JUDGMENT

Final judgment is entered for Plaintiffs and against Defendants on Plaintiffs' claims arising from an *ultra vires* violation of 2 U.S.C. § 2a and 13 U.S.C. § 141 (namely, the Fifth Claim for Relief in the Governmental Plaintiffs' Amended Complaint and Count Two in the NGO Plaintiffs' Amended Complaint).

DECLARATION AND PERMANENT INJUNCTION

The July 21, 2020 Memorandum on Excluding Illegal Aliens from the Apportionment Base Following the 2020 Census (the "Presidential Memorandum"), announcing that it is the policy of the United States to exclude from the apportionment base aliens who are not in a lawful immigration status, is DECLARED unlawful as an *ultra vires* violation of Congress's delegation of authority to conduct the decennial census and apportionment calculation pursuant to 2 U.S.C. § 2a and 13 U.S.C. § 141.

The Secretary of Commerce in his official capacity, the Director of the Census Bureau in his official capacity, the U.S. Department of Commerce, and the U.S. Census Bureau, and any successors to those offices, together with their agents, servants, employees, attorneys, and other persons who are in active concert or participation with the foregoing, *see* Fed. R. Civ. P. 65(d)(2), are PERMANENTLY ENJOINED from including in the Secretary's report to the President pursuant to Section 141(b) any information permitting the President to exercise the President's discretion to carry out the policy set forth in section 2 of the Presidential Memorandum — that is, any information concerning the number of aliens in each State who are not in a lawful immigration status under the Immigration and Nationality Act.

SO ORDERED.

Dated: September 10, 2020
New York, New York

/s/
RICHARD C. WESLEY
United States Circuit Judge

/s/
PETER W. HALL
United States Circuit Judge

/s/
JESSE M. FURMAN
United States District Judge

BC-DOC-CEN-2020-001602-000977

From: Kathleen M Styles (CENSUS/ADDC FED) [kathleen.m.styles@census.gov]
Sent: 9/11/2020 12:11:21 PM
To: Lisa F Houlihan (CENSUS/ADDC FED) [Lisa.F.Houlihan@census.gov]
Subject: Fw: Documents DOC already has
Attachments: 2020 Final Collection - page 12c Apportionment Replan - 8.5.20.pdf; Copy of IMS COVID-19 Replan Path from Data Collection to Apportionment.xlsx; List of Post Data Collection Activities.docx; Operational and Processing Options to meet September 30 Final v2-1.pdf; Operational Options to meet September 30 with NRFU OD team notes.docx; Options to meet September 30 9.30 Replan_Background Info.docx; Options to meet September 30_v11.docx; Reduced NRFU Timeframe - Planning Document v0.1 final.docx; 2010 Census Review Summary - compiled 07222020-1.docx

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Subject: Documents DOC already has

I forget who asked for this, but these are what we compiled that DOC has already. I recently heard back from the DOC attorneys, confirming not to release these to GAO.

Kathleen M. Styles
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U.S. Bureau of the Census
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From: Kathleen M Styles (CENSUS/ADDC FED) <kathleen.m.styles@census.gov>
Sent: Friday, August 28, 2020 6:48 PM
To: Christopher J Stanley (CENSUS/OCIA FED) <christopher.j.stanley@census.gov>; Melissa L Creech (CENSUS/PCO FED) <Melissa.L.Creech@census.gov>; Michael Cannon <mcannon@doc.gov>; Zimmerman, Paul (Federal) <PZimmerman@doc.gov>; Brebbia, Sean (Federal) <SBrebbia@doc.gov>; Nowell, Laura (Federal) <LNowell@doc.gov>
Cc: James L Dinwiddie (CENSUS/ADDC FED) <James.L.Dinwiddie@census.gov>; Colleen Holzbach (CENSUS/PCO FED) <Colleen.Holzbach@census.gov>; Christa D Jones (CENSUS/DEPDIR FED) <Christa.D.Jones@census.gov>
Subject: Repackaging of Documents for DOC review

Sorry for the delay folks! It's been a bit crazy. So -- here all all 9 documents under review. OIG has all of these, the question is which we can release to GAO, and which need to be redacted or withheld.

The background is that 8 of the 9 (all of them EXCEPT "2010 Census Review Summary) were compiled by me, on Al's direction the first week in August. Al gathered the Census managers at 8:00 a.m. on Thursday July 31

and told us we needed to replan. The group prepared the proposed replan that is reflected in the PDF document called "Operational and Processing Options," which was presented to the Secretary on Monday August 3. He asked everyone to send me the documents that we relied on in preparing that option, which is what the 8 documents represent. Some of the documents were produced earlier, however, and for other purposes. For example, the document called "List of Post Data Collection Activities" was prepared earlier in the summer for another purpose, but it was re-circulated as a helpful tool during the replan discussions. I can separate which were prepared earlier and which were created for the replan discussions if that would be helpful. These 8 documents are responsive to item 2 in the below list of GAO requests.

The 9th document "2010 Census Review Summary" was prepared in July and was not part of the replan discussions. It is responsive to item 1 in the list below of GAO document requests.

Item 3 in the GAO list is part of the 8 documents. Specifically it is the "List of Post Data Collection Activities" discussed above.

We don't have anything that needs DOC review for Item 4 below. We've given them some materials, but much of it simply hasn't been prepared yet. It will take us a month or more, e.g., to update risk registers.

Given everyone's workload right now, I've asked staff to start keeping a log of what we've sent to DOC for review. Maybe we can review that on our regular weekly calls and use that as an opportunity to keep things straight. There is a lot going on!

Hope this is helpful and again, sorry for the delay.

GAO LIST OF REQUESTED DOCUMENTS

1. Examples of "catches" made by post-processing during prior censuses [8/04]
2. List of operational changes made in response to 8/3/20 announcement of reversion to statutory timeframes for apportionment product [8/05] a. List of changes to operational planning + implications (cost, timeliness, quality, or other) & risks for each if identified. b. Copy of any written comprehensive assessment of cumulative or integrated risks (if exists)
3. "Two-page" doc from GEO on MAF extract processing timeframes [8/07] [AN: 3 columns; initial 2020 + COVID19 + replan. Note that replan was not expected to have dates for PL deliverables as of time requested]
4. Lists (as they exist) of data quality concerns/topics for monitoring [8/11] a. List of concerns/topics from before 8/3 b. Any concerns/topics that are new post-8/3 c. Any metrics/measures quality teams are using to monitor when a concern/topic has been realized or needs to be elevated d. Any benchmarks from 2010 or 2020 testing for the issues/topics described above e. Updated risk and issue registers f. New or updated contingency plans developed since COVID-19 outbreak g. Additional topics being proposed for demographic analysis evaluations h. Two memos on PES design changes

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From: Kathleen M Styles (CENSUS/ADDC FED) [kathleen.m.styles@census.gov]
Sent: 9/11/2020 1:23:10 PM
To: John Maron Abowd (CENSUS/ADRM FED) [john.maron.abowd@census.gov]
Subject: Fw: Activity in Case 8:19-cv-02710-PX-PAH-ELH La Union Del Pueblo Entero et al v. Trump et al Notice (Other)
Attachments: Comments on LUPE II Declarations.docx; 112.7 - Ex F - Decl. of Andrew Reamer.pdf; 112.6 - Ex. E -Decl. of Kimball Brace.pdf; 112.5 - Ex. D- Decl. of Amy O'HAra.pdf; 112.4 - Ex. C - Decl. of Dr. William O'HAre.pdf; 112.3 - Ex. B Expert Decl of Howard Hogan.pdf; 112.2 -Ex. A Expert Decl. of John thompson.pdf

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From: Enrique Lamas (CENSUS/DEPDIR FED) <Enrique.Lamas@census.gov>
Sent: Sunday, September 6, 2020 5:01 PM
To: Kathleen M Styles (CENSUS/ADDC FED) <kathleen.m.styles@census.gov>
Cc: Albert E Fontenot (CENSUS/ADDC FED) <Albert.E.Fontenot@census.gov>; Christa D Jones (CENSUS/DEPDIR FED) <Christa.D.Jones@census.gov>; John Maron Abowd (CENSUS/ADRM FED) <john.maron.abowd@census.gov>
Subject: Re: Activity in Case 8:19-cv-02710-PX-PAH-ELH La Union Del Pueblo Entero et al v. Trump et al Notice (Other)

I agree with Kathleen. The declarations are not unreasonable and we don't need to refute smaller disagreements. On the issue of internal knowledge by Amy O'Hara, Mike Cannon asked Christa and me last week and we said it was not likely. Many academics know admin records outside the bureau and past directors often provide opinions on census matters. So I do not see where Amy used internal information.

Enrique Lamas
Senior Advisor
Director's Office
U.S. Census Bureau
Office: 301-763-3811

On Sep 6, 2020, at 4:00 PM, Kathleen M Styles (CENSUS/ADDC FED) <kathleen.m.styles@census.gov> wrote:

(b) (5) [redacted]

Kathleen M. Styles

Chief, Decennial Communications and Stakeholder Relationships
U.S. Bureau of the Census
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(b)(6) [redacted] Cell

From: Ehrlich, Stephen (CIV) <Stephen.Ehrlich@usdoj.gov>
Sent: Saturday, September 5, 2020 3:30 AM
To: Albert E Fontenot (CENSUS/ADDC FED) <Albert.E.Fontenot@census.gov>; Kathleen M Styles (CENSUS/ADDC FED) <kathleen.m.styles@census.gov>; Christa D Jones (CENSUS/DEPDIR FED) <Christa.D.Jones@census.gov>; Enrique Lamas (CENSUS/DEPDIR FED) <Enrique.Lamas@census.gov>; John Maron Abowd (CENSUS/ADRM FED) <john.maron.abowd@census.gov>; Cannon, Michael <MCannon@doc.gov>; DiGiacomo, Brian <bDiGiaco@doc.gov>; Heller, Megan <MHeller@doc.gov>; Kourkoumelis, Aristidis <AKourkoumelis@doc.gov>; Sharma, Sapna <SSharma@doc.gov>
Cc: Kelleher, Diane (CIV) <Diane.Kelleher@usdoj.gov>; Sverdlov, Alexander V. <Alexander.V.Sverdlov@usdoj.gov>; Zee, M. Andrew (CIV) <M.Andrew.Zee@usdoj.gov>
Subject: FW: Activity in Case 8:19-cv-02710-PX-PAH-ELH La Union Del Pueblo Entero et al v. Trump et al Notice (Other)

(b) (5) [redacted]

Stephen Ehrlich
Trial Attorney
U.S. Department of Justice
Civil Division | Federal Programs Branch
202-305-9803 | stephen.ehrlich@usdoj.gov

From: MDD_CM-ECF_Filing@mdd.uscourts.gov <MDD_CM-ECF_Filing@mdd.uscourts.gov>
Sent: Friday, September 04, 2020 11:39 PM
To: MDDdb_ECF@mdd.uscourts.gov
Subject: Activity in Case 8:19-cv-02710-PX-PAH-ELH La Union Del Pueblo Entero et al v. Trump et al Notice (Other)

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U.S. District Court
District of Maryland

Notice of Electronic Filing

The following transaction was entered by Minnis, Terry on 9/4/2020 at 11:38 PM EDT and filed on 9/4/2020

Case Name: La Union Del Pueblo Entero et al v. Trump et al
Case Number: 8:19-cv-02710-PX-PAH-ELH
Filer: Marco Abarca
Lydia Camarillo
Ralph Carmona
Deborah Chen
David Chiu
Cynthia Choi
Kenny Chu
Coalition for Humane Immigrant Rights of Los Angeles
Felipe Cruz
Javier Gaston-Greenberg
Rogene Gee Calvert
Mia Gregerson
Candy L. Gutierrez
Zeenat Nisha Hasan
Jeffrey D. Hsi
La Union Del Pueblo Entero
Maricela Lechuga
Raj Mukherji
Albert Muratsuchi
Organization of Chinese Americans-Greater Houston
Alexandra Rosy Palomo-Pujol
Vincent Pan
John Park
Promise Arizona
Marty Ramirez
Jennifer Reyes
Raymond Sanchez
Phillip Ting
Jacinta Titialii Abott
Sharon Tomiko Santos
Juanita Valdez-Cox
Eugene Wu

Yicheng Wu

Document Number: 116

Docket Text:
NOTICE by Marco Abarca, Lydia Camarillo, Ralph Carmona, Deborah Chen, David Chiu, Cynthia Choi, Kenny Chu, Coalition for Humane Immigrant Rights of Los Angeles, Felipe Cruz, Javier Gaston-Greenberg, Rogene Gee Calvert, Mia Gregerson, Candy L. Gutierrez, Zeenat Nisha Hasan, Jeffrey D. Hsi, La Union Del Pueblo Entero, Maricela Lechuga, Raj Mukherji, Albert Muratsuchi, Organization of Chinese Americans-Greater Houston, Alexandra Rosy Palomo-Pujol, Vincent Pan, John Park, Promise Arizona, Marty Ramirez, Jennifer Reyes, Raymond Sanchez, Phillip Ting, Jacinta Titialii Abott, Sharon Tomiko Santos, Juanita Valdez-Cox, Eugene Wu, Yicheng Wu re [112] Emergency MOTION for Temporary Restraining Order *and/or Preliminary Injunction* (Attachments: # (1) Exhibit A, # (2) Exhibit B, # (3) Exhibit C, # (4) Exhibit D)(Minnis, Terry)

8:19-cv-02710-PX-PAH-ELH Notice has been electronically mailed to:

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8:19-cv-02710-PX-PAH-ELH Notice will not be electronically delivered to:
The following document(s) are associated with this transaction:

Document description: Main Document
Original filename:n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1046883720 [Date=9/4/2020] [FileNumber=9734272-0] [1c5eaf0cc222636c57254810d912bb1b21079bd0b59ffbadd20bb50430a1c2506db07035eb987edbd7cce1dd5a4f2948fda6cec75b5045809014aa1276787d16]]
Document description: Exhibit A
Original filename:n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1046883720 [Date=9/4/2020] [FileNumber=9734272-1] [98ab03bceec84b3de4ac190c1278fff2f046c59ee1fd3653aa5c2b5aea26afb97e40db8736e9707ed053f4bd5581c3a1db0c045f18d0f3983775c633e36993df]]
Document description: Exhibit B
Original filename:n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1046883720 [Date=9/4/2020] [FileNumber=9734272-2] [223a39d74140ab7d0cb1e480f432ad13e35f5a57aa928a6a2d1d1fd89c5f49ef7daaf9a6514790da05938584d19db9e6c9202846d9039286f1c4057eb2db42ce]]
Document description: Exhibit C
Original filename:n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1046883720 [Date=9/4/2020] [FileNumber=9734272-3] [8a4c051d3270715fc0b06556c9aec53846677eeffdcc770043e639efd8afa5a81b32b5f986ba37506c3cd8a0c6b02990acf29f9be708a46fb9f71dbdd139eaab]]
Document description: Exhibit D
Original filename:n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1046883720 [Date=9/4/2020] [FileNumber=9734272-4] [4b5b77e8c08e4340c5c315922d49b628c16f6e8bdfd2981d1eddd294dc7c818858d3fe8e58463208472fc8b061f7ba223ecb7c66e01e4665f01af5858b8cf9fa]]

<Comments on LUPE II Declarations.docx>
<Abowd Declaration + FINAL + legal.pdf>

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EXHIBIT F

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

LA UNIÓN DEL PUEBLO ENTERO, et al., *Plaintiffs*, v. DONALD J. TRUMP, sued in his official capacity as President of the United States, et al., *Defendants*.	Civil Action No. 8:19-CV-02710-PX

DECLARATION OF DR. ANDREW REAMER

I. Introduction

1. I have been retained by the Plaintiffs in *La Union del Pueblo Entero, et al. v. Trump, et al.,* (regarding Civil Action No. 8:19-CV-02710-PX in the District Court of Maryland) to prepare a report on the portion of federal funds that are distributed based on data derived from the decennial Census and the effect of a differential undercount in the decennial Census on the distribution of federal funding to states and localities.

II. Qualifications

2. I am a research professor in the George Washington Institute of Public Policy (GWIPP) at the George Washington University in Washington, D.C. GWIPP research faculty focus on various aspects of the public policies of the federal, state, and local governments. GWIPP research is funded through grants and contracts from the federal government, philanthropies, and nonprofit research organizations.

3. My research aims to support U.S. national economic development and competitiveness. A substantial component of my work concerns the roles and functioning of the federal statistical system.

4. I am a member of two federal statistical advisory committees—the U.S. Bureau of Economic Analysis (BEA) Advisory Committee and the Workforce Information Advisory Council. I provide staff support to the Committee on Economic Statistics of the American Economic Association. I also am a member of the Statistics Committee of the National Association for Business Economics (NABE). The NABE Statistics Committee meets three times yearly with the directors of the U.S. Census Bureau, the U.S. Bureau of Labor Statistics, and BEA.

5. I am a board member of the Industry Studies Association and am organizing a webinar series on federal industrial policy. I am an active member and former president and former board member of the Association of Public Data Users.

6. I began my research at GWIPP in 2011, after six years at the Brookings Institution's Metropolitan Policy Program and 20 years as a consultant in U.S. regional economic development and public policy.

7. At GWIPP and Brookings, I have been responsible for encouraging a strong, well-functioning federal statistical system that met the data needs of public and private stakeholders. To that end, I have been instrumental in ensuring the continued existence of three Census Bureau programs – the American Community Survey (ACS) in 2005, 2012, and 2015; the Survey of Business Owners (SBO) in 2007; and the Longitudinal Employer-Household Dynamics (LEHD) Program in 2008.

8. As an economic development consultant, I prepared strategic analyses and plans that relied heavily on federal demographic and economic statistics. For the U.S. Economic Development Administration, I co-authored "Socioeconomic data for understanding your regional economy: a user's guide" (1998).

9. I received a Ph.D. in Economic Development and Public Policy and a Master of City Planning from the Massachusetts Institute of Technology and a Bachelor of Science in Economics from the Wharton School, University of Pennsylvania.

10. I recently conducted the research project *"Counting for Dollars 2020: The Role of the Decennial Census in the Geographic Distribution of Federal Funds."* Project reports published include:[1]

- Report #1: Initial Analysis: 16 Large Census-guided Financial Assistance Programs (August 2017)
- Report #2: Estimating Fiscal Costs of a Census Undercount to States (March 2018)
- Report #3: Federal Funding for Rural America: The Role of the Decennial Census (December 2018)
- Report #4: Census-derived Datasets Used to Distribute Federal Funds (December 2018)
- Report #5: Distribution of Funding from 55 Large Census-guided Programs by State (May 2019)
- Report #6: The Distribution of Census-Guided Federal Funds to U.S. Communities: Five Program Examples (July 2019)

[1] All reports are available at https://gwipp.gwu.edu/counting-dollars-2020-role-decennial-census-geographic-distribution-federal-funds.

- Report #7: Comprehensive Accounting of Census-Guided Federal Spending (FY2017)
  - Part A: Nationwide Analysis (November 2019)
  - Part B: State Estimates (February 2020)

11. At the Brookings Institution, I conceived of and carried out a Counting for Dollars 2010 study that identified census-guided federal financial assistance programs and calculated FY2008 funding flows by program to states, metro areas, and counties, although with a substantially smaller level of effort than my current project.[2] A full resume and list of publications is attached as an exhibit to this report. I am being paid at a rate of $300 per hour.

III. Summary of Opinions

12. Those states, counties, and communities with an undercount of formula-relevant populations greater than that for the U.S. as a whole will lose a share of funding. Those states, counties, and communities with an undercount of formula-relevant populations less than that for the U.S. as a whole will gain a share of funding.

13. Based on my experience and knowledge, when a state, county, or community loses population share due to a differential undercount, it receives less federal funding and its residents experience less access to valued programs and services than they otherwise would have received and/or the community and residents face higher taxes.

IV. Background: Federal Spending Programs Guided by Data Derived from the Decennial Census

[2] Andrew Reamer and Rachel Carpenter, "Counting for Dollars: The Role of the Decennial Census in the Distribution of Federal Funds," The Brookings Institution, March 9, 2010. Available at https://www.brookings.edu/research/counting-for-dollars-the-role-of-the-decennial-census-in-the-distribution-of-federal-funds/.

14. A significant portion of federal spending is directed on the basis of statistics derived from the decennial census. I have identified 316 census-guided federal spending programs that geographically distributed over $1.5 trillion in FY2017.

15. The two primary uses of census-derived data to determine the geographic distribution of federal spending are (1) setting numerical eligibility criteria and (2) numerical formulas for the geographic allocation of funds. Geographic allocation formulas based on population shares are particularly sensitive to inaccuracies in decennial data.

A. Domestic Financial Assistance

16. The federal government relies on data derived from the decennial census to geographically allocate spending through three types of programs – domestic financial assistance, tax credits, and procurement. Each of these types is reviewed below.

17. As of October 2019, U.S. federal departments and agencies offered 2,293 total domestic financial assistance programs.[3] "Domestic assistance programs" provide either financial assistance (such as direct payments to individuals, grants, loans, and loan guarantees) and non-financial assistance (such as counseling) to non-federal entities within the U.S.—such as individuals, state and local governments, companies and nonprofits—to fulfill a public purpose. Federal domestic assistance is provided in every realm of domestic policy. Examples include health care, education, economic development, transportation, social services, science, technology, criminal justice, and emergency management. Domestic assistance programs do not include foreign aid.

[3] "Catalog Of Federal Domestic Assistance – CFDA," Investopedia, available at https://www.investopedia.com/terms/c/catalog-of-federal-domestic-assistance-cfda.asp.

18. The *Catalog of Federal Domestic Assistance* (CFDA) is the federal government's compendium of all domestic assistance programs. The CFDA categorizes each program by type (across 15 categories) and gives it a five-digit CFDA number (such as 10.500) – the first two digits identify the sponsoring department or independent agency and the last three digits designate the individual program.[4]

19. Of the 15 categories of domestic assistance, six provide direct financial assistance (see box below). Two are in the form of grants, two are in the form of direct payments, one covers direct loans, and one covers guaranteed/insured loans.

Categories of Direct Federal Domestic Financial Assistance[5]

A. Formula Grants - Allocations of money to States or their subdivisions in accordance with distribution formulas prescribed by law or administrative regulation, for activities of a continuing nature not confined to a specific project.

B. Project Grants - The funding, for fixed or known periods, of specific projects. Project grants can include fellowships, scholarships, research grants, training grants, traineeships, experimental and demonstration grants, evaluation grants, planning grants, technical assistance grants, survey grants, and construction grants.

C. Direct Payments for Specified Use - Financial assistance from the Federal government provided directly to individuals, private firms, and other private institutions to encourage or subsidize a particular activity by conditioning the receipt of the assistance on a particular performance by the recipient. This does not include solicited contracts for the procurement of goods and services for the Federal government.

D. Direct Payments with Unrestricted Use - Financial assistance from the Federal government provided directly to beneficiaries who satisfy Federal eligibility requirements

[4] The CFDA states:

> "Assistance" or "benefits" refers to the transfer of money, property, services, or anything of value, the principal purpose of which is to accomplish a public purpose of support or stimulation authorized by Federal statute. Assistance includes, but is not limited to grants, loans, loan guarantees, scholarships, mortgage loans, insurance, and other types of financial assistance, including cooperative agreements; property, technical assistance, counseling, statistical, and other expert information; and service activities of regulatory agencies. It does not include the provision of conventional public information services. (U.S. General Services Administration, *2019 Catalog of Federal Domestic Assistance*, October 2019, p. 1)

Until recently, the CFDA was available at www.cfda.gov. The information has been transferred to a new searchable website, https://beta.sam.gov/.

[5] *Ibid.*, pp. 1-2. The CFDA identifies each assistance category with a capital letter (A through O).

with no restrictions being imposed on the recipient as to how the money is spent. Included are payments under retirement, pension, and compensatory programs.

E. Direct Loans - Financial assistance provided through the lending of Federal monies for a specific period of time, with a reasonable expectation of repayment. Such loans may or may not require the payment of interest.

F. Guaranteed/Insured Loans - Programs in which the Federal government makes an arrangement to indemnify a lender against part or all of any defaults by those responsible for repayment of loans.[6,7]

20. In Fiscal Year (FY) 2019, the federal government provided $3,938,931,000,000 in direct domestic financial assistance programs across the above six categories, an amount equal to 18.6 percent of Gross Domestic Product (GDP) over the same period.

- Of that total, $2,561,537,000,000 were **direct payments** to individuals and $721,140,000,000 were **grants**, primarily to state and local governments.[8]
- In addition, in FY2019 the federal government made commitments for **guaranteed loans** totaling $482,685,000,000 and **direct loan** obligations of $173,569,000,000.[9]

Federal Domestic Assistance by Category, FY2019	
Direct Payments to Individuals	$2,561,537,000,000
Grants	$721,140,000,000
Guaranteed Loans	$482,685,000,000

[6] Recipients of federal direct and guaranteed/insured loans include, for example, students, homeowners, small businesses, and farmers.

[7] Insurance is an additional category of financial assistance, although one that does not result in an immediate financial transfer. This category includes such programs as bank deposit insurance, pension guarantees, disaster insurance (flood, crop), and terrorism and other security-related risks. The CFDA defines the Insurance category as "Financial assistance provided to assure reimbursement for losses sustained under specified conditions. Coverage may be provided directly by the Federal government or through private carriers and may or may not involve the payment of premiums." I have not found a census-guided federal insurance program and so that category is not part of this analysis.

[8] Figures from Historical Table 6.1 - Composition of Outlays: 1940–2025 of "Budget of the United States Government, Fiscal Year 2021," February 2020, available at https://www.whitehouse.gov/wp-content/uploads/2020/02/hist06z1_fy21.xlsx.

[9] Office of Management and Budget, "Analytical Perspectives, Budget of the United States Government, Fiscal Year 2019," Supplemental Materials, February 2018, Table 19.8: Direct Loan Transactions of the Federal Government and Table 19.9: Guaranteed Loan Transactions of the Federal Government, available at https://www.whitehouse.gov/omb/analytical-perspectives/.

Direct Loan Obligations	$173,569,000,000
Total	**$3,938,931,000,000**

B. Tax Credits

21. Distinct from the distribution of federal funds through financial assistance programs, tax credits reduce federal revenues. In legal terms, tax credits are known as "tax expenditures."

22. Tax expenditures are defined under the Congressional Budget and Impoundment Control Act of 1974 (the "Budget Act") as "revenue losses attributable to provisions of the Federal tax laws which allow a special exclusion, exemption, or deduction from gross income or which provide a special credit, a preferential rate of tax, or a deferral of tax liability." Thus, tax expenditures include any reductions in income tax liabilities that result from special tax provisions or regulations that provide tax benefits to particular taxpayers.

23. Special income tax provisions are referred to as tax expenditures because they may be analogous to direct outlay programs and may be considered alternative means of accomplishing similar budget policy objectives. Tax expenditures are similar to direct spending programs that function as entitlements to those who meet the established statutory criteria.[10]

24. The federal budget for FY2021 lists 165 provisions for federal income tax expenditures, covering returns from both individuals and corporations. Estimated expenditures by provision are provided, but not a total across all 165.[11]

C. Federal Procurement

[10] Joint Committee on Taxation, "Estimates of Federal Tax Expenditures for Fiscal Years 2017-2021," JCX-34-18, May 25, 2018, p. 2.
[11] Office of Management and Budget, "Chapter 13, Tax Expenditures, Analytical Perspectives volume of the Budget of the United States Government, Fiscal Year 2021" February 2020, available at https://www.whitehouse.gov/wp-content/uploads/2020/02/ap_13_expenditures_fy21.pdf.

25. In FY2019, the federal government spent $586.2 billion on the procurement of goods and services. Of this amount, $381.2 billion was for the Department of Defense and $205.1 billion for civilian agencies. Top-spending civilian agencies were the Department of Energy ($33.3 billion), Department of Veterans Affairs ($27.3 billion), Department of Health and Human Services $26.5 billion), and NASA ($18.2 billion).[12]

The Role of Census-derived Datasets in Guiding the Distribution of Federal Spending

26. Article 1, Section 2 of the Constitution mandates a Decennial Census for the purposes of apportioning seats in the House of Representatives. In January 1790, Congress passed the Census Act of 1790 with an amendment proposed by Representative James Madison to add questions on population characteristics beyond those needed for apportionment (that is, race, gender, and age) so that Congress might "adapt the public measures to the particular circumstances of the community." Ever since, the Decennial Census has carried questions beyond those required for apportionment.[13]

27. For 230 years, Congress has used data derived from the Decennial Census to guide the design and implementation of public policies and programs. Over time, moreover, the size and complexity of the Decennial Census has regularly catalyzed significant advances in the statistical and survey sciences.

28. As directed or authorized by Congress, a substantial portion of federal spending is geographically allocated to state and local governments, households, businesses, and nonprofit

[12] "A Snapshot of Government-wide Contracting for FY 2019," WatchBlog, U.S. Government Accountability Office, May 26, 2020, available at https://blog.gao.gov/2020/05/26/a-snapshot-of-government-wide-contracting-for-fy-2019-infographic/.

[13] Up through 1930, every household was required to answer each Decennial Census question. Sampling began in 1940. In 1960, most census questions were placed on the "long form" that went to a sample of households. In 2005, the "long form" questions were shifted to the new American Community Survey, which had been in development for about a decade.

organizations based on statistics derived from the Decennial Census. Congress recognizes that the appropriate and equitable distribution of certain forms of spending should be guided by socioeconomic data at various levels of geography.

29. As the Decennial Census is carried out once a decade and collects data on a small number of demographic characteristics (such as household size and relationships, housing tenure, sex, age, race, ethnicity), Congress also recognizes that the decennial numbers, on their own, are not appropriate to guide the appropriate, equitable distribution of federal spending. As a result, Congress has authorized a series of more current and broadly descriptive datasets derived from the Decennial Census (made possible by the scientific advances noted above).

30. I refer to these as "census-derived datasets." **I have identified 316 federal spending programs that rely on census-derived data. These programs distributed $1.504 trillion in FY2017**, a figure equal to 7.8 percent of GDP.[14]

31. With the development of these new datasets over the course of the last century and with the extraordinary expansion of federal financial assistance in the last six decades, Congress has specified or authorized these new datasets be used to guide the appropriate, fair geographic distribution of federal funds.

32. The following box outlines the distribution of spending for 316 census-guided programs by program type, geographic level, data use, program size, and other characteristics.

Characteristics of 316 Federal Census-Guided Spending Programs, FY2017
Program Type

[14] Andrew Reamer, "Brief 7: Comprehensive Accounting of Census-Guided Federal Spending (FY2017), Part A: Nationwide Analysis," Counting for Dollars 2020: The Role of the Decennial Census in the Geographic Distribution of Federal Funds, George Washington Institute of Public Policy, George Washington University, November 2019.

- ***Financial assistance programs*** that provide direct payments, grants, loans, and loan guarantees to state and local governments, nonprofits, businesses, and households (305 programs, $1,465.2 billion)[15]
- ***Matching payments*** from states to the federal government required by financial assistance programs (3 programs, $16.5 billion)
- ***Tax credit programs*** that allow a special exclusion, exemption, or deduction from gross income (7 programs, $14.9 billion)
- ***Procurement programs*** that award federal contract dollars to small businesses located in areas selected using census-derived data (1 program, $7.5 billion)

Geographic Level of Data

- ***Local only*** – 176 programs rely only on local-level census-derived data ($970.3 billion).
- ***State only*** – 101 programs rely only on state-level census-derived data ($458.9 billion).
- ***State and local*** – 39 programs rely on both state and local-level census-derived data ($75.0 billion).

Data Use

- ***Allocation*** – Almost all programs use census-derived data to determine the amount of spending or services provided to each eligible geographic area and household (297 programs, $1,414.8 billion).
- ***Eligibility*** – Forty percent of the programs use census-derived data to determine the geographic areas and households eligible to receive the program's funding (128 programs, $206.3 billion).
  - Most of these programs also use census-derived data to determine allocations (109 programs, $116.9 billion).
  - Nineteen programs ($89.4 billion) only use census-derived data for program eligibility purposes.

Allocation Variables

- ***Total population*** (90 programs, $520.3 billion)
  - Per capita income – total income (from tax and other records) divided by total population (11 programs, $410.8 billion)
  - Count of residents (79 programs, $109.5 billion)
- ***Population subsets*** (226 programs, $216.9 billion) – examples:
  - Persons in rural areas
  - Persons below 125% of federal poverty level
  - Persons age 60+ at or below 185 percent of federal poverty level
  - Persons in overcrowded housing
  - Persons unemployed
  - Children ages 5-17 below federal poverty level
  - Children under age 3
- ***Categories of geographic areas*** (87 programs, $773.8 billion)
  - Examples of categories

[15] This figure equals 39.1 percent of all federal domestic assistance in FY2017 ($3,745.0 billion). See footnote 8 for source.

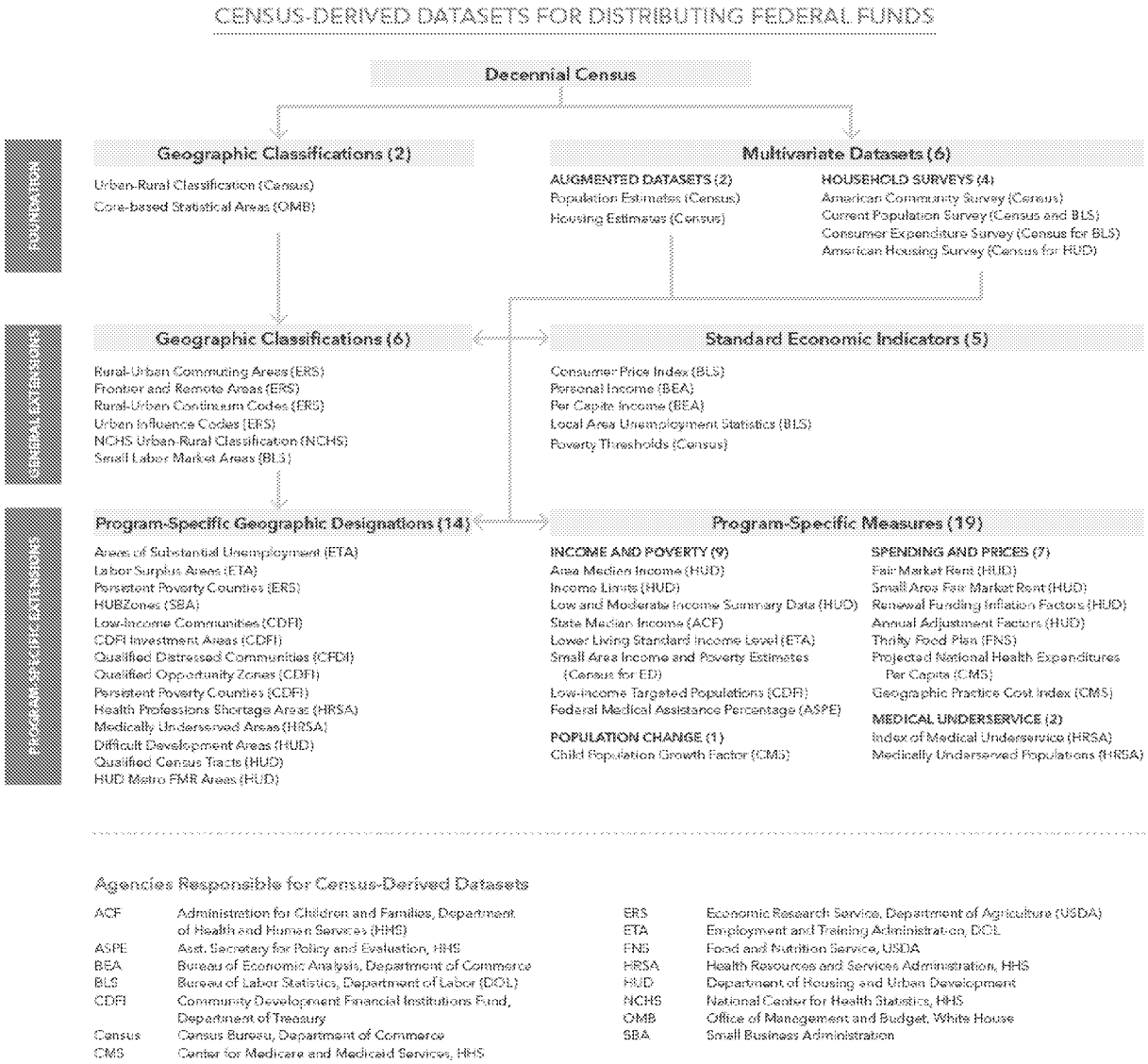
- Large metro, metro, micro, rural, and isolated counties
- Urban, suburban, rural zip codes
- Persistent poverty counties
- Area median income as percent of state median income

- Examples of uses
  - Funds sub-allocated by category
  - Minimum percent allocation reserved for particular category
  - In competitive grant selections, points awarded vary by category
  - In competitive grant selections, preference given to one category
  - Provider service requirements vary by category

Eligibility Variables

- Geographic areas (92 programs, $139.3 billion) – examples:
  - Population density (such as rural or urban designation)
  - Population size (above or below a specified level)
  - Unemployment rate (above a specified level)
  - Household income (percentage of population below a specified level)
- Households (52 programs, $89.5 billion)
  - Area median income (household income below a specified percentage of AMI)

33. **I have identified 52 census-derived datasets used to geographically allocate federal spending.** (See schematic below.)



34. Eight datasets can be considered **foundational**. The remaining 44 datasets are **extensions** of these. Some extensions are **general**, in that they are used by multiple programs, and some are **program-specific**.

35. One foundational dataset is the Census Bureau's **Urban-Rural Classification** of every census tract based on Decennial Census population density. (The minimum density for an urban designation is 1,000 persons per square mile.) The Census Bureau publishes the Urban-Rural Classification once a decade (in the year ending in "2"). This classification is the primary

basis for other geographic classifications. It is the only census-derived dataset that relies solely on decennial numbers.[16]

36. The Office of Management and Budget (OMB) delineates county-based **Core-based Statistical Areas** (CBSAs) — metropolitan areas and micropolitan areas. CBSAs are delineated around urban "cores" designated by the Urban-Rural Classification.[17]

37. The other six foundational datasets are multivariate—that is, they provide census-derived data on multiple socioeconomic variables such as race, age, poverty, occupation, and housing costs.

38. Two of these are **augmented datasets**. The Census Bureau constructs annual **Population Estimates** and **Housing Estimates** by augmenting decennial population and housing numbers with more recent data, primarily from vital statistics and tax records. For example, the Census Bureau annually updates Population Estimates by taking the previous year's numbers (starting with the decennial year) and adding births, subtracting deaths, and estimating net domestic and international migration.[18]

[16] The Census Bureau identifies two types of urban areas—urbanized areas (UAs) that contain 50,000 or more people and urban clusters (UCs) with a population of at least 2,500 and less than 50,000. By definition, any census tract that is not in a UA or UC is "rural." Detailed information on the Census Bureau's Urban-Rural Classification, including methodology, is available at https://www.census.gov/geo/reference/urban-rural.html.

[17] OMB delineations of metropolitan and micropolitan areas and the 2010 standards on which they are based can be found at https://www.census.gov/programs-surveys/metro-micro.html. In the CBSAs framework, metropolitan areas have a UA as the core and micropolitan areas have a UC as the core. Each CBSA contains one or more central counties (the ones containing the UA or UC) plus any outlying counties economically integrated with the central counties, as measured by commuting flows. "Non-core" means any county not in a CBSA.

[18] Detailed information on the Census Bureau's Population and Housing Unit Estimates, including methodology, is available at https://www.census.gov/programs-surveys/popest.html.

39. The Census Bureau uses a similar method to annually update Housing Estimates. Each of the variables in Population Estimates and Housing Estimates is on the decennial data collection form.

40. Population Estimates are frequently used directly to determine funds distribution, for instance, according to each state's share of the most recent U.S. population total. They also enable the creation of economic indicators that allow geographic areas to be compared regardless of size. A good example is state Per Capita Income (PCI), which is determined by dividing state Personal Income by state population (from Population Estimates).

41. The remaining four foundational datasets are produced through ongoing **household surveys** that collect information on demographic variables not on the decennial questionnaire (such as income, health insurance coverage, and housing costs). The Census Bureau relies on the Decennial Census to design and implement the **American Community Survey** (ACS), the **Current Population Survey** (CPS), the **Consumer Expenditure Survey** (CEX), and the **American Housing Survey** (AHS).[19] It does so in five ways, as described in the table on the next page.

42. The two augmented datasets and the four household surveys are intertwined. In particular, the international in-migration component of Population Estimates comes from the ACS.[20] At the same time, Population Estimates are used as controls in the design and implementation of the household surveys.

[19] The Census Bureau conducts the CEX on behalf of BLS.
[20] Census Bureau, "Methodology for the United States Population Estimates: Vintage 2017, Nation, States, Counties, and Puerto Rico – April 1, 2010 to July 1, 2017," p. 10, available at https://www2.census.gov/programs-surveys/popest/technical-documentation/methodology/2010-2017/2017-natstcopr-meth.pdf.

43. The eight foundational census-derived datasets enable the creation of 44 extension datasets. These include:

- **Geographical classifications** (six general, 14 program-specific) – The classification of geographic units (such as census tracts and counties) on the basis of some combination of population density (e.g., urban/rural), population size, and commuting patterns (e.g., metropolitan and micropolitan statistical areas).
- **Standard economic indicators** (five general) – Widely-recognized measures of economic conditions (such as inflation, personal income, unemployment rate, and poverty rate) that can be used to guide a multitude of assistance programs.
- **Program-specific measures** (19) – Measures of specific economic conditions specifically created to administer a particular financial assistance program, for example, Section 8 housing vouchers and Title I grants to local education agencies.

The Roles of the Decennial Census in Household Survey Design and Analysis	
Sampling frame	The Census Bureau's Master Address File (MAF), the underpinning of the Decennial Census operation, provides the frame from which a survey sample is drawn.[21]
Sample design	The Decennial Census guides sample design in two ways. One is by delineating the primary sampling units from which samples are to be drawn and the sampling rates by which they are drawn. The second is to guide sample stratification, that is, the size of subsamples by characteristics such as race and household composition.[22]

[21] See, for example, Census Bureau, "Chapter 3. Frame Development" in "American Community Survey: Design and Methodology," January 2014.
[22] See, for example, Danielle Neiman, Susan King, David Swanson, Stephen Ash, Jacob Enriquez, and Joshua Rosenbaum, "Review of the 2010 Sample Redesign of the Consumer Expenditure Survey," presented at the Joint Statistical Meetings, October 2015.

Imputation	Nonresponses to individual questions are filled in by imputing, or "borrowing," answers from other households with similar characteristics.[23]
Weighting	In preparing survey estimates, the weight of each household's response is determined in relation to the estimated overall number of households and the estimated number of residents of similar age, sex, race, and Hispanic origin, as derived from the Decennial Census through annual population and housing estimates.[24]
Variance	To understand the reliability of any survey result, the survey sponsors need to produce estimates of variance, or sampling error, which also is based annual population and housing estimates.[25]

44. Census-guided financial assistance programs use census-derived datasets to differentiate among geographic areas in terms of eligibility and/or allocation and then distribute funds based on those differentiations.

V. CONCLUSION

45. Across the breadth of census-guided programs, geographic differences in the accuracy of the Decennial Census will lead to distortions in the distribution of financial assistance. That said, the sensitivity of funds distribution to census mismeasurement is by far the greatest for programs with geographic allocation formulas that rely on census-derived data. Allocation formulas reflect a continuum of possible outcomes – place on that continuum is determined by specific statistics, often calculated to the one-hundredth or one-thousandth of a percent point. Even modest geographic differences in census accuracy can lead to changes in funds distribution.

[23] See, for example, Census Bureau, "Section 10.6: Editing and Imputation" in "American Community Survey: Design and Methodology," January 2014.
[24] See, for example, Census Bureau, "Chapter 11. Weighting and Estimation," in "American Community Survey: Design and Methodology," January 2014.
[25] See, for example, Census Bureau, "Chapter 14: Estimation of Variance" in "Current Population Survey: Design and Methodology," Technical Paper 66, October 2006.

46. Based on my experience and knowledge, when a state, county, or community loses population share due to a differential undercount, it receives less federal funding and its residents experience less access to valued programs and services than they otherwise would have received and/or face higher taxes than they otherwise would have paid.

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

Andrew Reamer

Executed on August 31, 2020 at Washington, D.C.

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Education

- Ph.D. in Economic Development and Public Policy, Department of Urban Studies and Planning, Massachusetts Institute of Technology (1987)
- Master in City Planning, Department of Urban Studies and Planning, Massachusetts Institute of Technology (1981)
- Bachelor of Science in Economics, cum laude, Wharton School, University of Pennsylvania (1971)

Professional Experience

Research Professor, George Washington Institute of Public Policy, George Washington University (2011-present)

Focus on policies that encourage and support U.S. economic competitiveness. Areas of interest include innovation, regional economic and workforce development, and economic statistics.

Advisory Committees

- Member, U.S. Bureau of Economic Analysis Advisory Committee (2008-present)
- Member, Workforce Information Advisory Council, U.S. Department of Labor (2016-present)
- Member, Statistics Committee, National Association for Business Economics (2013-present)
- Member, Data User Advisory Committee, U.S. Bureau of Labor Statistics (2009-2018, chair 2009-2011)
- Member, National Advisory Committee on Innovation and Entrepreneurship, U.S. Department of Commerce (2016-2018)
- Member, Panel on Communicating National Science Foundation Science and Engineering Information to Data Users, Committee on National Statistics, National Research Council (2010-2011)

Publications

- "Comprehensive Accounting of Census-Guided Federal Spending (FY2017)—Part A: State Estimates," Report #7B of the Counting for Dollars Project, February 2020
- "Federal Sources of Entrepreneurship Data: A Compendium," for the E.M. Kauffman Foundation, December 2019
- "Comprehensive Accounting of Census-Guided Federal Spending (FY2017)—Part A: Nationwide Analysis," Report #7A of the Counting for Dollars Project, November 2019

- "The Distribution of Census-Guided Federal Funds to U.S. Communities: Five Program Examples," with Sean Moulton, Report #6 of the Counting for Dollars Project, July 2019
- "Distribution of Funding from 55 Large Census-guided Programs by State," Report #5 of the Counting for Dollars Project, May 2019
- "Census-derived Datasets Used to Distribute Federal Funds," Report #4 of the Counting for Dollars Project, December 2018
- "Federal Funding for Rural America: The Role of the Decennial Census," Report #3 of the Counting for Dollars 2020 Project, December 2018
- "Company Outcomes Research for Evaluating SBIR (CORES)," with Robin Gaster, for the National Science Foundation, May 2018
- "Nationwide Data Initiative: Principles of Approach to Organizational Design and Development," for the US Partnership on Mobility from Poverty, April 2018
- "Counting U.S. Secondary and Postsecondary Credentials," co-author with Center for Regional Economic Competitiveness, for Credential Engine, April 2018
- "Counting for Dollars 2020: The Role of the Decennial Census in the Geographic Distribution of Federal Funds – Report #2: Estimating Fiscal Costs of a Census Undercount to States," March 2018
- "A Roadmap to a Nationwide Data Infrastructure for Evidence-Based Policymaking," with Julia Lane, *The ANNALS of the American Academy of Political and Social Science*, Vol 675, Issue 1, 2018
- "Before the U.S. Tariff Commission: Congressional Efforts to Obtain Statistics and Analysis for Tariff-setting, 1789–1916," chapter for *Centennial History of the United States International Trade Commission*, November 2017
- "Toward A U.S. Competitiveness Strategy," *Innovations: Technology, Governance, Globalization*, Policy Design issue, Summer-Fall 2017, Volume 11, Issue 3-4
- "Counting For Dollars: The Role of the Decennial Census in the Geographic Distribution of Federal Funds Initial Analysis: 16 Largest Census-guided Programs," August 2017.
- "Federal Efforts in Support of Entrepreneurship: A Reference Guide," prepared for the Kauffman Foundation, April 2017
- "Better Jobs Information Benefits Everyone," *Issues in Science and Technology*, v. 23, n. 1, Fall 2016, pp. 58-63.
- "Data Resources to Support Middle-Skill Workforce Development," research paper prepared for Committee on the Supply Chain for Middle-Skill Jobs: Education, Training and Certification Pathways, Board on Science, Technology and Economic Policy, National Academy of Sciences, August 2015
- "Analyzing Talent Flow: Identifying Opportunities for Improvement," with Robert Sheets and David Stevens, for the Talent Pipeline Management Initiative of the Center for Education and Workforce, U.S. Chamber of Commerce Foundation, July 2015

- "Stumbling into the Great Recession: How and Why GDP Estimates Kept Economists and Policymakers in the Dark," GWIPP research note, April 2014
- "Indicators of the Capacity for Invention in the United States," research paper prepared for the Lemelson Foundation, March 2014
- "The Impacts of Technological Invention on Economic Growth – A Review of the Literature," research paper prepared for the Lemelson Foundation, February 2014
- "National Nonprofit Organizations That Inspire and Enable Invention and Invention-based Enterprises," research paper prepared for the Lemelson Foundation, February 2014
- "Global Entrepreneurship Week Policy Survey," report, Public Forum Institute, November 2013
- "Improving Federal Statistics for Industry Studies," research paper presented at Industry Studies Association annual conference, Kansas City, Missouri, May 2013
- "Using Real-time Labor Market Information on a Nationwide Scale," policy brief, Credentials That Work Initiative, Jobs for the Future, April 2013
- "Labor Market Information Customers and Their Needs: Customer-Oriented LMI Product Innovation," with Center for Regional Economic Competitiveness, report for the Customer Consultation Study Group, Workforce Information Council, April 2012
- "Economic Intelligence: Enhancing the Federal Statistical System to Support U.S. Competitiveness," policy brief, Series on U.S. Science, Innovation, and Economic Competitiveness, Center for American Progress, February 2012
- "Say Goodbye to the Survey of Business Owners?," Policy Forum Blog, the Policy Dialogue on Entrepreneurship, September 26, 2011.
- "The Quality of Economic Statistics is About to Erode," Policy Forum Blog, the Policy Dialogue on Entrepreneurship, September 19, 2011
- "Putting America to Work: The Essential Role of Federal Labor Market Statistics," article, AMSTAT News, American Statistical Association, March 1, 2011
- "The Federal Role in Encouraging Innovation: The "I's" Have It," article, Innovation Policy Blog, December 18, 2010

Congressional and Other Public Testimony

- "The Economic Impacts of the 2020 Census and Business Uses of Federal Data," testimony to the Joint Economic Committee, U.S. Congress, May 22, 2019
- "The Evolution of the Federal Statistical System: Implications for Evidence-based Policymaking," testimony to the Commission on Evidence-based Policymaking, March 13, 2017
- "The American Community Survey: Approaches to Addressing Constituent Concerns," testimony before the Subcommittee on Federal Financial Management, Committee on Homeland Security and Government Affairs, U.S. Senate, Washington, DC, July 18, 2012

- "The Economic Impact of Ending or Reducing Funding for the American Community Survey and Other Government Statistics," testimony before the Joint Economic Committee, U.S. Congress, Washington, DC, June 19, 2012
- Testimony on the President's FY2012 Budget before the House Appropriations Subcommittee on Commerce, Justice, Science, and Related Agencies, Washington, DC, March 11, 2011

Public Presentations

- "Role of the 2020 Census in the Geographic Allocation of Federal Spending," presented at Council of Professional Associations on Federal Statistics, March 6, 2020.
- "Role of the 2020 Census in the Geographic Allocation of Federal Spending," presented at National Association of Counties Legislative Conference, March 2, 2020.
- "Census-Guided Federal Spending: A Comprehensive Accounting," presented at National League of Cities, November 18, 2019.
- "The Role of the 2020 Census in the Geographic Distribution of Federal Funds," presented at annual conference of Association of Public Data Users, July 10, 2019
- "Making it Count: The Role of the 2020 Census in the Geographic Distribution of Federal Funds by County," webinar presentation to the National Association of Counties, June 13, 2019
- "The Role of the 2020 Census in Distributing Federal Funds to Metro Washington," presented at "Interventions that Work: 2020 Census & Hard-to-Reach Communities," Washington, DC, June 6, 2019
- "Non-traditional Datasets for Research on Entrepreneurship," presentation at Industry Studies Association annual conference, May 31, 2019
- "The Census, SCOTUS & The Economy," podcast interview, Joint Economic Committee Democrats, recorded May 22, 2019, released May 30, 2019
- "The Role of the ACS in the Distribution of Federal Funding," presented at the ACS Data Users Conference, Washington, DC, May 14, 2019
- "The Role of the 2020 Census in Distributing Federal Funds to Maryland Nonprofits," presented to Maryland Nonprofits, March 20, 2019
- "Counting for Dollars: A Study of Census-guided Financial Assistance to Rural America," presented to the Congressional Rural Caucus, U.S. House of Representatives, Washington, DC, October 11, 2018
- "2020 Census: How the Count Affects State Budgets," presented to the National Association of State Budget Officers (NASBO) annual conference, Oklahoma City, Oklahoma, July 23, 2018
- "Company Outcomes Research for Evaluating SBIR (CORES)," presentation at Association of Public Data Users annual conference, July 18, 2018
- "Preparing for the Census: What's in Store for 2020 – Why the Census Matters to Cities," presentation to National League of Cities annual conference, March 13, 2018

- "Counting for Dollars: The Role of the Decennial Census in the Geographic Distribution of Federal Funds," presented to the Council of Professional Associations for Federal Statistics, September 15, 2017
- "Congressional Attitudes to Evidence-based Policymaking: An Historical Review," presentation to Legislative Branch Capacity Working Group, July 17, 2017
- "Before the U.S. Tariff Commission: Congress' Efforts to Obtain Statistics and Analysis for Tariff-setting, 1789-1916," presentation to Industry Studies Association annual conference, May 26, 2017
- "A Compendium of Federal Efforts to Support Entrepreneurship: Assessment and Implications," Industry Studies Association annual conference, May 26, 2016
- "Communicating the American Community Survey's Value to Respondents," Committee on National Statistics, National Academy of Sciences, March 8, 2016.
- "The Mercantilist Policy Origins of Federal Economic Statistics Agencies," History of Economics Society annual conference, June 27, 2015.
- "Data Resources to Support Middle-Skill Workforce Development," Symposium on the Supply Chain for Middle-Skill Jobs: Education, Training and Certification Pathways, June 25, 2015.
- "Towards a Federal Strategy for U.S. Economic Competitiveness," Industry Studies Association, May 27, 2015
- "Madison's Legacy: Federal Statistical Products Based on the American Community Survey," ACS Data Users Conference, May 12, 2015
- "Stumbling into the Great Recession: How and Why GDP Estimates Kept Economists and Policymakers in the Dark," GW Forecasting Seminar, February 12, 2015
- "Efforts to Measure Trade in Value-Added and Map Global Value Chains: A Guide," Industry Studies Association Annual Conference, Portland, Oregon, May 29, 2014
- "Stumbling into the Great Recession: How and Why GDP Estimates Kept Economists and Policymakers in the Dark," presented to the U.S. Bureau of Economic Analysis Advisory Committee, Washington, DC, May 9, 2014
- "The Manufacturing Policy Origins of U.S. Economic Statistical Agencies," presentation to the Manufacturing Council, U.S. Department of Commerce, Washington, DC, July 23, 2013
- "A Foundation to Measure U.S. Economic Competitiveness: Proposals," presented at "Measuring Competitiveness: In Search of New Metrics" Luncheon, Bernard L. Schwartz Program in Competitiveness and Growth Policies, Carnegie Endowment for International Peace, Washington, DC, June 20, 2013
- "Sources and Uses of Federal Labor Market Information: Current Developments," presentation to the Real-Time LMI Innovators Network, Jobs for the Future, Boston, MA, April 16, 2013
- "The Economic Census and Its Role in Economic Statistics," 2012 Economic Census Conference, U.S. Census Bureau, Washington, DC, October 15, 2012

- "The Government's Role in Stimulating Clusters," Workshop: Encouraging the Commercialization of Research Results and the Utilization of Cluster Mapping through EU-US Collaborations, Center for Transatlantic Relations, Johns Hopkins University, Washington, DC, December 7, 2011
- "Employment and Workforce Data Systems at the Federal Level: New Developments, Challenges, and Opportunities for Community Colleges," presented to Real Time LMI Innovators Network, Jobs for the Future, Chicago, IL, November 29, 2011
- "Statistics for Cluster Analysis: Innovations and Opportunities," presentation to the Taskforce for the Advancement of Regional Innovation Clusters (TARIC), U.S. Department of Commerce, Washington, DC October 24, 2011
- "Sub-National STI Statistics: Recommendations for the National Center for Science and Engineering Statistics," presentation to panel on Developing Science, Technology, and Innovation Indicators for the Future, National Academies of Science, Washington, DC, July 12, 2011
- "Regional Clusters and Federal Economic Policy," presentation to Manufacturing Industry Study Seminar, Industrial College of the Armed Forces, Washington, DC, March 22, 2011
- "Innovations in Federal Statistics: New Views on Regions," presented to Understanding, Using, and Maximizing New Federal Data Workshop, IEDC 2011 Federal Economic Development Forum, March 20, 2011
- "The Changing Landscape of Federal Workforce Statistics: The Context for Real-Time LMI," presentation to Credentials That Work workshop, Jobs for the Future, Washington, DC, March 15, 2011
- "Putting America to Work: The Essential Role of Federal Labor Market Statistics," presentation to Local Employment Dynamics Partnership Workshop, Washington, DC, March 9, 2011

Hosted Public Events

- "Innovative Data Sources for Regional Economic Analysis," conference and symposium, Washington, DC, May 7-9, 2012
- "Roundtable on Science, Technology, and Innovation Data and Indicators," Washington, DC, June 29, 2011

Public Resource Material

- "Education and Workforce Data Resources," LMI Institute, Fall 2014
- "Public and Private Sources of Education and Workforce Data," April 2014
- "Resources Regarding the American Community Survey (ACS) of the U.S. Census Bureau," May-December 2012

Reports to Clients for Internal Use

- "Federal Manufacturing Policy: An Historical Overview," reference paper prepared for the U.S. Department of Commerce, August 2013

- Papers and reports prepared with the University of North Carolina for "Evaluation and Assessment of Economic Development Investments," a cooperative project with the U.S. Economic Development Administration, October 2011-December 2013
- Analyses prepared for the Panel on Developing Science, Technology, and Innovation Indicators for the Future, Committee on National Statistics in collaboration with the Board on Science, Technology, and Economic Policy, National Research Council, April 2011-December 2012.

Fellow, Metropolitan Policy Program, The Brookings Institution (2006-2010)

Managed the Federal Data Project, an effort that encouraged the federal government to produce the current, accurate, detailed geographic data needed by public and private decision-makers and researchers. Priorities included economic statistics, demographic statistics, and federal expenditures data. Methods include congressional testimony and briefings, public presentations, written and oral communications with federal statistical organizations, public and roundtable events, statistical system stakeholder network development, participation in statistical agency advisory committees, and data product development.

Examples of efforts included:

- Economic Statistics
  - "Putting America to Work: The Essential Role of Federal Labor Market Statistics" (2010)
  - Economic data roundtables with federal statistical agencies, professional and trade associations, policy research organizations, and federal program agencies (2008-2010)
  - Regarding Census Bureau's Local Employment Dynamics program – congressional briefings, annual conference and leadership meetings, panel session participation (2006-2010)
  - "Measuring Up in a Changing Economy: A Look at New U.S. Service Sector Data and Why It Matters," public event and roundtable (2010)
  - Who Cares About Economic Statistics," *Dismal Scientist*, Moody's Economy.com (2009)
  - "The Structure of the U.S. Economic Statistical System: Implications for Public Policy," presentation to the International Statistical Institute conference, Durban, South Africa (2009)
  - "In Dire Straits: The Urgent Need to Improve Economic Statistics," *AmStat News* (2009)
  - "Ensuring Economic Programs Accurately Reflect the 21st Century," speech to the Census Bureau Economic Programs Directorate leadership off-site (2008)
  - "The Department of Commerce Budget Request for Fiscal Year 2008: Observations for Consideration," testimony before the House Committee on Appropriations, Subcommittee on Commerce, Justice, Science and Related Agencies (2007)

- Demographic Statistics
  - "Surveying for Dollars: The Role of the American Community Survey in the Geographic Distribution of Federal Funds" (2010)
  - "Counting for Dollars: The Role of the Decennial Census in the Geographic Distribution of Federal Funds" (2010)
  - "The Federal Statistical System in the 21st Century: The Role of the Census Bureau," testimony before the Joint Economic Committee (2009)
  - "Tempest Over the Census," Brookings editorial (2009)
  - Prototype database to determine geographic allocation of federal funds (counties, metros, states) on the basis on census statistics (2008-09)
  - Prototype tool to provide maps and tables on "hard-to-count" census tracts throughout the U.S. (2008-09)
  - Communications with OMB and Census Bureau leading to improved decennial census enumeration of households in small multi-unit buildings without traditional city-style addresses (2006-09)
  - Census Bureau-data user roundtables on improving Census Bureau's American Community Survey data products (2007-08)
  - "Preparations for 2010: Is the Census Bureau Ready for the Job Ahead?," testimony before the Senate Committee on Homeland Security and Governmental Affairs Subcommittee on Federal Financial Management, Government Information, Federal Services, and International Security (2007)
  - "The 2010 Census: What State, Local, and Tribal Governments Need to Know," workshop (2007)
- Federal Spending Transparency and Accountability
  - "Metro Potential in ARRA: An Early Assessment of the American Recovery and Reinvestment Act" (with Mark Muro, Jennifer Bradley, Alan Berube, Robert Puentes, and Sarah Rahman), chapter on transparency (2009)
  - Memos to and meetings with Congress and the Office of Management and Budget (OMB) on the design and implementation of the Federal Financial Accountability and Transparency Act of 2006 and American Recovery and Reinvestment Act (2007-09)
  - "OMB's Congressional Mandates to Provide Information on Federal Spending," presentations to the National Grants Partnership (2007) and National Academies of Science (2008)

Prepared briefs, articles, presentations, and testimony on federal economic development policy.

- "Stimulating Regional Economies: the Federal Role," presented at Growing Innovation Clusters for American Prosperity symposium, National Academy of Sciences (2009)

- Congress Directs EDA to Act on Clusters," *The New Republic* blog post (with Mark Muro, 2009)
- "Clusters and Competitiveness: A New Federal Role for Stimulating Regional Economies" (with Karen Mills and Elisabeth Reynolds, 2008)
- "The Department of Commerce Budget Request for Fiscal Year 2008: Observations for Consideration," testimony before the House Committee on Appropriations, Subcommittee on Commerce, Justice, Science and Related Agencies (2007)
- "The Federal Role in Regional Economic Development," testimony before the House Committee on Transportation and Infrastructure, Subcommittee on Economic Development, Public Buildings, and Emergency Management (2007)
- "How Economic Change Happens and Why We Resist It," speech before the Symposium on Change, University of Buffalo Regional Institute (2007)

Deputy Director and Fellow, Urban Markets Initiative, The Brookings Institution (2004-06)

Guided a foundation-funded effort to increase the availability and accessibility of data on urban neighborhoods. Projects managed included:

- Federal data agenda – identifying ways in which the federal government can improve availability and accessibility of statistics for states, metro areas, cities, and neighborhoods
- National Infrastructure for Community Statistics – managing a Community of Practice (CoP) focused on the development of a nationwide infrastructure to provide widespread access to data from multiple sources on multiple topics
- Urban budgets – creating a tool to ascertain the flow of federal investments by type of investment and by county

Examples of efforts included:

- "To Take a Bite Out of Crime: Safeguard the Census," *Brookings Alert* (2006)
- "Anticipating the Unimaginable: The Crucial Role of the Census in Disaster Planning and Recovery," *Brookings Alert* (2006)
- "Apportionment in the Balance: A Look into the Progress of the 2010 Decennial Census ," testimony before House Committee on Government Reform (2006)
- "Better Data for Better Decisions: The Value of the American Community Survey to the Nation," Brookings Briefings on the Census (2006)
- "The Road to 2010: Plans for the 2010 Census and the American Community Survey," Brookings Briefings on the Census (2006)
- "Federal Statistics: Robust Information Tools for the Urban Investor" (with Pari Sabety, 2005)

Principal, Andrew Reamer & Associates (full-time 1995-2004, part-time 2004-present)

Promotes sound public policy and effective economic development through three sets of activities:

- Building Capacities for Producing and Using Regional Socioeconomic Data
- Indicator Systems Design and Implementation
- Regional Economic Development Analysis, Strategy, and Program Development

Building Capacities for Producing and Using Regional Socioeconomic Data

- Determining Public and Private Sector Needs For Socioeconomic Data
  - Federal Data Agenda, Urban Markets Initiative, Brookings Institution (consultant, 2004). Managed staff assessments of 30 federal statistical agencies to determine issues and barriers to providing data useful for urban market decisions, and priorities for action to address these issues and barriers.
  - Socioeconomic Data for Economic Development: An Assessment (with Joseph Cortright, for U.S. Economic Development Administration, 1999)
- Mechanisms to Enhance Economic Markets Through Improved Data Development, Access, and Use
  - Guides
    - Socioeconomic Data for Understanding Your Regional Economy: A User's Guide (with Joseph Cortright, for U.S. Economic Development Administration, 1998)
  - Web sites
    - WorkforceUSA (adviser to Workforce Learning Strategies, for U.S. Department of Labor and Ford Foundation, 2002)
    - Mapstats (adviser to Mapstats Working Group, FedStats Task Force, 2000-01)
    - EconData.Net (co-developer and –owner, with Joseph Cortright, 1999-present). Econdata.Net is a portal to 1,000 on-line sources of regional socioeconomic data, organized by topic and provider. The site has 14,000 visitors monthly, and 3,000 subscribers to a monthly newsletter, StatScan. EconData.Net was developed and operated using Economic Development Administration funds, and is now sponsored by the Fannie Mae Foundation.
  - CDs
    - R-Maps, Office of Policy Development and Research, U.S. Department of Housing and Urban Development (facilitator of development of CD with PD&R data sets and LandView mapping tool, 2000-01)

- Conference Design and Development
  - America's Scorecard: The Historic Role of the Census Bureau in an Ever-Changing Nation, Woodrow Wilson International Center for Scholars, Washington, DC (for Census Bureau, March 2004)
  - International Conference on Community Indicators, Community Indicators Consortium, Reno, Nevada (March 2004)
  - Next Generation of Community Statistical Systems, Tampa, Florida (with University of Florida, for Ford Foundation, March 2002)
  - Innovations in Federal Statistics, Woodrow Wilson International Center for Scholars, Washington, DC (for the Center, May 2001)
- Organizational and Professional Network Development and Management
  - Community Indicators Consortium (conference track chair, planning committee chair, 2004)
  - Community Statistical Systems Network (2002 – 04)

Indicator Systems Design and Implementation

- Working Poor Families Project, Annie E. Casey Foundation/Ford Foundation/Rockefeller Foundation (with Brandon Roberts + Associates, 2001 – present)
  - Annually oversee the preparation of state indicators on the economic conditions and characteristics of working families and individuals
  - With Brandon Roberts, advised state advocacy organizations (15 to date) in the preparation of policy reports on low-income working families
  - Co-authored one national report (2004) and advised on second (2008)
- "Development Report Card for the States," Corporation for Enterprise Development (1987 – 2006)
  - Annually prepared indicators on economic vitality for the 50 states
  - Advised on revisions of indicators framework

Regional Economic Development Analysis, Strategy, and Program Development

- Nationwide Analysis Of Regional Economic Dynamics and Programs
  - Technology Transfer and Commercialization: Their Role in Economic Development (for Economic Development Administration, 2003) – Note Chapter Three and Appendix B on the geography of innovation in the U.S.

- Guides
  - Strategic Planning in the Technology-Driven World: A Guidebook for Innovation-Led Development, Collaborative Economics (co-author with Jennifer Montana, for Economic Development Administration, 2001)
- Regional Economic Analysis, Strategy, and Program Development (see next section)

Other Prior Professional Experience – Regional Economic Development

As co-founder and principal of Mt. Auburn Associates (1984-1995) and as principal of Andrew Reamer & Associates (1995-present), Andrew Reamer managed and participated in regional economic development studies of three types: analysis and strategy, program evaluation, and program design

Analysis and Strategy

- General Regional Economic Development Analyses and Strategies

  Involved in over 30 general economic development studies, clients include:

  - States of Massachusetts, Rhode Island, Arkansas, Indiana, Georgia, and Colorado
  - Regions in western Massachusetts, northeast and northwest Connecticut, northern New Mexico, northwest Oregon
  - Metro areas of Boston, Worcester, and Springfield, Massachusetts; Nashua, New Hampshire; Indianapolis, Indiana; Memphis, Tennessee; Shreveport, Louisiana; Austin, Texas
  - Cities of Boston, Massachusetts, Dublin, Ohio, and Collierville, Tennessee
  - Clarke County, Georgia and Aiken County, South Carolina
- Regional Industry Competitive Analyses and Strategies
  - Examined competitive strengths, weaknesses, and strategy options for specific regional industries, include fiber optics, telecommunications, information technology, advanced materials, software, metalworking, environmental technology, marine technology, biomedical, food processing, footwear, plastics, oil, natural gas, petrochemicals, wood products, warehousing and distribution, and heavy vehicles.
- Advanced Technology Analyses and Strategies
  - Analyzed key technology industries and development opportunities in Iowa and Virginia

- Prepared regional strategies for promoting technology transfer from the Los Alamos National Laboratory, the Department of Energy Jefferson National Accelerator Facility, and the Air Force's Rome Laboratory.Regional Defense Adjustment Efforts
    - Managed or participated in the preparation of conversion strategies for defense-dependent regions, facilities reuse plans, and base closure impact analyses.
- Recyclable Material Markets Analyses and Strategies
    - Managed or participated in preparation of analyses and strategies in New York, Pennsylvania, Massachusetts, Connecticut, Rhode Island, Texas, North Carolina, Mississippi, and Iowa.

Program Evaluation

- Evaluation Of Federal Economic Development Programs
    - Managed or participated in evaluation of the U.S. Economic Development Administration's Revolving Loan Fund, Technical Assistance, Public Works, and Small Business Incubator programs.
    - Managed two evaluations of the Jobs Through Recycling program of the U.S. Environmental Protection Agency.
- Evaluation of State Economic Development Programs
    - Managed or participated in evaluation of Ohio's Edison Technology Centers and technology transfer intermediaries, New York's Office of Recycling Market Development, Iowa's small business incubator program, Oregon's Regional Strategy program, Georgia's economic development agencies, and Massachusetts' Community Development Finance Corporation.

Program Design

- Design Of State And Individual Small Business Incubator Programs
    - Managed program-specific efforts for the states of Massachusetts and Iowa and facility-specific efforts in New Mexico and Massachusetts.
- Design Of State Defense Industry Conversion Programs
    - For the National Governors Association, participated in the development of state defense industry conversion programs in Massachusetts, Rhode Island, and Virginia.

Chronology of Professional Experience

- Research Professor, George Washington Institute of Public Policy, George Washington University (2011-present)
- Nonresident Senior Fellow, Metropolitan Policy Program, The Brookings Institution (2010-2013)
- Fellow, Metropolitan Policy Program, The Brookings Institution (2005-2010)
- Deputy Director and Fellow, Urban Markets Initiative, Metropolitan Policy Program, The Brookings Institution (2004-06)
- Principal, Andrew Reamer & Associates (full-time 1995-2004, part-time 2004-present)
- Lecturer, Department of Urban Studies and Planning, Massachusetts Institute of Technology (1986, 2002-04)
- Principal, Mt. Auburn Associates (1984-1995)
- Case Team Member, Rhode Island Strategic Development Commission (1983-84)
- Consultant, Counsel for Community Development (1982-83)
- Graduate instructor, MIT Department of Urban Studies and Planning (1981-82)
- Policy Analyst, U.S. Department of Commerce, Office of the Assistant Secretary for Policy (1980)
- Research Assistant, MIT Center for Transportation Studies (1981-82)
- Research Assistant, MIT Energy Laboratory (1978-1981)
- Health Planner, Maryland Health Planning and Development Agency (1975-78)
- Administrative Assistant, Johns Hopkins Hospital (1974)
- Research Analyst, Boston Urban Observatory, University of Massachusetts (1973)
- Summer Intern, Mayor's Office of Public Service, City of Boston (1970, 1971)

Achievements and Honors

- Doctoral Fellow, Harvard-MIT Joint Center for Urban Studies (1983-1984)

Professional Affiliations

- Association of Public Data Users, Past President (2011-2012), President (2009-2010), Vice President (2008), Board member (2006-2007)
- Council for Community and Economic Research, Board member (2007- 2012)
- National Association for Business Economics, Member of Statistics Committee (2013-present)
- American Statistical Association
- American Economic Association
- History of Economics Association

EXHIBIT E

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MARYLAND

LA UNIÓN DEL PUEBLO ENTERO, et al., *Plaintiffs*, v. DONALD J. TRUMP, sued in his official capacity as President of the United States, et al., *Defendants*.	Civil Action No. 8:19-CV-02710-PX

DECLARATION OF KIMBALL W. BRACE

I. INTRODUCTION

1. I am the president of Election Data Services, Inc. (E.D.S. Inc.), a Manassas, Virginia-based consulting firm whose specialty is reapportionment, redistricting matters, election administration issues, and the census.

2. I have been retained by the plaintiffs in *La Union del Pueblo Entero v. Trump et al.*, Case No. 8-19-cv-02710 (D. Md.). I have been asked to assess the impact of a truncated Census field operation and post-processing operation on (i) the apportionment of Congressional seats following the 2020 Census, and (ii) the dilution of the votes of people living in certain counties as a result of intrastate redistricting.

3. All the materials considered in forming the opinions contained herein are identified in this report. I am being compensated for my work on this matter at an hourly rate of $175, while members of my staff at billed at $140 per hour.

II. BACKGROUND AND QUALIFICATIONS

4. I attended American University in Washington, D.C., from 1969 through 1974 (having taken a year off for the 1972 campaign), where I earned a B.A. degree in Political Science. I started E.D.S. Inc. in 1977 and have been with the company since that time.

5. Prior to 1977, I was a journalist and employed by companies like NBC News, Congressional Quarterly, and Plus Publications. While I was with NBC News, I was a researcher, advance man, and, during the 1972 election year, an election analyst for the NBC News Elections Unit. One of my responsibilities was to follow the redistricting process that occurred after the 1970 census. At Congressional Quarterly, I was in charge of congressional voting studies. At Plus Publications, I was Associate Editor of a newsletter called *Election Administration Reports*, a bi-weekly publication for state and county election administrators and registrars of voters. A copy of my curriculum vitae is attached as **Exhibit 1**.

6. As president of E.D.S. Inc., I supervise and direct all major projects in which the company is involved.

7. E.D.S. Inc. is a research facility and consulting firm dealing with many aspects of the electoral process. The company and its staff have been hired by state and local governments across the nation to provide software, database development services, and consulting services for the creation of districting plans and the analysis of many aspects of the apportionment and redistricting process.

8. Since 1979, I, individually and with E.D.S. Inc., have been actively involved in many aspects of the redistricting and reapportionment process, having gone through four full census and redistricting cycles. We have already been retained by several states for the planning and database activities associated with the 2020 redistricting process. I have been a consultant to many state and local governmental organizations around the nation, providing strategic advice and consulting on redistricting matters, coordinating the development of the databases used in the

redistricting process, creating and assisting others with the creation of districting plans, and analyzing many aspects of districts and district configurations.

9. Over the past 39 years, E.D.S. Inc.'s clients for redistricting services have come from more than half the states in the nation. In addition, over the past three decades, I have been called upon to provide reports, expert witness testimony, and assistance to attorneys in more than 70 different court cases.

10. Further, I frequently give speeches to groups and organizations and participate in numerous conferences and panels on various aspects of apportionment, redistricting, and the census. Since the early 1980s, I have been a regular participant and speaker at annual and bi-annual meetings of the Task Force on Redistricting of the National Conference of State Legislatures ("NCSL"). I have also been on their faculty, as NCSL has conducted five regional "Get Ready for Redistricting" seminars each decade since 1980. I was also appointed by the U.S. Secretary of Commerce to the 2010 Census Advisory Committee, a 20-person advisory board to the Director of the Census Bureau and served for two terms. Earlier this year I was asked to be NCSL's representative on a series of half-day small-group expert meetings, being arranged by the Committee on National Statistics (CNSTAT), to delve deeply into and provide informal discussion/feedback with Census Bureau staff as they continue to develop the differential privacy-based Disclosure Avoidance System for the 2020 census. I am regularly called upon by members of the press with questions on redistricting, reapportionment, the census, election administration issues, and politics in general.

11. In addition to its redistricting work, E.D.S. Inc. provides assistance in the election administration field to state and local jurisdictions in such areas as precinct management, voter registration systems, and voting equipment evaluation. E.D.S. Inc. regularly collects election returns for each state in the nation. In 1992, the company published a 500-page volume of county-level voter registration and voter turnout data, and election returns for the entire nation

(The Election Data Book: A Statistical Portrait of Voting in America, 1992 (Bernan Press, 1993)). While we only published the single volume, we have continued to compile an electronic county-level database for each general election since that time, which we sell to numerous institutions and organizations.

12. I personally have been involved in the election administration field for over 40 years. I have worked for federal government clients (Federal Election Commission, Election Administration Commission, GAO, Library of Congress) along with a number of state governments on different aspects of election administration. These include studies on voter registration systems as well as voting equipment.

13. Since 2008, I have been a poll worker in Prince William County, VA where I live. Because the state holds elections every year and due to my interest in all aspects of election administration, I have graduated to now being "chief judge" in the precincts that I have been assigned to work. In 2012, the county experienced long lines at the polls on Election Day, and I was then appointed to a 20-person task force by the County Board of Supervisors to investigate the cause of the problems. Because of my data background, I compiled and analyzed all the data used by the task force, presenting updates at our bi-weekly meetings over the 5-month life of the task force. With the retirement of the County's General Registrar (director of elections for the county), I was asked to take over the 11-person office. While I declined the full time job offer, I did agree to be the Acting General Registrar for four months while the county conducted a search for a full time replacement. I have continued to be actively involved in election administration issues within the county since that time. I have continued to be involved with the county, now serving as chief judge in a number of rotating precincts that need assistance with each election, as well as serving on the County's Historical Commission since 2015 (and elected Chairman twice since 2017).

III. U.S. CONGRESSIONAL REAPPORTIONMENT: BASELINE PROJECTIONS FOR 2020

14. For the past four decades I and Election Data Services have studied and issued yearly reports on the apportionment process using new population estimates released by the Census Bureau and private demographic firms. All our reports can be found at our website: www.electiondataservices.com, under the "Research" tab. We have become a staple for the press and others to cite when looking at the shift that is occurring in population between different states.

15. In the mid-1980s, E.D.S. Inc. developed software to calculate the distribution of congressional districts to the states based on population or other data. Initially developed in the Basic programming language, in the early 1990s, we reprogrammed it as macros for Excel spreadsheets. The program implemented the "method of equal proportions" formula that was adopted by the U.S. Congress in 1941 as the official manner to divide seats in the US House of Representatives among the states. As the Constitution stipulates, each state is provided at least one initial seat in the House of Representatives. The formula is actually used to apportion the remaining 385 districts. The formula works as follows:

> The rest of the seats are handed out based on statistical "priority values" assigned to each additional seat that a state might get. In as close to plain English as the formula will allow, these priority values are calculated in a two-step process that requires dividing a state's population by the square root of the product of the number of seats it's already been assigned and that number plus one. The priority numbers are then rank ordered: "State A" will get an additional seat if its priority value for that seat is greater than any other state's. The seats are disbursed to states based on these rankings until all 435 have been awarded.[1]

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[1] Greg Giroux, "Before Redistricting, That Other 'R' Word," CQ Weekly (Nov. 30, 2009); *see also* Kristin D. Burnett, "Congressional Apportionment: 2010 Census Briefs," U.S. Census Bureau (Nov. 2011), https://www.census.gov/prod/cen2010/briefs/c2010br-08.pdf.

16. Our reapportionment program calculates not only how many seats each state would receive based on the population or other numbers put into the formula, but it also calculates and reports the number of people a state gained its last seat by or lost the next seat by. It reports the last seat number that is given to a state, as well as what number seat the next district would be if the calculations continued past the 435 seat cut-off. The program also allows the user to change the maximum number of seats to be calculated. Finally, the program calculates the ideal district size for each state, by taking the state's total population and dividing it by the number of seats that the state has been awarded.

17. On at least a yearly basis, we have utilized the apportionment program to analyze the Census Bureau's annual state population estimates, which are usually released in late December each year. Our resulting studies and press releases have been consistently referenced by the media and scholars. Our studies are usually released the same day the Census Bureau estimates are unveiled and can be found on our website (www.electiondataservices.com). All of our historical studies (back to when we started them in 1994) and press releases are also kept on our website, available for all to see. The same tables have also been generated from the final decennial population numbers each decade back to 1940. Our website also has a historical table, that we have continued to update, showing the number of seats given to each state each decade back to the nation's founding in 1789.

18. We can utilize the annual estimates from the Bureau to create reliable projections of what the population, by state, might be at the time of the next decennial census (April 1 of the year ending in "0") and test those estimates on the anticipated deviations that will result. We do this projection each year and report the results in our press releases. A copy of our most recent study, released December 30, 2019, is attached to this report as **Exhibit 2**. For the purposes of studying the 2019 population estimates released by the Census Bureau in December 2019, E.D.S. Inc. created a series of estimates for possible 2020 population projections based upon

various amounts of change that were apparent in the Bureau's data. The three trend models used various time factors that the change would be calculated upon.

19. While our most recent study also reported on a "short-term change", a "mid-term change" and a "long-term change" model, at this point in the decade (when the Census is currently ongoing) it is logical to focus on just the "short-term change" model.

20. Using the 2019 population estimates, I am able to calculate a projected allocation of seats in the House of Representatives. I calculate the number of seats to be apportioned to each State based upon the so-called "method of equal proportions." As discussed above, under this formula, the population of each state is multiplied by a constant that is mathematically determined to test the priority of each state for an additional seat in the House. The only variable entered into the formula is the population of the states, as reported in the decennial Census. Any variation in the population will modify the priority ranking of the states and can cause a state to lose, or to fail to gain, an additional seat.

21. As we reported repeatedly in our 2019 report, and have continued to stress in press interviews, speeches, and conversations, the apportionment formula is very susceptible to slight changes in state's individual populations and how they relate to other states' populations. We always demonstrate this vulnerability by looking at the states that fall close to the magic 435 cut-off for seats.

2019 Reapportionment Analysis

2020 Projections (using 2018-2019 short-term trend)

Last Five Seats		Margin of Gain	Next Seats		Margin of Loss
431	Illinois (17th)	126,052	436	Alabama (17th)	10,072
432	New York (26th)	61,279	437	Minnesota (8th)	21,992
433	Texas (39th)	79,742	438	Ohio (16th)	74,135
434	Montana (2nd)	2,402	439	California (53rd)	344,367
435	Florida (29th)	44,285	440	Rhode Island (2nd)	14,539

22. All of the above states are very possible to change their ranking, and therefore their allocation of seats, when the final population numbers are published at the end of this year.

23. We've seen this happen in past decades, as we always note in our studies, when circumstances like weather events have affected apportionment. The Census Bureau's estimated populations released for 2005 showed **Louisiana** would keep all their congressional districts that decade. Even the Bureau's own projections for 2010 released that same year showed **Louisiana** staying the same. Then hurricane Katrina hit **Louisiana** at the end of August 2005 (after the date of the population estimates). Devastation and population loss impacted New Orleans in a major way, and when the Bureau's 2006 population estimates were released **Louisiana** was looking at losing a congressional seat. That was ultimately confirmed when the 2010 Census was taken, and state data was released at the end of that year. Just last week, when Hurricane Laura came ashore in the Gulf Coast, I was called by several media and a Louisiana State Senator wondering about the likely impact on 2020. The current hurricane season, wild fires, and the ongoing COVID-19 pandemic make it more likely that undercounts will be exacerbated, particularly if Census operations are truncated.

24. A changed practice on how to count the military overseas could also change the final apportionment when it is announced December 31, 2020. For the 2020 Census the Census Bureau has changed the "residency rules" for counting the military by creating a distinction between personnel who are *deployed* overseas (usually for short periods of time) compared to those who are *stationed* or *assigned* overseas (frequently for longer periods of time). The Bureau will use DOD's administrative records to count *deployed* personnel at their usual residence in the US for both apportionment and redistricting purposes (they will be embedded within the state's resident population counts). On the other hand, personnel who are *stationed* or *assigned* overseas will be counted to their "home state of record" for apportionment purposes only and will show up as part of a state's total "overseas count" when the Bureau releases the final and

official apportionment data by December, 31, 2020. Military sources have told the Census Bureau that of all overseas military, approximately 15% are *deployed* personnel and 85% are *stationed* or *assigned* overseas. Overseas military personnel have been a factor in the apportionment formula for the past several decades, including the switching of the final district in 2000 that went from **Utah** to **North Carolina**.

25. These numbers are likely to also be significantly impacted by how well the Commerce Department and Census Bureau conducts the census, how well the American public responds to this decennial exercise, the first Census where major components will be conducted via the internet, and whether the discussion on a Census citizenship question over the past year will cause some groups to avoid participating. With these complications and policies described above, the truncation of the 2020 Census field operations and post-processing is likely to prevent enumeration of people in hard to count communities and increase the differential undercount.

26. As I noted in EDS's report from last year's we cautioned users that even though there is a very short time before the Census, the population projections are still subject to change. "We are now at a place where the rubber meets the road," I said. "How well does the Census Bureau and the Trump administration put on the greatest mobilization of government resources outside of war time? How well will the public respond and answer the Census, given the competing focuses of everyday life and the need to utilize the internet? Will the fear of foreign intervention also impact the census?" I noted. "Having worked with Census data and estimates since the 1970s, it is important to remember that major events like Katrina and the 2008 recession each changed population growth patterns and that impacted and changed the next apportionment," I said.

27. The ore apparent with the low response rates still being identified across the country. Because the Census Bureau has had to react to the pandemic that appeared right when the counting process was beginning, they initially requested a delay of four months in the reporting

requirements in proposed language to Congress. Yet, in the last month the Trump administration has pulled back that delay, and instead reinstituted the original reporting requirements of December 31, 2020 for the apportionment numbers. As a result, the Bureau has shortened the time to find people who have not responded to the census, thinned down the time to process the census questionnaires, and cut various procedural processes to check whether the counting process is correct.

28. Just this morning, the Bureau's website was showing a nationwide response rate of just 64.9% as of Saturday evening, August 29th, 2020, their latest estimates. Additionally, they note another 16.9% have been enumerated in the follow-up procedure called Non-Response Follow Up (NRFU), for a total nationwide enumerated rate of 81.7%.

29. But these "enumerated rates" vary greatly by state. Idaho is currently at the highest rate of 96.5%, helped greatly from the 27.8% that were found in the NRFU program. The state of New Mexico is at the bottom of the list, showing a self-response rate of 55.6%, an enumerated in Nonresponse rate of 15.6%, and a total enumerated rate of 71.2%.

30. Looking at four of the five states where the last five seats are expected to be allocated, those states are also all below the average self-response rate for the nation, which is 64.9 % as of August 29, 2020. For example, New York has a self-response rate of 61.0 %, Florida has a self-response rate of 61.5%, and Texas has a self-response rate of 60.2%. If the final population counts of these three states, that are currently projected to gain one of the last congressional seats, are undercounted, by even tens of thousands of people, those states will lose a congressional seat to a different state.

31. **Exhibit 3** in this report is a table of these response rates reported this morning where I have sorted the states by the overall enumerated rates. At the bottom of the list are the mostly southern states of New Mexico, Georgia, Puerto Rico, Arizona, Alabama, Montana, South Carolina, Mississippi, North Carolina, Louisiana, Florida and Texas (listed in order of least

enumerated rate to higher). Except for Montana, all of these listed states have higher than average concentration of minority racial groups in their population.

32. Clearly minority racial groups are being negatively affected disproportionately by the challenges of this Census. When one uses the Bureau's same reporting system to look down at the tract level, one can find the lowest self-response rates in areas heavily populated by African-Americans (including inner cities), Hispanics (including colonias), and Native America communities (reservations). On the other hand, the best self-response rates are in suburban communities. Unfortunately, the Bureau does not report the NRFU numbers at the tract level, so it is unknown whether that process is successful or not.

33. The Bureau's changes to the timeline for the counting and post-count process will likely result in a greater undercount than experienced in prior censuses. Based on my experience and knowledge, this will likely have a significant effect on the accuracy of the census, meaning more individuals will be missed in certain underperforming states and in hard to count communities. There is also a strong potential to impact a number of states in the apportionment process if the period for counting and post-processing is truncated to September 30. Furthermore, states use Census data in their state legislative redistricting processes, and undercounts of hard to count communities can result in the loss of state and local legislative seats for the undercounted areas.

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

Kimball W. Brace

Executed on August 31, 2020 at Manassas, Virginia.

APPENDIX 1

(Exhibit 1 to Declaration of Kimball W. Brace)

VITA

KIMBALL WILLIAM BRACE

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Kimball Brace is the president of Election Data Services Inc., a consulting firm that specializes in redistricting, election administration, and the analysis and presentation of census and political data. Mr. Brace graduated from the American University in Washington, D.C., (B.A., Political Science) in 1974 and founded Election Data Services in 1977.

Redistricting Consulting

Activities include software development; construction of geographic, demographic, or election databases; development and analysis of alternative redistricting plans; general consulting, and onsite technical assistance with redistricting operations.

Congressional and Legislative Redistricting

Arizona Independent Redistricting Commission: Election database, 2001

Arizona Legislature, Legislative Council: Election database, 2001

Colorado General Assembly, Legislative Council: Geographic, demographic, and election databases, 1990–91

Connecticut General Assembly
- Joint Committee on Legislative Management: Election database, 2001; and software, databases, general consulting, and onsite technical assistance, 1990–91
- Senate and House Democratic Caucuses: Demographic database and consulting, 2001

Florida Legislature, House of Rep.: Geographic, demographic, and election databases, 1989–92

Illinois General Assembly
- Speaker of House and Senate Minority Leader: Software, databases, general consulting, and onsite technical assistance, 2000–02,
- Speaker of House and President of Senate: Software, databases, general consulting, and onsite technical assistance, 2018-current, 2009-2012, 1990–92, and 1981-82

Iowa General Assembly, Legislative Service Bureau and Legislative Council: Software, databases, general consulting, and onsite technical assistance, 2000–01 and 1990–91

Kansas Legislature: Databases and plan development (state senate and house districts), 1989

Massachusetts General Court
- Senate Democratic caucus: Election database and general consulting, 2001–02
- Joint Reapportionment Committees: Databases and plan development (cong,, state senate, and state house districts), 1991–93, 2010-2012

(Redistricting Consulting, cont.)

Michigan Legislature: Geographic, demographic, and election databases, 1990–92; databases and plan development (cong., state senate, and state house districts), 1981-82

Missouri Redistricting Commission: General consulting, 1991–92

Commonwealth of Pennsylvania: General consulting, 1992

Rhode Island General Assembly and Reapportionment Commissions

- Software, databases, plan development, and onsite assistance (cong., state senate, and state house districts), 2016- current, 2010-2012, 2001–02 and 1991–92
- Databases and plan development (state senate districts), 1982-83

State of South Carolina: Plan development and analysis (senate), U.S. Dept. of Justice, 1983–84

Local Government Redistricting

Orange County, Calif.: Plan development (county board), 1991–92

City of Bridgeport, Conn.: Databases and plan development (city council), 2011-2012 and 2002–03

Cook County, Ill.: Software, databases, and general consulting (county board), 2010-2012, 2001–02, 1992–1993, and 1989

Lake County, Ill.: Databases and plan development (county board), 2011 and 1981

City of Chicago, Ill.: Software, databases, general consulting, and onsite technical assistance (city wards), 2010-2012, 2001–02 and 1991–92

City of North Chicago, Ill.: Databases and plan development (city council), 1991 and 1983

City of Annapolis, Md.: Databases and plan development (city council), 1984

City of Boston, Mass.: Databases and plan development (city council), 2011-2012, 2001-2002, and 1993

City of New Rochelle, N.Y.: Databases and plan development (city council), 1991–92

City of New York, N.Y.: Databases and plan development (city council), 1990–91

Cities of Pawtucket, Providence, East Providence, and Warwick, and town of North Providence, R.I.: Databases and plan development (city wards and voting districts), 2011-2012, 2002

City of Woonsocket and towns of Charlestown, Johnston, Lincoln, Scituate and Westerly, R.I.: Databases and plan development (voting districts), 2011-2012, 2002; also Westerly 1993

City of Houston, Tex.: Databases and plan development (city council), 1979 — recommended by U.S. Department of Justice

City of Norfolk, Va.: Databases and plan development (city council), 1983–84 — for Lawyers' Committee for Civil Rights

Virginia Beach, Va.: Databases and plan development (city council), 2011-2012, 2001–02, 1995, and 1993

Other Activities

International Foundation for Electoral Systems (IFES) and U.S. Department of State: redistricting seminar, Almaty, Kazakhstan, 1995

Library of Congress, Congressional Research Service: Consulting on reapportionment, redistricting, voting behavior and election administration

National Conference of State Legislatures (NCSL): Numerous presentations on variety of redistricting and election administration topics, 1980 - current

Election Administration Consulting

Activities include seminars on election administration topics and studies on voting behavior, voting equipment, and voter registration systems.

Prince William County, VA:
2013 – Appointed by Board of County Supervisors to 15 member Task Force on Long Lines following 2012 election. Asked and appointed by County's Electoral Board to be Acting General Registrar for 5-month period between full-time Registrars.
2008 - current – poll worker and now chief judge for various precincts in county

U.S. Election Assistance Commission (EAC): Served as subcontractor to prime contractors who compiled survey results from 2008 and 2010 Election Administration and Voting Survey.

U.S. Election Assistance Commission (EAC): Compile, analyze, and report the results of a survey distributed to state election directors during FY–2007. Survey results were presented in the following reports of the EAC: *The Impact of the National Voter Registration Act of 1993 on the Administration of Elections for Federal Office, 2005–2006, A Report to the 110th Congress,* June 30, 2007; *Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), Survey Report Findings,* September, 2007; and *The 2006 Election Administration and Voting Survey, A Summary of Key Findings,* December, 2007.

U.S. Election Assistance Commission (EAC): Compile, analyze, and report the results of three surveys distributed to state election directors during FY–2005: Election Day, Military and Overseas Absentee Ballot (UOCAVA), and Voter Registration (NVRA) Surveys. Survey results were presented in the following reports: *Final Report of the 2004 Election Day Survey,* by Kimball W. Brace and Dr. Michael P. McDonald, September 27, 2005; and *Impact of the National Voter Registration Act of 1993 on the Administration of Elections for Federal Office, 2003–2004, A Report to the 109th Congress,* June 30, 2005.

Rhode Island Secretary of State: Verification of precinct and district assignment codes in municipal registered voter files and production of street files for a statewide voter registration database, on-going maintenance of street file, 2004-2006, 2008-2014, 2016-2017.

Rhode Island Secretary of State, State Board of Elections & all cities & towns: production of precinct maps statewide, 2012, 2002, 1992

District of Columbia, Board of Elections and Ethics (DCBOEE): Verification of election ward, Advisory Neighborhood Commission (ANC), and Single-Member District (SMD) boundaries and production of a new street locator, 2003. Similar project, 1993.

Harris County, Tex.: Analysis of census demographics to identify precincts with language minority populations requiring bilingual assistance, 2002–03

(Election Administration Consulting, cont.)

Cook County, Ill., Election Department and Chicago Board of Election Commissioners:
- Analysis of census demographics to identify precincts with language minority populations requiring bilingual assistance, 2019, 2010-2013, 2002–03
- Study on voting equipment usage and evaluation of punch card voting system, 1997

Chicago Board of Election Commissioners: Worked with Executive Director & staff in Mapping Dept. to redraw citywide precincts, eliminate over 600 to save costs, 2011-12

Library of Congress, Congressional Research Service: Nationwide, biannual studies on voter registration and turnout rates, 1978–2002

U.S. General Accounting Office (GAO), U.S. Dept. of Justice, and numerous voting equipment vendors and media: Data on voting equipment usage throughout the United States, 1980–present

Needs assessments and systems requirement analyses for the development of statewide voter registration systems:
- Illinois State Board of Elections: 1997
- North Carolina State Board of Elections, 1995
- Secretary of Commonwealth of Pennsylvania, 1996

Federal Election Commission, Office of Election Administration:
- Study on integrating local voter registration databases into statewide systems, 1995
- Nationwide workshops on election administration topics, 1979–80
- Study on use of statistics by local election offices, 1978–79

Cuyahoga County, Ohio, Board of Elections: Feasibility study on voting equipment, 1979

Winograd Commission, Democratic National Committee: Analysis of voting patterns, voter registration and turnout rates, and campaign expenditures from 1976 primary elections

Mapping and GIS

Activities include mapping and GIS software development (geographic information systems) for election administration and updating TIGER/Line files for the decennial census.

2000 Census Transportation Planning Package (CTPP), 1998–99: GIS software for the U.S. Department of Transportation to distribute to 400 metropolitan planning organizations (MPOs) and state transportation departments for mapping traffic analysis zones (TAZs) for the 2000 census; provided technical software support to MPOs

Census 2000, 2010 and 2020 Redistricting Data Program, Block Boundary Suggestion Project (Phase 1) and Voting District Project (Phase 2), 1995–99: GIS software and provided software, databases, and technical software support to the following program participants:
- Alaska Department of Labor
- Connecticut Joint Committee on Legislative Management
- Illinois State Board of Elections
- Indiana Legislative Services Agency
- Iowa Legislative Service Bureau

(Mapping & GIS Support, cont.)

- New Mexico Legislative Council Service
- Rhode Island General Assembly
- Virginia Division of Legislative Services

Developed PRECIS® Precinct Information System—GIS software to delineate voting precinct boundaries—and delivered software, databases, and technical software support to the following state and local election organizations (with date of installation):

- Cook County, Ill., Department of Elections (1993)
- Marion County, Fla., Supervisor of Elections (1995)
- Berks County Clerk, Penn. (1995)
- Hamilton County, Ohio, Board of Elections (1997)
- Brevard County, Fla., Supervisor of Elections (1999)
- Osceola County, Fla., Supervisor of Elections (1999)
- Multnomah County, Ore, Elections Division (1999)
- Chatham County, Ga., Board of Elections (2000)
- City of Chicago, Ill., Board of Election Commissioners (2000)
- Mahoning County, Ohio, Board of Elections (2000)
- Iowa Secretary of State, Election and Voter Registrations Divisions (2001)
- Woodbury County, Iowa, Elections Department (2001)
- Franklin County, Ohio, Board of Elections (2001)
- Cobb County, Ga., Board of Elections and Voter Registration (2002)

Illinois State Board of Elections, Chicago Board of Election Commissioners, and Cook County Election Department: Detailed maps of congressional, legislative, judicial districts, 1992

Associated Press: Development of election night mapping system, 1994

Litigation Support

Activities include data analysis, preparation of court documents and expert witness testimony. Areas of expertise include the census, demographic databases, district compactness and contiguity, racial bloc voting, communities of interest, and voting systems. Redistricting litigation activities also include database construction and the preparation of substitute plans.

State of Alabama vs. US Department of Commerce, et al (2019-2020) apportionment & citizenship data

NAACP vs. Denise Merrill, CT Secretary of State, et al (2019-2020) state legislative redistricting and prisoner populations

Latasha Holloway, et al. v. City of Virginia Beach, VA (2019) city council redistricting

Joseph V. Aguirre vs. City of Placentia, CA (2018-2019), city council redistricting

Davidson, et al & ACLU of Rhode Island vs. City of Cranston, RI (2014-16), city council & school committee redistricting with prisoner populations.

Navaho Nation v. San Juan County, UT (2014-17) county commissioner & school board districts.

Michael Puyana vs. State of Rhode Island (2012) state legislature redistricting

(Litigation Support, cont.)

United States of America v. Osceola County, Florida, (2006), county commissioner districts.

Deeds vs McDonnell (2005), Va. Attorney General Recount

Indiana Democratic Party, et al., v. Todd Rokita, et al. (2005), voter identification.

Linda Shade v. Maryland State Board of Elections (2004), electronic voting systems

Gongaley v. City of Aurora, Ill. (2003), city council districts

State of Indiana v. Sadler (2003), ballot design (city of Indianapolis-Marion County, Ind.)

Peterson v. Borst (2002–03), city-council districts (city of Indianapolis-Marion County, Ind.)

New Rochelle Voter Defense Fund v. City of New Rochelle, City Council of New Rochelle, and Westchester County Board Of Elections (2003), city council districts (New York)

Charles Daniels and Eric Torres v. City of Milwaukee Common Council (2003), council districts (Wisconsin)

The Louisiana House of Representatives v. Ashcroft (2002–03), state house districts

Camacho v. Galvin and *Black Political Caucus v. Galvin* (2002–03), state house districts (Massachusetts)

Latino Voting Rights Committee of Rhode Island, et al., v. Edward S. Inman, III, et al. (2002–03), state senate districts

Metts, v. Harmon, Almond, and Harwood, et al. (2002–03), state senate districts (Rhode Island)

Joseph F. Parella, et al. v. William Irons, et al. (2002–03), state senate districts (Rhode Island)

Jackson v. County of Kankakee (2001–02), county commissioner districts (Illinois)

Corbett, et al., v. Sullivan, et al. (2002), commissioner districts (St Louis County, Missouri)

Harold Frank, et al., v. Forest County, et al. (2001–02), county commissioner districts (Wisc.)

Albert Gore, Jr., et al., v. Katherine Harris as Secretary of State, State of Florida, et al., and The Miami Dade County Canvassing Board, et al., and The Nassau County Canvassing Board, et al., and The Palm Beach County Canvassing Board, et al., and George W. Bush, et al (2000), voting equipment design — Leon County, Fla., Circuit Court hearing, December 2, 2000, on disputed ballots in Broward, Volusia, Miami-Dade, and Palm Beach counties from the November 7, 2000, presidential election.

Barnett v. Daley/PACI v. Daley/Bonilla v. Chicago City Council (1992–98), city wards

Donald Moon, et al. v. M. Bruce Meadows, etc and Curtis W. Harris, et al. (1996–98), congressional districts (Virginia)

Melvin R. Simpson, et al. v. City of Hampton, et al. (1996–97), city council districts (Va.)

Vera vs. Bush (1996), Texas redistricting

In the Matter of the Redistricting of Shawnee County Kansas and Kingman, et al. v. Board of County Commissioners of Shawnee County, Kansas (1996), commissioner districts

Vecinos de Barrio Uno v. City of Holyoke (1992–96), city council districts (Massachusetts)

(Litigation Support, cont.)

Torres v. Cuomo (1992–95), congressional districts (New York)

DeGrandy v. Wetherell (1992–94), congressional, senate, and house districts (Florida)

Johnson v. Miller (1994), congressional districts (Georgia)

Jackson, et al v Nassau County Board of Supervisors (1993), form of government (N.Y.)

Gonzalez v. Monterey County, California (1992), county board districts

LaPaille v. Illinois Legislative Redistricting Commission (1992), senate and house districts

Black Political Task Force v. Connolly (1992), senate and house districts (Massachusetts)

Nash v. Blunt (1992), house districts (Missouri)

Fund for Accurate and Informed Representation v. Weprin (1992), assembly districts (N.Y.)

Mellow v. Mitchell (1992), congressional districts (Pennsylvania)

Phillip Langsdon v. Milsaps (1992), house districts (Tennessee)

Smith v. Board of Supervisors of Brunswick County (1992), supervisor districts (Virginia)

People of the State of Illinois ex. rel. Burris v. Ryan (1991–92), senate and house districts

Good v. Austin (1991–92), congressional districts (Michigan)

Neff v. Austin (1991–92), senate and house districts (Michigan)

Hastert v. Illinois State Board of Elections (1991), congressional districts

Republican Party of Virginia et al. v. Wilder (1991), senate and house districts

Jamerson et al. v. Anderson (1991), senate districts (Virginia)

Ralph Brown v. Iowa Legislative Services Bureau (1991), redistricting database access

Williams, et al. v. State Board of Election (1989), judicial districts (Cook County, Ill.)

Fifth Ward Precinct 1A Coalition and Progressive Association v. Jefferson Parish School Board (1988–89), school board districts (Louisiana)

Michael V. Roberts v. Jerry Wamser (1987–89), St. Louis, Mo., voting equipment

Brown v. Board of Commissioners of the City of Chattanooga, Tenn. (1988), county commissioner districts

Business Records Corporation v. Ransom F. Shoup & Co., Inc. (1988), voting equip. patent

East Jefferson Coalition for Leadership v. The Parish of Jefferson (1987–88), parish council districts (Louisiana)

Buckanaga v. Sisseton School District (1987–88), school board districts (South Dakota)

Griffin v. City of Providence (1986–87), city council districts (Rhode Island)

United States of America v. City of Los Angeles (1986), city council districts

Latino Political Action Committee v. City of Boston (1984–85), city council districts

Ketchum v. Byrne (1982–85), city council districts (Chicago, Ill.)

(Litigation Support, cont.)

State of South Carolina v. United States (1983–84), senate districts — U.S. Dept. of Justice

Collins v. City of Norfolk (1983–84), city council districts (Virginia) — for Lawyers' Committee for Civil Rights

Rybicki v. State Board of Elections (1981–83), senate and house districts (Illinois)

Licht v. State of Rhode Island (1982–83), senate districts (Rhode Island)

Agerstrand v. Austin (1982), congressional districts (Michigan)

Farnum v. State of Rhode Island (1982), senate districts (Rhode Island)

In Re Illinois Congressional District Reapportionment Cases (1981), congressional districts

Publications

"EAC Survey Sheds Light on Election Administration", *Roll Call*, October 27, 2005 (with Michael McDonald)

Developing a Statewide Voter Registration Database: Procedures, Alternatives, and General Models, by Kimball W. Brace and M. Glenn Newkirk, edited by William Kimberling, (Washington, D.C.: Federal Election Commission, Office of Election Administration, Autumn 1997).

The Election Data Book: A Statistical Portrait of Voting in America, 1992, Kimball W. Brace, ed., (Bernan Press, 1993)

"Geographic Compactness and Redistricting: Have We Gone Too Far?", presented to Midwestern Political Science Association, April 1993 (with D. Chapin and R. Niemi)

"Whose Data is it Anyway: Conflicts between Freedom of Information and Trade Secret Protection in Redistricting", *Stetson University Law Review*, Spring 1992 (with D. Chapin and W. Arden)

"Numbers, Colors, and Shapes in Redistricting," *State Government News*, December 1991 (with D. Chapin)

"Redistricting Roulette," *Campaigns and Elections*, March 1991 (with D. Chapin)

"Redistricting Guidelines: A Summary", presented to the Reapportionment Task Force, National Conference on State Legislatures, November 9, 1990 (with D. Chapin and J. Waliszewski)

"The 65 Percent Rule in Legislative Districting for Racial Minorities: The Mathematics of Minority Voting Equality," *Law and Policy*, January 1988 (with B. Grofman, L. Handley, and R. Niemi)

"Does Redistricting Aimed to Help Blacks Necessarily Help Republicans?" *Journal of Politics*, February 1987 (with B. Grofman and L. Handley)

"New Census Tools," *American Demographics*, July/August 1980

Professional Activities

Member, Task Force on Long Lines in 2012 Election, Prince William County, VA

Member, 2010 Census Advisory Committee, a 20-member panel advising the Director of the Census on the planning and administration of the 2010 census.

Delegate, Second Trilateral Conference on Electoral Systems (Canada, Mexico, and United States), Ontario, Canada, 1995; and Third Trilateral Conference on Electoral Systems, Washington, D.C., 1996

Member, American Association of Political Consultants

Member, American Association for Public Opinion Research

Member, American Political Science Association

Member, Association of American Geographers, Census Advisory Committee

Member Board of Directors, Association of Public Data Users

Member, National Center for Policy Alternatives, Voter Participation Advisory Committee

Member, Urban and Regional Information Systems Association

Historical Activities

Member, Manassas Battlefield Trust Board Member, 2018 -- current

Member, Historical Commission, Prince William County, VA., 2015 – current. Elected Chairman in 2017, re-elected 2018

Member of Executive Committee & head of GIS Committee, Bull Run Civil War Round Table, Centerville, VA. 2015 – current

Member, Washington Capitals Fan Club, Executive Board 2017 -- current

February, 2020

APPENDIX 2

(Exhibit 2 to Declaration of Kimball W. Brace)

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FOR IMMEDIATE RELEASE

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Montana Gains California's Seat With New 2019 Census Estimates; But Alabama & Ohio to also lose by 2020

New Census Bureau population estimates for 2019 released today shows a change of one more seat between two states from last year's study generated by Election Data Services, Inc. on which states would gain or lose congressional seats if the current estimate numbers were used for apportionment in 2019. But projecting these numbers to 2020, using several different methods, leads to more states being impacted by the decennial census scheduled to take place in just four months. These numbers could also be majorly impacted by how well the Commerce Department and Census Bureau conducts the census, how well the American public responds to this decennial exercise, the first where major components will be conducted via the internet, and whether the discussion on citizenship over the past year will cause some groups to avoid participating. A changed practice on how to count the military overseas could also change the final apportionment when it is announced December 31, 2020.

The Bureau's 2019 total population estimates show that now 15 states will be impacted by changes in their congressional delegation if these new numbers were used for apportionment today. The state of **Montana** joins the previously indicated states of **Arizona, Colorado, Florida**, **North Carolina**, and **Oregon** to each gain a single seat while the state of **Texas** is now shown to gain a second seat with the new data. The state of **California** joins the states of **Illinois**, **Michigan**, **Minnesota, New York, Pennsylvania, Rhode Island,** and **West Virginia** to lose a seat in Congress using the new data. A map of the 2019 numbers is attached.

The new numbers, however, reflect subtle changes taking place across the nation in birth and death rates and resulting total population numbers that become magnified when the information is projected forward to coincide with the taking of the Census on April 1, 2020. Election Data Services created a variety of different methodologies to project the 2019 data forward nine months (from the July1, 2019 date of the Census estimates) to April 1, 2020 (several short-term projection methods for the trend occurring in 2018-2019, and 2017-2019, a middle term

methodology using the 2015-2019 trend, and a long-term projection for 2011-2019). The different methodologies benefit some states and disadvantage others in the "musical-chairs" effort of allocating 435 seats to the 50 states. All the methods would add a second seat for **Florida** and a third seat for **Texas,** to the list of states noted above that will gain one or more seats by 2020. The list of losing states will expand to also include **Alabama** and **Ohio**, by the time the Census is taken in 2020. A map showing the 2020 projected apportionment using the 2018-2019 trend is attached. Because all the projection models produce the same state overall results in seats as the 2018-2019 trend map, only the tables of the calculations for the different projection models are attached so that how close states are to changes can be observed.

The new 2019 data and all projections forward to 2020 now confirms that **California** will lose a congressional district in 2020. Our 2018 study first picked up the possibility that **California** could lose a congressional district for the first time in their nearly 160-year history. The new 2019 numbers from the Bureau indicate the state would lose that seat by 98,709 people but projecting the data forward to 2020 shows the state further away from potentially keeping that seat, losing it by over 300,000 people in 2020.

While the 2019 Census estimate numbers show **Alabama** keeping their seventh seat by a slim margin of just 18,516 people, projecting the data forward to 2020 would find the state losing the seventh seat by only 10,072 to 19,074 people, depending on the projection model utilized. All of the projection models find **Alabama** just missing the last seat to be apportioned, coming in at seat #436 when there are only 435 seats to hand out (a cut-off mark established in 1910).

The state of **Montana** is just barely able to reverse previous decades of population shifts when it went from two seats down to one in 1990. For 2020 the state is projected to go back to having two seats, but that gain of a second seat is because the state occupies the dubious distinction of obtaining seat #435, the last one to be apportioned. Election Data Services calculations show **Montana** getting that additional seat by only between 2,402 and 4,163 people to spare; a very close margin.

Rhode Island is also a state with an extremely close margin. For most of the decade our studies have projected that **Rhode Island** would lose their second seat by the end of the decade and the new numbers confirm that projection. But their margin has gotten tighter with the new data. For the past several years we saw that **Rhode Island** would lose that second seat by more than 25,000 people. But this new data shows the state missing the seat by only 14,539 residents.

Previous Election Data Services studies have hinted that the states of **Illinois** and **New York** might be in a position to each lose a second seat by 2020. However, these new Census numbers seem to indicate this will not be the case, with both states just losing a single seat each.

The state of **Minnesota** is also close to the margin of likely losing a seat in Congress. All of the projections place the state at position #437, having lost their last seat (their 8th) by between 6,740 people (the 2019 estimate) to around 21,000 people. **Minnesota**'s state demographer has indicated that recent influx of people to the state has boosted their numbers and it is likely to have had an impact on reapportionment.

Using any methodology, the population projections points toward a ten (10) seat change over 17 states across the nation by year 2020. States that will gain single seats include **Arizona**, **Colorado**, **Montana**, **North Carolina**, and **Oregon**, while **Florida** is set to gain two congressional districts and **Texas** would gain three seats. Single seat losses will again occur in the Midwest and Northeast sections of the nation, where **Alabama**, **California, Illinois, Michigan**, **Minnesota, New York**, **Ohio**, **Pennsylvania, Rhode Island** and **West Virginia** would each lose a seat. All other states would keep the same number of representatives they were awarded in December 2010 when the official 2010 Census numbers were released.

In table form, the gainers and losers are:

States Gaining Districts (7)	States Losing Districts (10)
Arizona +1 (from 9 to 10)	**Alabama** -1 (from 7 to 6)
Colorado +1 (from 7 to 8)	**California** -1 (from 53 to 52)
Florida +2 (from 27 to 29)	**Illinois** -1 (from 18 to 17)
Montana +1 (from At-large to 2)	**Michigan** -1 (from 14 to 13)
North Carolina +1 (from 13 to 14)	**Minnesota** -1 (from 8 to 7)
Oregon +1 (from 5 to 6)	**New York** -1 (from 27 to 26)
Texas +3 (from 36 to 39)	**Ohio** -1 (from 16 to 15)
	Pennsylvania -1 (from 18 to 17)
	Rhode Island -1 (from 2 to 1)
	West Virginia -1 (from 3 to 2)

With only four months until Census Day, many states have appropriated funds to help send a message to their constituents about the importance of participating in the Census[i]. Many of these states are on the edge of gaining or losing a seat in the apportionment process, but there are some notable exceptions. For example, Texas has not appropriated any funds for Complete Count efforts, and yet whether they stand to gain only two or maybe three additional seats may depend on how good the counting is conducted in the state. This could also be impacted by the reaction to the citizenship issue that has become more of a focus in the past year. Florida has also failed to appropriate any funds for Complete Count efforts in 2020, but they are more firm in the projection of receiving two additional seats in 2020. Thus, the two largest gaining states in number of seats are those that didn't spend their own money to help the counting process.

Since 1941, by law the number of seats in the U.S. House of Representatives has been capped at 435. As a result, there has always been interest in finding which states are close to that magic bubble, either just gaining their last seat, or just missing their next seat. The following table shows the results of the 2019 population estimates, as well as one of the short-term trend methodology calculations (2018-2019) for the seats within five positions of the 435 cut off.

2019 Reapportionment Analysis

2019 Population Estimates			2020 Projections (using 2018-2019 short-term trend)		
Last Five Seats		**Margin of Gain**	**Last Five Seats**		**Margin of Gain**
431	Arizona (10th)	128,294	431	Illinois (17th))	126,052
432	New York (26th)	237,376	432	New York (26th)	61,279
433	Alabama(7th)	18,516	433	Texas (39th)	79,742
434	Montana (2nd)	2,856	434	Montana (2nd)	2,402
435	Ohio (16th)	12,508	435	Florida (29th)	44,285

2019 Reapportionment Analysis

2019 Population Estimates			2020 Projections (using 2018-2019 short-term trend)		
Next Seats		**Margin of Loss**	**Next Seats**		**Margin of Loss**
436	Florida (29th)	23,006	436	Alabama (7th)	10,072
437	Minnesota (8th)	6,740	437	Minnesota (8th))	21,992
438	Texas (39th)	51,004	438	Ohio (16th)	74,135
439	California (53rd)	98,709	439	California (53rd)	344,367
440	Rhode Island (2nd)	7,703	440	Rhode Island (2nd)	14,539

The Census Bureau's yearly release of population estimates also results in a revision of previous year estimates. While Election Data Services has traditionally reflected those revisions in our projection methodology, we have created a new apportionment table that shows the apportionment results for each year in the decade based upon those revised numbers. The table, entitled "2020 Apportionment Calculations based on different trend lines coming from the 2019 Census Bureau Estimates" is attached to this press release. The table shows consistent gains and losses of seats over the entire decade with the new data. The table also includes a chart of where seats # 430 through # 440 would be assigned to states in each projection.

Kimball Brace, President of Election Data Services, Inc. cautioned users that even though there is a very short time before the Census, the population projections are still subject to change. "We are now at a place where the rubber meets the road. How well does the Census Bureau and the Trump administration put on the greatest mobilization of government resources outside of war time? How well will the public respond and answer the Census, given the competing focuses of everyday life and the need to utilize the internet? Will the fear of foreign intervention also impact the census?" Brace noted. "Having worked with Census data and estimates since the 1970s, it is important to remember that major events like Katrina and the 2008 recession each changed population growth patterns and that impacted and changed the next apportionment," he said.

Brace also noted that major changes in the counting process are in the works for 2020 and that reduced budget funding could impact those plans. "History can also be a guide, recalling that the 1920 apportionment was cancelled because the numbers showed for the first time that more people resided in urban areas than rural areas" said Brace. "I have had my share of nightmares that a failed Census process could lead to unreliable numbers and a repeat of 1920."

Because congressional apportionment also impacts the Electoral College and the vote for President, Election Data Services took the 2020 projections for each state and applied the Presidential election results from the past five Presidential contests to determine the Electoral College outcomes in the past 16 years. The study shows that none of the presidential contests would have elected a different presidential candidate using the new apportionment counts but they would have been more Republican in nature. For example, in 2016 President Trump would have gained two additional electoral college votes under the new apportionment projections. In 2012 President Obama would still have won the Electoral College, but with four less votes (328 vs 332) than he won at the time of the voting. The biggest change would have occurred in the 2000 presidential election where George Bush would have gained an additional 20 electoral votes had the new 2020 apportionment projections determined the number of congressional seats in each state.

The 2016 Electoral College was muddled because 7 electors voted for a different candidate than what they had pledged based on the vote totals. As a result, the overall change in candidate votes based on the new apportionment numbers shows just two vote difference in the bottom line results. President elect Trump's ability to carry states that will be losing congressional seats in 2020 also contributed to a reversal of the pattern depicted in previous elections.

It should be noted that the 2020 Presidential election and resulting Electoral College will occur before the results of the 2020 Census are released by December 31, 2020. Therefore, the Electoral College results in 2020 will be governed by the state's apportionment allocation as they exist today, having been first determined in 2011. The first time the new 2020 apportionment results will be utilized will be the 2024 Presidential election. Election Data Services, Inc. has also worked with the website 270ToWin, who has built an interactive map of the these new apportionment results where users can adjust state outcomes to discover Electoral College outcomes for the presidential elections back to 2000.

Major weather events have also affected apportionment. The Census Bureau's estimated populations released for 2005 showed **Louisiana** would keep all their congressional districts that decade. Even the Bureau's own projections for 2010 released that same year showed **Louisiana** staying the same. Then hurricane Katrina hit **Louisiana** at the end of August 2005 (after the date of the population estimates). Devastation and population loss impacted New Orleans in a major way, and when the Bureau's 2006 population estimates were released **Louisiana** was looking at losing a congressional seat. That was ultimately confirmed when the 2010 Census was taken, and state data was released at the end of that year.

As Election Data Services, Inc. noted last year in the 2017 study, the year of 2017 saw 18 hurricanes and tropical storms, three of which had a potential of impact on population movements in the United States. Two of these storms: Irma (impacting Miami and the Florida Gulf Coast), and Maria (which devastated Puerto Rico)) affected **Florida** and the new population estimates reflect that fact. Last years study showed **Florida** was 366,735 people away from gaining a third seat.

The 2019 data shows the state is only 172,169 people away from a third additional seat, an improvement of nearly 200,000 people.

The 2019 population estimates have not been statistically adjusted for any known undercount that may take place when the Census is conducted. In addition, no estimates were provided for U.S. military personnel overseas. This component has in the past been counted by the Census Bureau and allocated to the states based on administrative records retained by the military. Overseas military personnel have been a factor in the apportionment formula for the past several decades, including the switching of the final district in 2000 that went from **Utah** to **North Carolina**.

For 2020 the Census Bureau has changed the "residency rules" for counting the military by creating a distinction between personnel who are *deployed* overseas (usually for short periods of time) compared to those who are *stationed* or *assigned* overseas (frequently for longer periods of time). The Bureau will use DOD's administrative records to count *deployed* personnel at their usual residence in the US for both apportionment and redistricting purposes (they will be embedded within the state's resident population counts). On the other hand, personnel who are *stationed* or *assigned* overseas will be counted to their "home state of record" for apportionment purposes only and will show up as part of a state's total "overseas count" when the Bureau releases the final and official apportionment data by December, 31, 2020. Military sources have told the Census Bureau that of all overseas military, approximately 15% are *deployed* personnel and 85% are *stationed* or *assigned* overseas.

Past apportionment studies by Election Data Services, Inc. can be found at https://www.electiondataservices.com/reapportionment-studies/. A historical chart on the number of districts each state received each decade from 1789 to current is also available at this web address and linkable at https://www.electiondataservices.com/wp-content/uploads/2014/10/CD-apportionment-1789-2010.pdf.

Election Data Services Inc. is a political consulting firm that specializes in redistricting, election administration, and the analysis of census and political data. Election Data Services, Inc. conducts the congressional apportionment analyses with each annual release of the census population estimates. For more information about the reapportionment analysis, contact Kimball Brace (703-580-7267 or 202-789-2004 or kbrace@electiondataservices.com).

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[i] National Conference of State Legislatures reports 26 states have appropriated funds for Census counting. http://www.ncsl.org/research/redistricting/2020-census-resources-and-legislation.aspx

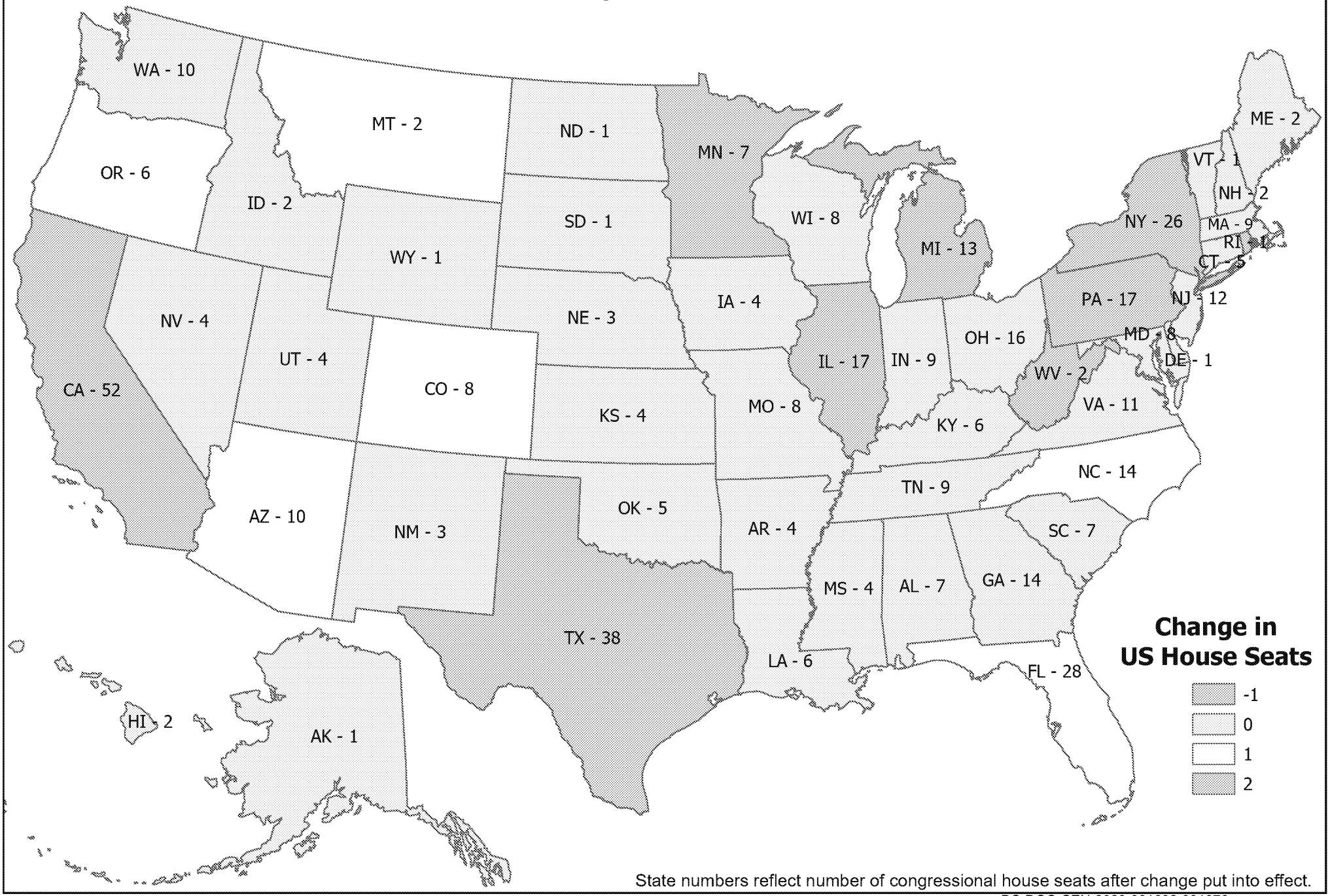
2019 Population Estimates 2019 Apportionment

2019 Population Estimates, Generated by Census Bureau 12/30/2019

State	Population	Compare To	Seats	Change	Gain a Seat	Lose a Seat	Last Seat Given	Next Seat At	Average Size	Size Rank
Alabama	4,903,185	7	7	0	743,187	18,516	433	502	700,455	43
Alaska	731,545	1	1	0			at large	637	731,545	34
Arizona	7,278,717	9	10	1	634,842	128,294	431	472	727,872	37
Arkansas	3,017,804	4	4	0	356,549	406,839	378	490	754,451	24
California	39,512,223	53	52	-1	98,709	697,431	430	439	759,850	20
Colorado	5,758,736	7	8	1	643,648	118,406	428	487	719,842	39
Connecticut	3,565,287	5	5	0	567,434	194,546	413	507	713,057	40
Delaware	973,764	1	1	0			at large	477	973,764	2
Florida	21,477,737	27	28	1	23,006	753,842	421	436	767,062	15
Georgia	10,617,423	14	14	0	316,729	449,174	419	446	758,387	22
Hawaii	1,415,872	2	2	0	432,337	349,950	330	565	707,936	41
Idaho	1,787,065	2	2	0	61,144	721,143	262	449	893,533	4
Illinois	12,671,821	18	17	-1	527,032	241,139	429	454	745,401	29
Indiana	6,732,219	9	9	0	425,864	336,686	417	465	748,024	28
Iowa	3,155,070	4	4	0	219,283	544,105	362	468	788,768	9
Kansas	2,913,314	4	4	0	461,039	302,349	393	505	728,329	36
Kentucky	4,467,673	6	6	0	422,229	339,375	402	474	744,612	30
Louisiana	4,648,794	6	6	0	241,108	520,496	390	459	774,799	11
Maine	1,344,212	2	2	0	503,997	278,290	344	597	672,106	46
Maryland	6,045,680	8	8	0	356,704	405,350	407	462	755,710	23
Massachusetts	6,892,503	9	9	0	265,580	496,970	405	451	765,834	16
Michigan	9,986,857	14	13	-1	192,285	572,888	411	442	768,220	13
Minnesota	5,639,632	8	7	-1	6,740	754,963	379	437	805,662	6
Mississippi	2,976,149	4	4	0	398,204	365,184	385	493	744,037	31
Missouri	6,137,428	8	8	0	264,956	497,098	399	456	767,179	14
Montana	1,068,778	1	2	1	779,431	2,856	434	734	534,389	50
Nebraska	1,934,408	3	3	0	679,355	88,177	418	586	644,803	47
Nevada	3,080,156	4	4	0	294,197	469,191	371	476	770,039	12
New Hampshire	1,359,711	2	2	0	488,498	293,789	339	589	679,856	45
New Jersey	8,882,190	12	12	0	541,864	222,598	426	464	740,183	32
New Mexico	2,096,829	3	3	0	516,934	250,598	387	542	698,943	44
New York	19,453,561	27	26	-1	537,876	237,376	432	444	748,214	27
North Carolina	10,488,084	13	14	1	446,068	319,835	423	455	749,149	26
North Dakota	762,062	1	1	0			at large	613	762,062	18
Ohio	11,689,100	16	16	0	754,898	12,508	435	466	730,569	35
Oklahoma	3,956,971	5	5	0	175,750	586,230	374	457	791,394	8
Oregon	4,217,737	5	6	1	672,165	89,439	427	508	702,956	42
Pennsylvania	12,801,989	18	17	-1	396,864	371,307	424	447	753,058	25
Rhode Island	1,059,361	2	1	-1			at large	440	1,059,361	1
South Carolina	5,148,714	7	7	0	497,658	264,045	415	478	735,531	33
South Dakota	884,659	1	1	0			at large	524	884,659	5
Tennessee	6,829,174	9	9	0	328,909	433,641	409	458	758,797	21
Texas	28,995,881	36	38	2	51,004	733,864	425	438	763,050	17
Utah	3,205,958	4	4	0	168,395	594,993	355	460	801,490	7
Vermont	623,989	1	1	0			at large	729	623,989	48
Virginia	8,535,519	11	11	0	133,350	630,429	404	441	775,956	10
Washington	7,614,893	10	10	0	298,666	464,470	410	452	761,489	19
West Virginia	1,792,147	3	2	-1	56,062	726,225	261	448	896,074	3
Wisconsin	5,822,434	8	8	0	579,950	182,104	422	480	727,804	38
Wyoming	578,759	1	1	0			at large	781	578,759	49
Washington DC	705,749	*0*								
	328,239,523		435					Median =	751,104	
Other Inputs:	Seats to Apportion							Min =	534,389	
435	Max Seats to Calculate							Max =	1,059,361	
75	States									
50										
☐ Include										

Anticipated Gains/Losses in Reapportionment

2019 Population Estimates



State numbers reflect number of congressional house seats after change put into effect.

Election Data Services

Based on Census Bureau estimates released 12/30/2019

2020 Population Projections and Apportionment

2020 Projections (short term 2018-2019 change) based on 2019 Population Estimates, Generated by Census Bureau 12/30/2019

State	Population	Compare To	Seats	Change	Gain a Seat	Lose a Seat	Last Seat Given	Next Seat At	Average Size	Size Rank
Alabama	4,914,850	7	6	-1	10,072	761,044	371	436	819,142	6
Alaska	728,863	1	1	0			at large	640	728,863	38
Arizona	7,370,763	9	10	1	599,470	176,160	425	471	737,076	36
Arkansas	3,023,873	4	4	0	374,646	396,776	379	489	755,968	24
California	39,550,248	53	52	-1	344,367	495,632	430	439	760,582	22
Colorado	5,809,922	7	8	1	638,314	134,743	426	485	726,240	40
Connecticut	3,560,620	5	5	0	601,698	169,052	416	508	712,124	41
Delaware	980,031	1	1	0			at large	475	980,031	2
Florida	21,654,726	27	29	2	760,045	44,285	435	447	746,715	29
Georgia	10,697,948	14	14	0	314,512	466,873	417	446	764,139	20
Hawaii	1,412,343	2	2	0	449,103	339,835	334	572	706,172	43
Idaho	1,815,033	2	2	0	46,412	742,526	261	443	907,517	3
Illinois	12,633,538	18	17	-1	659,841	126,052	431	460	743,149	32
Indiana	6,759,912	9	9	0	449,436	324,863	415	464	751,101	27
Iowa	3,159,919	4	4	0	238,600	532,822	362	468	789,980	10
Kansas	2,914,781	4	4	0	483,738	287,684	395	507	728,695	39
Kentucky	4,472,570	6	6	0	452,352	318,764	402	478	745,428	31
Louisiana	4,640,641	6	6	0	284,281	486,835	392	461	773,440	14
Maine	1,348,093	2	2	0	513,353	275,585	342	596	674,047	46
Maryland	6,053,101	8	8	0	395,136	377,921	409	462	756,638	23
Massachusetts	6,899,915	9	9	0	309,433	464,866	406	453	766,657	18
Michigan	9,988,946	14	13	-1	263,096	516,811	413	444	768,380	17
Minnesota	5,664,818	8	7	-1	21,992	749,969	377	437	809,260	8
Mississippi	2,972,502	4	4	0	426,017	345,404	386	497	743,125	33
Missouri	6,149,312	8	8	0	298,924	474,133	400	457	768,664	15
Montana	1,074,909	1	2	1	786,537	2,402	434	735	537,455	50
Nebraska	1,941,034	3	3	0	691,448	83,395	418	587	647,011	47
Nevada	3,120,458	4	4	0	278,061	493,361	369	473	780,115	11
New Hampshire	1,364,417	2	2	0	497,029	291,909	339	589	682,209	45
New Jersey	8,879,315	12	12	0	612,232	166,218	429	465	739,943	35
New Mexico	2,099,901	3	3	0	532,581	242,263	387	542	699,967	44
New York	19,396,195	27	26	-1	738,416	61,279	432	449	746,007	30
North Carolina	10,568,755	13	14	1	443,705	337,679	421	451	754,911	25
North Dakota	765,064	1	1	0			at large	612	765,064	19
Ohio	11,698,680	16	15	-1	74,135	708,742	410	438	779,912	12
Oklahoma	3,969,576	5	5	0	192,743	578,008	374	456	793,915	9
Oregon	4,244,856	5	6	1	680,066	91,050	428	505	707,476	42
Pennsylvania	12,802,789	18	17	-1	490,590	295,303	427	450	753,105	26
Rhode Island	1,060,167	2	1	-1			at large	440	1,060,167	1
South Carolina	5,197,747	7	7	0	489,063	282,898	412	474	742,535	34
South Dakota	889,160	1	1	0			at large	525	889,160	5
Tennessee	6,872,698	9	9	0	336,649	437,649	408	458	763,633	21
Texas	29,274,825	36	39	3	740,080	79,742	433	442	750,637	28
Utah	3,245,917	4	4	0	152,602	618,820	350	454	811,479	7
Vermont	623,712	1	1	0			at large	731	623,712	48
Virginia	8,561,297	11	11	0	169,656	607,364	403	441	778,300	13
Washington	7,683,987	10	10	0	286,246	489,384	407	448	768,399	16
West Virginia	1,783,100	3	2	-1	78,346	710,593	264	452	891,550	4
Wisconsin	5,833,734	8	8	0	614,502	158,555	424	483	729,217	37
Wyoming	579,629	1	1	0			at large	782	579,629	49
Washington DC	708,919	*0*								
	329,418,113		435					Median =	754,008	
Other Inputs:	Seats to Apportion							Min =	537,455	
435	Max Seats to Calculate							Max =	1,060,167	
75	States									
50										
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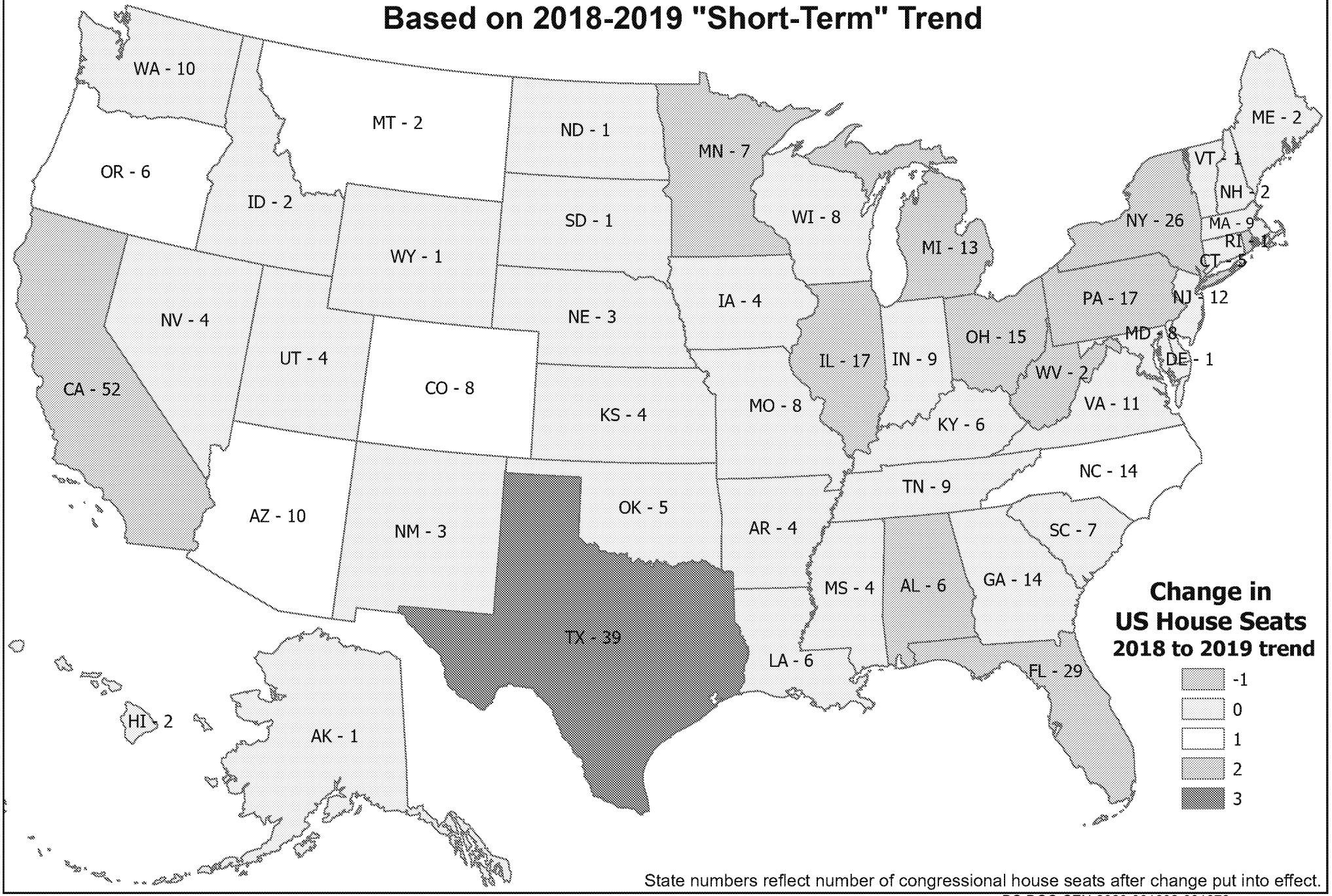
Anticipated Gains/Losses in Reapportionment

2020 Population Projections
Based on 2018-2019 "Short-Term" Trend



State numbers reflect number of congressional house seats after change put into effect.

Election Data Services

Based on Census Bureau estimates released 12/30/2019

2020 Population Projections and Apportionment

2020 Projections (short term 2017-2019 change) based on 2019 Population Estimates, Generated by Census Bureau 12/30/2019

State	Population	Compare To	Seats	Change	Gain a Seat	Lose a Seat	Last Seat Given	Next Seat At	Average Size	Size Rank
Alabama	4,914,010	7	6	-1	12,184	760,914	372	436	819,002	6
Alaska	728,521	1	1	0			at large	640	728,521	39
Arizona	7,369,666	9	10	1	602,627	176,291	426	471	736,967	36
Arkansas	3,024,010	4	4	0	375,387	397,361	379	490	756,002	24
California	39,570,095	53	52	-1	334,826	522,150	430	439	760,963	22
Colorado	5,815,246	7	8	1	634,656	141,036	425	485	726,906	40
Connecticut	3,562,290	5	5	0	601,104	171,301	416	508	712,458	41
Delaware	980,229	1	1	0			at large	475	980,229	2
Florida	21,675,262	27	29	2	745,300	68,512	433	447	747,423	29
Georgia	10,696,628	14	14	0	318,677	467,300	417	446	764,045	20
Hawaii	1,412,696	2	2	0	449,231	340,371	334	572	706,348	43
Idaho	1,814,121	2	2	0	47,806	741,797	261	444	907,061	3
Illinois	12,632,029	18	17	-1	664,784	126,679	431	460	743,061	32
Indiana	6,760,331	9	9	0	450,878	326,382	415	464	751,148	27
Iowa	3,160,162	4	4	0	239,235	533,513	362	468	790,040	10
Kansas	2,915,040	4	4	0	484,357	288,392	395	507	728,760	38
Kentucky	4,473,470	6	6	0	452,724	320,373	402	478	745,578	31
Louisiana	4,640,670	6	6	0	285,525	487,573	392	461	773,445	14
Maine	1,347,838	2	2	0	514,089	275,513	343	597	673,919	46
Maryland	6,053,889	8	8	0	396,013	379,679	409	462	756,736	23
Massachusetts	6,904,829	9	9	0	306,381	470,880	406	453	767,203	18
Michigan	9,992,018	14	13	-1	262,673	521,500	413	443	768,617	17
Minnesota	5,667,521	8	7	-1	20,758	753,511	377	437	809,646	8
Mississippi	2,971,533	4	4	0	427,864	344,884	386	497	742,883	33
Missouri	6,149,020	8	8	0	300,882	474,810	400	457	768,628	16
Montana	1,074,984	1	2	1	786,943	2,659	435	735	537,492	50
Nebraska	1,941,398	3	3	0	691,764	84,077	418	587	647,133	47
Nevada	3,123,035	4	4	0	276,362	496,386	368	473	780,759	11
New Hampshire	1,363,841	2	2	0	498,086	291,516	339	589	681,920	45
New Jersey	8,880,940	12	12	0	613,059	169,331	429	465	740,078	35
New Mexico	2,098,725	3	3	0	534,436	241,405	387	543	699,575	44
New York	19,402,911	27	26	-1	736,901	71,298	432	449	746,266	30
North Carolina	10,572,293	13	14	1	443,011	342,965	421	451	755,164	25
North Dakota	764,757	1	1	0			at large	612	764,757	19
Ohio	11,700,172	16	15	-1	75,684	712,111	410	438	780,011	12
Oklahoma	3,966,654	5	5	0	196,740	575,666	374	458	793,331	9
Oregon	4,246,026	5	6	1	680,168	92,930	428	505	707,671	42
Pennsylvania	12,807,376	18	17	-1	489,438	302,025	427	450	753,375	26
Rhode Island	1,060,749	2	1	-1			at large	440	1,060,749	1
South Carolina	5,197,719	7	7	0	490,560	283,709	411	474	742,531	34
South Dakota	889,140	1	1	0			at large	525	889,140	5
Tennessee	6,875,125	9	9	0	336,085	441,175	408	456	763,903	21
Texas	29,265,114	36	39	3	757,545	75,018	434	442	750,388	28
Utah	3,246,633	4	4	0	152,765	619,984	350	455	811,658	7
Vermont	623,856	1	1	0			at large	731	623,856	48
Virginia	8,562,723	11	11	0	170,486	610,148	403	441	778,429	13
Washington	7,688,570	10	10	0	283,722	495,196	407	448	768,857	15
West Virginia	1,782,953	3	2	-1	78,974	710,629	264	452	891,477	4
Wisconsin	5,834,594	8	8	0	615,308	160,384	424	483	729,324	37
Wyoming	578,695	1	1	0			at large	783	578,695	49
Washington DC	709,879	*0*								
	329,489,985		435					Median =	754,269	
Other Inputs:	Seats to Apportion							Min =	537,492	
435	Max Seats to Calculate							Max =	1,060,749	
75	States									
50										
Include										

2020 Population Projections and Apportionment

2020 Projections (mid- term 2015-2019 change) based on 2019 Population Estimates, Generated by Census Bureau 12/30/2019

State	Population	Compare To	Seats	Change	Gain a Seat	Lose a Seat	Last Seat Given	Next Seat At	Average Size	Size Rank
Alabama	4,912,817	7	6	-1	19,074	760,729	372	436	818,803	6
Alaska	730,438	1	1	0			at large	638	730,438	37
Arizona	7,368,448	9	10	1	613,064	176,821	427	471	736,845	36
Arkansas	3,025,358	4	4	0	377,971	399,347	379	490	756,339	24
California	39,625,332	53	52	-1	325,736	586,871	430	439	762,026	22
Colorado	5,819,773	7	8	1	637,588	146,941	425	485	727,472	40
Connecticut	3,561,218	5	5	0	606,991	171,053	415	508	712,244	41
Delaware	980,071	1	1	0			at large	475	980,071	2
Florida	21,730,551	27	29	2	715,938	129,049	432	447	749,329	29
Georgia	10,703,281	14	14	0	324,762	476,437	417	446	764,520	19
Hawaii	1,414,718	2	2	0	449,362	342,654	334	570	707,359	43
Idaho	1,814,667	2	2	0	49,413	742,603	261	444	907,333	3
Illinois	12,637,252	18	17	-1	674,939	134,938	431	460	743,368	33
Indiana	6,755,866	9	9	0	463,683	323,479	416	465	750,652	28
Iowa	3,161,536	4	4	0	241,793	535,525	362	468	790,384	10
Kansas	2,914,122	4	4	0	489,206	288,111	395	507	728,531	39
Kentucky	4,475,565	6	6	0	456,326	323,477	402	478	745,927	31
Louisiana	4,645,835	6	6	0	286,056	493,748	392	461	774,306	14
Maine	1,347,239	2	2	0	516,841	275,174	344	598	673,619	46
Maryland	6,057,065	8	8	0	400,296	384,233	409	463	757,133	23
Massachusetts	6,911,196	9	9	0	308,353	478,809	406	452	767,911	18
Michigan	9,997,254	14	13	-1	269,296	529,036	414	443	769,020	16
Minnesota	5,670,032	8	7	-1	24,826	757,215	377	437	810,005	8
Mississippi	2,973,848	4	4	0	429,480	347,838	386	497	743,462	32
Missouri	6,149,879	8	8	0	307,482	477,047	400	456	768,735	17
Montana	1,076,227	1	2	1	787,853	4,163	435	735	538,113	50
Nebraska	1,942,679	3	3	0	693,527	85,810	418	587	647,560	47
Nevada	3,123,107	4	4	0	280,221	497,097	369	473	780,777	11
New Hampshire	1,364,168	2	2	0	499,912	292,104	340	589	682,084	45
New Jersey	8,884,864	12	12	0	620,113	175,371	429	466	740,405	35
New Mexico	2,098,247	3	3	0	537,959	241,378	388	543	699,416	44
New York	19,416,240	27	26	-1	746,863	89,321	433	449	746,778	30
North Carolina	10,577,560	13	14	1	450,483	350,716	422	451	755,540	25
North Dakota	763,577	1	1	0			at large	614	763,577	21
Ohio	11,702,603	16	15	-1	86,871	717,210	410	438	780,174	12
Oklahoma	3,965,980	5	5	0	202,229	575,815	375	458	793,196	9
Oregon	4,257,506	5	6	1	674,385	105,418	426	502	709,584	42
Pennsylvania	12,805,211	18	17	-1	506,979	302,898	428	450	753,248	26
Rhode Island	1,059,981	2	1	-1			at large	440	1,059,981	1
South Carolina	5,199,387	7	7	0	495,471	286,570	412	474	742,770	34
South Dakota	890,616	1	1	0			at large	526	890,616	5
Tennessee	6,875,411	9	9	0	344,138	443,024	408	457	763,935	20
Texas	29,297,864	36	39	3	759,514	114,857	434	442	751,227	27
Utah	3,251,140	4	4	0	152,189	625,129	350	455	812,785	7
Vermont	623,759	1	1	0			at large	731	623,759	48
Virginia	8,568,766	11	11	0	174,542	618,123	404	441	778,979	13
Washington	7,704,829	10	10	0	276,683	513,202	407	448	770,483	15
West Virginia	1,783,044	3	2	-1	81,036	710,980	266	453	891,522	4
Wisconsin	5,834,087	8	8	0	623,274	161,255	424	483	729,261	38
Wyoming	577,489	1	1	0			at large	785	577,489	49
Washington DC	711,695	*0*								
	329,739,397		435					Median =	754,394	
Other Inputs:	Seats to Apportion							Min =	538,113	
435	Max Seats to Calculate							Max =	1,059,981	
75	States									
50										
Include										

2020 Population Projections and Apportionment

2020 Projections (long- term 2011-2019 change) based on 2019 Population Estimates, Generated by Census Bureau 12/30/2019

State	Population	Compare To	Seats	Change	Gain a Seat	Lose a Seat	Last Seat Given	Next Seat At	Average Size	Size Rank
Alabama	4,913,158	7	6	-1	17,500	760,782	372	436	818,860	6
Alaska	732,439	1	1	0			at large	637	732,439	37
Arizona	7,363,698	9	10	1	615,818	171,572	428	472	736,370	36
Arkansas	3,025,225	4	4	0	377,252	399,033	379	490	756,306	24
California	39,696,643	53	52	-1	244,435	655,474	430	438	763,397	22
Colorado	5,825,957	7	8	1	629,790	152,731	425	485	728,245	40
Connecticut	3,563,145	5	5	0	604,021	172,745	415	508	712,629	41
Delaware	980,443	1	1	0			at large	475	980,443	2
Florida	21,733,957	27	29	2	706,919	130,957	433	447	749,447	29
Georgia	10,700,181	14	14	0	325,104	472,628	419	445	764,299	20
Hawaii	1,419,389	2	2	0	444,225	347,250	333	568	709,694	42
Idaho	1,808,554	2	2	0	55,060	736,415	261	446	904,277	3
Illinois	12,653,759	18	17	-1	655,102	150,579	431	460	744,339	32
Indiana	6,753,109	9	9	0	464,634	320,276	416	465	750,345	28
Iowa	3,163,630	4	4	0	238,848	537,437	362	468	790,907	10
Kansas	2,917,511	4	4	0	484,966	291,318	395	507	729,378	38
Kentucky	4,477,052	6	6	0	453,606	324,676	404	477	746,175	31
Louisiana	4,655,763	6	6	0	274,894	503,388	392	461	775,961	14
Maine	1,345,723	2	2	0	517,891	273,585	344	599	672,862	46
Maryland	6,065,700	8	8	0	390,046	392,475	408	463	758,212	23
Massachusetts	6,919,755	9	9	0	297,989	486,922	406	452	768,862	18
Michigan	9,996,752	14	13	-1	267,230	527,878	414	444	768,981	17
Minnesota	5,668,657	8	7	-1	24,776	755,500	378	437	809,808	8
Mississippi	2,975,907	4	4	0	426,570	349,714	386	497	743,977	33
Missouri	6,149,601	8	8	0	306,145	476,376	400	458	768,700	19
Montana	1,075,958	1	2	1	787,656	3,819	435	735	537,979	50
Nebraska	1,943,643	3	3	0	691,904	86,645	418	587	647,881	47
Nevada	3,119,268	4	4	0	283,209	493,075	369	473	779,817	13
New Hampshire	1,363,526	2	2	0	500,088	291,387	340	589	681,763	45
New Jersey	8,887,290	12	12	0	615,310	177,193	429	466	740,608	35
New Mexico	2,098,377	3	3	0	537,171	241,378	388	544	699,459	44
New York	19,449,289	27	26	-1	708,771	121,030	432	448	748,050	30
North Carolina	10,572,638	13	14	1	452,647	345,085	422	451	755,188	25
North Dakota	770,073	1	1	0			at large	608	770,073	15
Ohio	11,702,810	16	15	-1	83,715	716,656	410	439	780,187	11
Oklahoma	3,973,480	5	5	0	193,687	583,080	374	456	794,696	9
Oregon	4,253,040	5	6	1	677,618	100,664	427	504	708,840	43
Pennsylvania	12,807,279	18	17	-1	501,583	304,098	426	450	753,369	26
Rhode Island	1,059,899	2	1	-1			at large	440	1,059,899	1
South Carolina	5,197,967	7	7	0	495,466	284,810	412	474	742,567	34
South Dakota	890,810	1	1	0			at large	526	890,810	5
Tennessee	6,872,183	9	9	0	345,561	439,350	409	459	763,576	21
Texas	29,350,998	36	39	3	698,863	165,968	434	442	752,590	27
Utah	3,247,776	4	4	0	154,702	621,583	351	455	811,944	7
Vermont	623,704	1	1	0			at large	732	623,704	48
Virginia	8,578,424	11	11	0	162,697	627,230	403	441	779,857	12
Washington	7,697,326	10	10	0	282,190	505,200	407	449	769,733	16
West Virginia	1,786,340	3	2	-1	77,273	714,202	265	453	893,170	4
Wisconsin	5,833,642	8	8	0	622,104	160,417	424	483	729,205	39
Wyoming	579,855	1	1	0			at large	782	579,855	49
Washington DC	714,924	*0*								
	329,956,225		435					Median =	754,279	
Other Inputs:	Seats to Apportion							Min =	537,979	
435	Max Seats to Calculate							Max =	1,059,899	
75	States									
50										
Include										

		2020 Apportionment Calculations based on different trend lines coming from the 2019 Census Bureau Estimates																	
		2010-2019 Trend		2011-2019 Trend		2012-2019 Trend		2013-2019 Trend		2014-2019 Trend		2015-2019 Trend		2016-2019 Trend		2017-2019 Trend		2018-2019 Trend	
State	Compare To	Seats	Change	Seats	Change	Seats	Change	Seats	Change	Seats	Change	Seats	Change	Seats	Change	Seats	Change	Seats	Change
Alabama	7	6	-1	6	-1	6	-1	6	-1	6	-1	6	-1	6	-1	6	-1	6	-1
Alaska	1	1	0	1	0	1	0	1	0	1	0	1	0	1	0	1	0	1	0
Arizona	9	10	1	10	1	10	1	10	1	10	1	10	1	10	1	10	1	10	1
Arkansas	4	4	0	4	0	4	0	4	0	4	0	4	0	4	0	4	0	4	0
California	53	52	-1	52	-1	52	-1	52	-1	52	-1	52	-1	52	-1	52	-1	52	-1
Colorado	7	8	1	8	1	8	1	8	1	8	1	8	1	8	1	8	1	8	1
Connecticut	5	5	0	5	0	5	0	5	0	5	0	5	0	5	0	5	0	5	0
Delaware	1	1	0	1	0	1	0	1	0	1	0	1	0	1	0	1	0	1	0
Florida	27	29	2	29	2	29	2	29	2	29	2	29	2	29	2	29	2	29	2
Georgia	14	14	0	14	0	14	0	14	0	14	0	14	0	14	0	14	0	14	0
Hawaii	2	2	0	2	0	2	0	2	0	2	0	2	0	2	0	2	0	2	0
Idaho	2	2	0	2	0	2	0	2	0	2	0	2	0	2	0	2	0	2	0
Illinois	18	17	-1	17	-1	17	-1	17	-1	17	-1	17	-1	17	-1	17	-1	17	-1
Indiana	9	9	0	9	0	9	0	9	0	9	0	9	0	9	0	9	0	9	0
Iowa	4	4	0	4	0	4	0	4	0	4	0	4	0	4	0	4	0	4	0
Kansas	4	4	0	4	0	4	0	4	0	4	0	4	0	4	0	4	0	4	0
Kentucky	6	6	0	6	0	6	0	6	0	6	0	6	0	6	0	6	0	6	0
Louisiana	6	6	0	6	0	6	0	6	0	6	0	6	0	6	0	6	0	6	0
Maine	2	2	0	2	0	2	0	2	0	2	0	2	0	2	0	2	0	2	0
Maryland	8	8	0	8	0	8	0	8	0	8	0	8	0	8	0	8	0	8	0
Massachusetts	9	9	0	9	0	9	0	9	0	9	0	9	0	9	0	9	0	9	0
Michigan	14	13	-1	13	-1	13	-1	13	-1	13	-1	13	-1	13	-1	13	-1	13	-1
Minnesota	8	7	-1	7	-1	7	-1	7	-1	7	-1	7	-1	7	-1	7	-1	7	-1
Mississippi	4	4	0	4	0	4	0	4	0	4	0	4	0	4	0	4	0	4	0
Missouri	8	8	0	8	0	8	0	8	0	8	0	8	0	8	0	8	0	8	0
Montana	1	2	1	2	1	2	1	2	1	2	1	2	1	2	1	2	1	2	1
Nebraska	3	3	0	3	0	3	0	3	0	3	0	3	0	3	0	3	0	3	0
Nevada	4	4	0	4	0	4	0	4	0	4	0	4	0	4	0	4	0	4	0
New Hampshire	2	2	0	2	0	2	0	2	0	2	0	2	0	2	0	2	0	2	0
New Jersey	12	12	0	12	0	12	0	12	0	12	0	12	0	12	0	12	0	12	0
New Mexico	3	3	0	3	0	3	0	3	0	3	0	3	0	3	0	3	0	3	0
New York	27	26	-1	26	-1	26	-1	26	-1	26	-1	26	-1	26	-1	26	-1	26	-1
North Carolina	13	14	1	14	1	14	1	14	1	14	1	14	1	14	1	14	1	14	1
North Dakota	1	1	0	1	0	1	0	1	0	1	0	1	0	1	0	1	0	1	0
Ohio	16	15	-1	15	-1	15	-1	15	-1	15	-1	15	-1	15	-1	15	-1	15	-1
Oklahoma	5	5	0	5	0	5	0	5	0	5	0	5	0	5	0	5	0	5	0
Oregon	5	6	1	6	1	6	1	6	1	6	1	6	1	6	1	6	1	6	1
Pennsylvania	18	17	-1	17	-1	17	-1	17	-1	17	-1	17	-1	17	-1	17	-1	17	-1
Rhode Island	2	1	-1	1	-1	1	-1	1	-1	1	-1	1	-1	1	-1	1	-1	1	-1
South Carolina	7	7	0	7	0	7	0	7	0	7	0	7	0	7	0	7	0	7	0
South Dakota	1	1	0	1	0	1	0	1	0	1	0	1	0	1	0	1	0	1	0
Tennessee	9	9	0	9	0	9	0	9	0	9	0	9	0	9	0	9	0	9	0
Texas	36	39	3	39	3	39	3	39	3	39	3	39	3	39	3	39	3	39	3
Utah	4	4	0	4	0	4	0	4	0	4	0	4	0	4	0	4	0	4	0
Vermont	1	1	0	1	0	1	0	1	0	1	0	1	0	1	0	1	0	1	0
Virginia	11	11	0	11	0	11	0	11	0	11	0	11	0	11	0	11	0	11	0
Washington	10	10	0	10	0	10	0	10	0	10	0	10	0	10	0	10	0	10	0
West Virginia	3	2	-1	2	-1	2	-1	2	-1	2	-1	2	-1	2	-1	2	-1	2	-1
Wisconsin	8	8	0	8	0	8	0	8	0	8	0	8	0	8	0	8	0	8	0
Wyoming	1	1	0	1	0	1	0	1	0	1	0	1	0	1	0	1	0	1	0
Washington DC	*0*																		
		435		435		435		435		435		435		435		435		435	
		State	Seat	State	Seat	State	Seat	State	Seat	State	Seat	State	Seat	State	Seat	State	Seat	State	Seat
	430	California	52	California	52	California	52	California	52	California	52	California	52	California	52	California	52	California	52
	431	Illinois	17	Illinois	17	Illinois	17	Illinois	17	Illinois	17	Illinois	17	Illinois	17	Illinois	17	Illinois	17
	432	New York	26	New York	26	Florida	29	Florida	29	Florida	29	Florida	29	Florida	29	New York	26	New York	26
	433	Texas	39	Florida	29	New York	26	New York	26	New York	26	New York	26	New York	26	Florida	29	Texas	39
	434	Florida	29	Texas	39	Texas	39	Texas	39	Texas	39	Texas	39	Montana	2	Texas	39	Montana	2
	435	Montana	2	Montana	2	Montana	2	Montana	2	Montana	2	Montana	2	Texas	39	Montana	2	Florida	29
	436	Alabama	7	Alabama	7	Alabama	7	Alabama	7	Alabama	7	Alabama	7	Alabama	7	Alabama	7	Alabama	7
	437	Minnesota	8	Minnesota	8	Minnesota	8	Minnesota	8	Minnesota	8	Minnesota	8	Minnesota	8	Minnesota	8	Minnesota	8
	438	California	53	California	53	California	53	California	53	Ohio	16	Ohio	16	Ohio	16	Ohio	16	Ohio	16
	439	Ohio	16	Ohio	16	Ohio	16	Ohio	16	California	53	California	53	California	53	California	53	California	53
	440	Rhode Island	2	Rhode Island	2	Rhode Island	2	Rhode Island	2	Rhode Island	2	Rhode Island	2	Rhode Island	2	Rhode Island	2	Rhode Island	2

State	New Apportionment Count (2018-2019 Trend)	New Electoral College Count	2010s Electoral College Count	2000s Electoral College Count	2016 Presidential Election: 2016 Presidential Victor	Electoral Votes For Clinton (D)	Electorial Votes For Trump (Rep)	Revised Electoral Votes For Clinton (D)	Revised Electorial Votes For Trump (Rep)
Alabama	6	8	9	9	Trump	0	9	0	8
Alaska	1	3	3	3	Trump	0	3	0	3
Arizona	10	12	11	10	Trump	0	11	0	12
Arkansas	4	6	6	6	Trump	0	6	0	6
California	52	54	55	55	Clinton	55	0	54	0
Colorado	8	10	9	9	Clinton	9	0	10	0
Connecticut	5	7	7	7	Clinton	7	0	7	0
Delaware	1	3	3	3	Clinton	3	0	3	0
Florida	29	31	29	27	Trump	0	29	0	31
Georgia	14	16	16	15	Trump	0	16	0	16
Hawaii	2	4	4	4	Clinton*	3	0	3	0
Idaho	2	4	4	4	Trump	0	4	0	4
Illinois	17	19	20	21	Clinton	20	0	19	0
Indiana	9	11	11	11	Trump	0	11	0	11
Iowa	4	6	6	7	Trump	0	6	0	6
Kansas	4	6	6	6	Trump	0	6	0	6
Kentucky	6	8	8	8	Trump	0	8	0	8
Louisiana	6	8	8	9	Trump	0	8	0	8
Maine	2	4	4	4	*Clinton*	3	1	4	0
Maryland	8	10	10	10	Clinton	10	0	10	0
Massachusetts	9	11	11	12	Clinton	11	0	11	0
Michigan	13	15	16	17	Trump	0	16	0	15
Minnesota	7	9	10	10	Clinton	10	0	9	0
Mississippi	4	6	6	6	Trump	0	6	0	6
Missouri	8	10	10	11	Trump	0	10	0	10
Montana	2	4	3	3	Trump	0	3	0	4
Nebraska	3	5	5	5	Trump	0	5	0	5
Nevada	4	6	6	5	Clinton	6	0	6	0
New Hampshire	2	4	4	4	Clinton	4	0	4	0
New Jersey	12	14	14	15	Clinton	14	0	14	0
New Mexico	3	5	5	5	Clinton	5	0	5	0
New York	26	28	29	31	Clinton	29	0	28	0
North Carolina	14	16	15	15	Trump	0	15	0	16
North Dakota	1	3	3	3	Trump	0	3	0	3
Ohio	15	17	18	20	Trump	0	18	0	17
Oklahoma	5	7	7	7	Trump	0	7	0	7
Oregon	6	8	7	7	Clinton	7	0	8	0
Pennsylvania	17	19	20	21	Trump	0	20	0	19
Rhode Island	1	3	4	4	Clinton	4	0	3	0
South Carolina	7	9	9	8	Trump	0	9	0	9
South Dakota	1	3	3	3	Trump	0	3	0	3
Tennessee	9	11	11	11	Trump	0	11	0	11
Texas	39	41	38	34	Trump#	0	36	0	39
Utah	4	6	6	5	Trump	0	6	0	6
Vermont	1	3	3	3	Clinton	3	0	3	0
Virginia	11	13	13	13	Clinton	13	0	13	0
Washington	10	12	12	11	Clinton&	8	0	8	0
West Virginia	2	4	5	5	Trump	0	5	0	4
Wisconsin	8	10	10	10	Trump	0	10	0	10
Wyoming	1	3	3	3	Trump	0	3	0	3
Washington DC	*1*	3	*3*	3	Clinton	3	0	3	0
						227	304	225	306
								-2	2

#One elector voted for John Kasich for President
#One elector voted for Ron Paul for President
&Three electors voted for Colin Powell for President
&One elector voted for Faith Spotted Eagle
*One elector voted for Bernie Sanders

2012 Presidential Election					2008 Presidential Election				
2012 Presidential Victor	Electoral Votes For Obama (D)	Electorial Votes For Romney (Rep)	Revised Electoral Votes For Obama (D)	Revised Electorial Votes For Romney (Rep)	2008 Presidential Victor	Electoral Votes For Obama (D)	Electorial Votes For McCain (Rep)	Revised Electoral Votes For Obama (D)	Revised Electorial Votes For McCain (Rep)
Romney	0	9	0	8	McCain	0	9	0	8
Romney	0	3	0	3	McCain	0	3	0	3
Romney	0	11	0	12	McCain	0	10	0	12
Romney	0	6	0	6	McCain	0	6	0	6
Obama	55	0	54	0	Obama	55	0	54	0
Obama	9	0	10	0	Obama	9	0	10	0
Obama	7	0	7	0	Obama	7	0	7	0
Obama	3	0	3	0	Obama	3	0	3	0
Obama	29	0	31	0	Obama	27	0	31	0
Romney	0	16	0	16	McCain	0	15	0	16
Obama	4	0	4	0	Obama	4	0	4	0
Romney	0	4	0	4	McCain	0	4	0	4
Obama	20	0	19	0	Obama	21	0	19	0
Romney	0	11	0	11	Obama	11	0	11	0
Obama	6	0	6	0	Obama	7	0	6	0
Romney	0	6	0	6	McCain	0	6	0	6
Romney	0	8	0	8	McCain	0	8	0	8
Romney	0	8	0	8	McCain	0	9	0	8
Obama	4	0	4	0	Obama	4	0	4	0
Obama	10	0	10	0	Obama	10	0	10	0
Obama	11	0	11	0	Obama	12	0	11	0
Obama	16	0	15	0	Obama	17	0	15	0
Obama	10	0	9	0	Obama	10	0	9	0
Romney	0	6	0	6	McCain	0	6	0	6
Romney	0	10	0	10	McCain	0	11	0	10
Romney	0	3	0	4	McCain	0	3	0	4
Romney	0	5	0	5	McCain	1	4	1	4
Obama	6	0	6	0	Obama	5	0	6	0
Obama	4	0	4	0	Obama	4	0	4	0
Obama	14	0	14	0	Obama	15	0	14	0
Obama	5	0	5	0	Obama	5	0	5	0
Obama	29	0	28	0	Obama	31	0	28	0
Romney	0	15	0	16	Obama	15	0	16	0
Romney	0	3	0	3	McCain	0	3	0	3
Obama	18	0	17	0	Obama	20	0	17	0
Romney	0	7	0	7	McCain	0	7	0	7
Obama	7	0	8	0	Obama	7	0	8	0
Obama	20	0	19	0	Obama	21	0	19	0
Obama	4	0	3	0	Obama	4	0	3	0
Romney	0	9	0	9	McCain	0	8	0	9
Romney	0	3	0	3	McCain	0	3	0	3
Romney	0	11	0	11	McCain	0	11	0	11
Romney	0	38	0	41	McCain	0	34	0	41
Romney	0	6	0	6	McCain	0	5	0	6
Obama	3	0	3	0	Obama	3	0	3	0
Obama	13	0	13	0	Obama	13	0	13	0
Obama	12	0	12	0	Obama	11	0	12	0
Romney	0	5	0	4	McCain	0	5	0	4
Obama	10	0	10	0	Obama	10	0	10	0
Romney	0	3	0	3	McCain	0	3	0	3
Obama	3	0	3	0	Obama	3	0	3	0
	332	206	328	210		365	173	356	182
			-4	4				-9	9

2004 Presidential Election					2000 Presidential Election				
2004 Presidential Victor	Electoral Votes For Kerry (D)	Electorial Votes For Bush (Rep)	Revised Electoral Votes For Kerry (D)	Revised Electorial Votes For Bush (Rep)	2000 Presidential Victor	Electoral Votes For Gore (D)	Electorial Votes For Bush (Rep)	Revised Electoral Votes For Gore (D)	Revised Electorial Votes For Bush (Rep)
Bush	0	9	0	8	Bush	0	9	0	8
Bush	0	3	0	3	Bush	0	3	0	3
Bush	0	10	0	12	Bush	0	8	0	12
Bush	0	6	0	6	Bush	0	6	0	6
Kerry	55	0	54	0	Gore	54	0	54	0
Bush	0	9	0	10	Bush	0	8	0	10
Kerry	7	0	7	0	Gore	8	0	7	0
Kerry	3	0	3	0	Gore	3	0	3	0
Bush	0	27	0	31	Bush	0	25	0	31
Bush	0	15	0	16	Bush	0	13	0	16
Kerry	4	0	4	0	Gore	4	0	4	0
Bush	0	4	0	4	Bush	0	4	0	4
Kerry	21	0	19	0	Gore	22	0	19	0
Bush	0	11	0	11	Bush	0	12	0	11
Bush	0	7	0	6	Gore	7	0	6	0
Bush	0	6	0	6	Bush	0	6	0	6
Bush	0	8	0	8	Bush	0	8	0	8
Bush	0	9	0	8	Bush	0	9	0	8
Kerry	4	0	4	0	Gore	4	0	4	0
Kerry	10	0	10	0	Gore	10	0	10	0
Kerry	12	0	11	0	Gore	12	0	11	0
Kerry	17	0	15	0	Gore	18	0	15	0
Kerry	9	0	8	0	Gore	10	0	9	0
Bush	0	6	0	6	Bush	0	7	0	6
Bush	0	11	0	10	Bush	0	11	0	10
Bush	0	3	0	4	Bush	0	3	0	4
Bush	0	5	0	5	Bush	0	5	0	5
Bush	0	5	0	6	Bush	0	4	0	6
Kerry	4	0	4	0	Bush	0	4	0	4
Kerry	15	0	14	0	Gore	15	0	14	0
Bush	0	5	0	5	Gore	5	0	5	0
Kerry	31	0	28	0	Gore	33	0	28	0
Bush	0	15	0	16	Bush	0	14	0	16
Bush	0	3	0	3	Bush	0	3	0	3
Bush	0	20	0	17	Bush	0	21	0	17
Bush	0	7	0	7	Bush	0	8	0	7
Kerry	7	0	8	0	Gore	7	0	8	0
Kerry	21	0	19	0	Gore	23	0	19	0
Kerry	4	0	3	0	Gore	4	0	3	0
Bush	0	8	0	9	Bush	0	8	0	9
Bush	0	3	0	3	Bush	0	3	0	3
Bush	0	11	0	11	Bush	0	11	0	11
Bush	0	34	0	41	Bush	0	32	0	41
Bush	0	5	0	6	Bush	0	5	0	6
Kerry	3	0	3	0	Gore	3	0	3	0
Bush	0	13	0	13	Bush	0	13	0	13
Kerry	11	0	12	0	Gore	11	0	12	0
Bush	0	5	0	4	Bush	0	5	0	4
Kerry	10	0	10	0	Gore	11	0	10	0
Bush	0	3	0	3	Bush	0	3	0	3
Kerry	3	0	3	0	Gore	2	0	2	0
	251	286	239	298		266	271	246	291
			-12	12				-20	20

APPENDIX 3

(Exhibit 3 to Declaration of Kimball W. Brace)

Report Date: 8/30/2020
As of 8/29/2020, percentage of housing units:

State	Self-Responded	Enumerated in Nonresponse	Enumerated
U.S. Total	**64.9**	**16.9**	**81.7**
Idaho	68.6	27.8	96.5
West Virginia	55.6	37.3	92.9
Washington	71.1	20.5	91.5
Kansas	68.6	22.4	91.0
Connecticut	69.0	21.0	90.0
Oregon	67.7	22.3	90.0
Maine	57.0	32.9	89.8
Wisconsin	71.1	18.7	89.8
Hawaii	61.7	28.0	89.7
Indiana	69.0	20.6	89.6
Minnesota	73.8	14.0	87.9
Illinois	69.6	18.1	87.7
Maryland	69.2	17.3	86.5
Missouri	64.6	22.0	86.5
California	67.1	18.8	85.9
Massachusetts	67.3	18.7	85.9
Alaska	52.8	32.3	85.1
Utah	69.3	15.8	85.1
Pennsylvania	67.7	17.4	85.0
Ohio	69.0	15.9	84.9
North Dakota	63.9	20.2	84.1
Nebraska	70.4	13.6	84.0
Virginia	69.4	14.2	83.7
Colorado	68.2	15.3	83.5
Arkansas	59.3	23.7	83.0
Tennessee	64.2	18.1	82.2
Michigan	69.9	11.9	81.8
Rhode Island	62.8	19.0	81.8
New Jersey	66.9	14.1	81.0
Vermont	58.7	22.1	80.8
New Hampshire	64.9	15.8	80.7
Kentucky	67.0	13.4	80.4
South Dakota	65.5	14.5	80.0
District of Columbia	61.3	18.5	79.7
New York	61.0	17.9	78.8
Delaware	62.4	16.1	78.5
Iowa	69.7	08.8	78.5
Nevada	64.1	14.3	78.5
Oklahoma	59.2	19.3	78.5
Wyoming	59.2	19.1	78.3
Texas	60.2	17.5	77.7
Florida	61.5	13.3	74.8
Louisiana	58.3	16.2	74.4
North Carolina	60.7	13.6	74.3
Mississippi	58.9	14.8	73.7
South Carolina	58.7	14.7	73.4
Montana	58.1	15.2	73.3
Alabama	61.8	11.2	73.0
Arizona	61.3	11.5	72.9
Puerto Rico	32.2	40.6	72.8
Georgia	60.2	12.5	72.7
New Mexico	55.6	15.6	71.2

EXHIBIT D

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

LA UNIÓN DEL PUEBLO ENTERO, et al., *Plaintiffs*, v. DONALD J. TRUMP, sued in his official capacity as President of the United States, et al., *Defendants*.	Civil Action No. 8:19-CV-02710-PX

DECLARATION OF AMY O'HARA

I. QUALIFICATIONS

1. I am a Research Professor in the Massive Data Institute at the McCourt School of Public Policy at Georgetown University and Executive Director of Georgetown's Federal Statistical Research Data Center. I have been in this role at Georgetown since 2018, where I focus on the secure and responsible use of administrative data for research and statistical purposes. I lead a team that develops governance models, data access protocols, and research methods to advance ethical and privacy preserving data uses. I have a Ph.D. in economics from the University of Notre Dame. A copy of my CV is attached to this declaration.

2. Prior to entering academia, I worked at the U.S. Census Bureau for fourteen years. I am the former chief of the Center for Administrative Records Research and Applications (CARRA), where I designed and led the data acquisition, linkage, and research activities using federal, state, and local administrative data. As the senior executive over administrative data, I negotiated access and uses of data from dozens of agencies, and oversaw the data processing to enable matching across files. I designed and led the work on administrative records during the 2020 Research and Testing Program through 2012, and led negotiations to obtain administrative data for decennial census planning and operations through 2017. I have received the Department

of Commerce Gold Award for negotiating access to tax data for the 2020 census, and Census Bureau Bronze Award for work with administrative data. I was also awarded the 2012 Arthur S. Flemming Award for my leadership in expanding the use of administrative data in federal statistics.

3. I was retained by the plaintiffs in *La Unión del Pueblo Entero, et al., v. Trump, et al.*, No. 8:19-CV-02710 (D. Md.), to provide my expert opinion on the policies and procedures involving administrative records at the U.S. Census Bureau, and on the extent to which the Commerce Department and Census Bureau policies and protocols affect the accuracy of the 2020 Census.

4. I am being compensated at a rate of $150 per hour.

II. SUMMARY AND CONCLUSIONS

5. Based on my experience and knowledge, the decision by the Census Bureau to end field operations and compress post data collection activities (referred to herein as "post-processing") to deliver apportionment data by December 31, 2020 will require excessive reliance on administrative data and imputation methods that are very likely to produce undercounts through failure to enumerate individuals.

6. Based on my experience and knowledge of administrative data sources and quality, it is my opinion that truncating field operations and post-processing will strain currently developed methods and processes that are used to fill-in missing data and will reduce the accuracy of census counts and characteristics in the following ways:

a. Shorter fieldwork may reduce the number of in-person or proxy responses obtained; this will then require more imputation.

b. The administrative data sources currently planned for count imputation use have insufficient coverage for low-income and highly mobile households.

c. Reduced fieldwork cannot be remedied by using administrative data.

III. PLANNED USES OF ADMINISTRATIVE RECORDS

7. The Census Bureau acquired administrative records from 2010 onwards, for research and testing, in order to determine how to assess quality and a source's fitness for use (e.g., different data are valuable for different uses, like filling in missing age or sex, or to help determine whether a unit is vacant). Data sources were identified, then data sharing agreements were negotiated between the Census Bureau and the relevant agency. Files were delivered, reviewed, and assessed to see how complete and accurate their data were. A set of data from federal, state, and commercial sources were built into an operational database for the 2020 census. These records were harmonized, or uniformly processed and ready to plug into census operations. The system was developed and tested over the past several years, and at the start of 2020 the system was expected to receive updates from its component sources during the year. The scale of data preparation was unprecedented for census operations, requiring billions of records to be normalized and readied for multiple uses. A typical census schedule required the parallel development of the MAF and field operations, but 2020 innovations also required coordination of the administrative data system and online response system. This was a huge and complex undertaking that received less testing than originally planned and had system integration challenges.

8. The pandemic rattled this undertaking. COVID-19 altered the economy, society, and census. Shifts in residential patterns, school closings, community lockdowns, and disruption of government programs and services were just a few of the factors that affected data streams

and census plans. Some families moved away from viral hotspots, families decided how to cohabitate to care for children and elders, higher education institutions sent students home, and many aspects of life shifted online as non-essential businesses were ordered closed in many places. Many government agencies and departments limited services, allowing extensions on everything from income tax filings to driver's license renewals. The economic shutdown caused a crush of filers and applicants for unemployment benefits and food assistance programs. All of this affected the both the data landscape and the enumeration itself. The Census Bureau faced uncertainty and delay over how the census fieldwork could occur, and has not released updated plans on how administrative data will be used. Based on my experience and knowledge, the policy setting and decision-making processes at the Census Bureau are unable to adapt quickly to address the effects of the pandemic.

9. According to Census Bureau plans, they hoped to have a self-response of 60% by mid-May, then send more than 420,000 field staff to conduct NRFU over a 15-week period from mid-May to mid-August 2020. That would have allowed the Census Bureau approximately twenty weeks (mid-August to December) to process the data to prepare the apportionment counts by December 31, 2020.

10. The Census Bureau announced it will end fieldwork on September 30, 2020, yet the counts are still due December 31, 2020 and the Census Bureau has hired far fewer enumerators than planned.

IV. AFFECT OF THE PANDEMIC ON THE INTENDED USE OF ADMINISTRATIVE RECORDS

11. Administrative data cannot fix all the issues created by the pandemic and the truncated schedule. Adhering to the end of year deadline compresses not only the fieldwork, but

also reduces the post-processing time. These two issues compound the risk of an inaccurate count. The goal of fieldwork is to obtain a count for each housing unit that has not yet responded. By limiting the number of weeks in the field, the Census Bureau risks its ability to visit housing units to assess whether they are vacant or occupied, and to arrange visits to obtain proxy responses from building managers in multi-unit buildings. If there are sections of cities or rural communities that fail to receive in-person visits, the Census Bureau will need to fill in missing data during post-processing in a time period of only about 13 weeks (October to December) to meet a December 31, 2020 apportionment count deadline. To recap, the Census Bureau was supposed to have 15 weeks in the field and will now have seven. They were supposed to have 20 weeks of post-processing and will now have 13.

12. After fieldwork is done, the Census Bureau needs to deal with missing data: If there is no self-response (from internet, phone, paper, or fieldwork) or proxy response for a housing unit, the Census Bureau will need to assess whether a non-responding unit was vacant or occupied. A number of administrative and commercial data sources are prepared for this assignment, but they have never been tested for the large volume of cases that will need to be processed. This brings a risk of using uneven USPS "vacant" designations from across the country and from differing types of addresses (e.g., non-city style addresses, apartment buildings with mail drops), and IRS data that may non-representative of the full population, undercounting minority groups.

13. Several of the administrative data sources tested for this use have had COVID challenges. The Census Bureau plan for count imputation is highly reliant on individual income tax data from the Internal Revenue Service (IRS). IRS data have substantial coverage of the U.S. population – hundreds of millions of records reflect person-address data on W-2s, information

returns about interest, mortgages, student loans, Social Security benefits, and contracting income. IRS income tax returns, filed on Form 1040s, often list an entire family or household and on-time returns are typically filed in early April, lining up well with Census Day of April 1. The pandemic affected timely filing, with business closures limiting the number of low-income filers who could visit retail tax preparers (or volunteer tax preparers at local libraries) in person. IRS offered a filing extension through July 15, 2020, though many individuals filed earlier to obtain their refunds or the economic stimulus payment that was administered through the tax system this spring. This stimulus payment may have increased the value of IRS records for the 2020 census, provided they arrive in time. The economic stimulus rebate administered during the last recession induced filing of millions of additional returns. However, IRS processing was disrupted due to the pandemic. A lack of transparency into the volume, coverage, and timeliness of administrative data like the IRS returns prompt questions over Census's possible expanded reliance on such sources.

14. The bulk of the tax records were expected in May and June. If the records come in late, post-processing will suffer delays and disruption. This calls into question whether the Census Bureau has adopted policies to address changes to administrative data delivery, content, or composition, and whether they can do all this work by December 31, 2020.

15. The Census Bureau invested in administrative data and methods expecting a much smaller workload to designate vacant, occupied, or delete status since they planned on being in the field for complete Non-Response Follow-Up operations. Given that the fieldwork will be cut short, the volume of addresses for which vacant/delete status must be identified will be greater.

V. ALTERNATIVE APPROACHES TO RESPOND TO THE PANDEMIC

16. The Census could use administrative data as planned to fill in missing data, but there are significant concerns about data availability. For example, as noted above, the Census Bureau's plans rely on heavy use of tax data, which does not include all households or children. With a larger than expected amount of missing data, this will result in biased responses and undercounts.

17. In order to maximize use of the administrative data, the Census Bureau would need to review the existing policies, assumptions, and rules of thumb embedded in their decisions. The Census Bureau has acquired, harmonized, and readied dozens of source files; many were evaluated during the decade and tested against 2010 or survey data, but were not deemed as highest quality by decennial planners. The 30+ administrative data sources ready for production [1] were assembled to support different operations. For example, some sources were tested and readied for vacant/delete checks, others were prepared for count imputation, and still other sources were best for characteristic imputation (e.g., where a household responds with a count but does not complete information on household member age or race). Operational tests had required the presence of two corroborating data points from the same or different data sources for inclusion in imputation processing.

18. Thus, it is possible that expanded administrative data use to fill in missing data could occur before traditional hot deck imputation. Hot deck imputation assigns a missing value (whether a household count, age, or sex) from another census record with similar characteristics. The "hot deck" is a set of records with similar variables such as age, race, and sex that provide

[1] "Intended Administrative Data Use in the 2020 Census," Karen D. Deaver, U.S. Census Bureau, May 1, 2020, https://www2.census.gov/programs-surveys/decennial/2020/program-management/planning-docs/administrative-data-use-2020-census.pdf.

the donor records for assignment. The Census Bureau has not released details on the characteristics of respondents or detailed geography of response patterns to demonstrate that available responses to act as donor households are sufficient for an increased use of imputation. In past censuses, the Census Bureau has imputed whole households, though at very low rates in any geography. Hot deck imputation at a greater level than previously applied could be risky during this census, especially with truncated fieldwork. This is because households who completed the census may not be representative of households who did not respond.

19. The 2020 census has been atypical in its conduct, timeline, response patterns, and underlying residential stability due to the pandemic. Based on my experience and knowledge, I do not believe that combining self-reported, proxy, and administrative data information was tested by the Census Bureau for imputation. The lack of uniform quality across sources, when census data were collected, the reference dates for administrative data, and lack of transparency about post-processing applied, leads to questionable overall data quality across the country and within population groups. Given these issues with administrative records, the lack of testing, and a drastically compressed schedule, based on my experience and knowledge, I do not believe maximizing administrative records use will be possible without serious risk to conducting an actual enumeration in the 2020 Census.

VI. CONCERNS WITH AVAILABLE ADMINISTRATIVE RECORDS

20. Census memos and publications have not described how the sources that have been prepared for operational use reflect the diverse population in the U.S. This calls into question the Census Bureau's ability to impute all ethnicity and race groups, and all age groups for every geography.

21. Earlier studies reveal that administrative data have lower coverage of groups including non-white and high mobility young adults.[2] An array of sources is needed to reflect the U.S. population, or you risk the results found in the 2010 Census Match Study[3] that I designed and conducted with Sonya Porter and my staff in CARRA at the Census Bureau. That study, the first national assessment of how close an administrative data census could come to a traditional enumeration, revealed that administrative data were useful but the combination used in that study did not result in population totals that were consistent with a traditional census. The combination of commercial and federal administrative data sources provided low coverage of Hispanics, Native Hawaiian or Other Pacific Islander, and American Indian or Alaska Native race groups. These groups were also challenging to match across sources due to the Census Bureau's approach to person validation and linkage. A 2014 study noted that young children, minorities, residents of group quarters, immigrants, recent movers, low-income individuals, and non-employed individuals were less likely to receive a validated person linkage identifier.[4] This is the same methodology being used for person validation and linkage for the 2020 census.

22. After the 2010 Census Match Study, the Census Bureau made efforts to improve administrative data coverage of the population, and to find sources of administrative data where earlier studies had revealed weaknesses. The composition of the records needs to be understood by age, sex, race, and Hispanic origin. Tax data misses many individuals who are not in the labor force, and will miss children in many households. This is why the now-dismantled Center for

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[2] *See* Brittany Bond, J. David Brown, Adela Luque, Amy O'Hara, The Nature of the Bias When Studying Only Linkable Person Records: Evidence from the American Community Survey, U.S. Census Bureau (April 22, 2014), https://www.census.gov/content/dam/Census/library/working-papers/2014/adrm/carra-wp-2014-08.pdf.
[3] "2010 Census Match Study," Sonya Rastogi and Amy O'Hara, U.S. Census Bureau, November 16, 2012, https://www.census.gov/2010census/pdf/2010_Census_Match_Study_Report.pdf.
[4] Brittany Bond, J. David Brown, Adela Luque, Amy O'Hara, The Nature of the Bias When Studying Only Linkable Person Records: Evidence from the American Community Survey, U.S. Census Bureau (April 22, 2014), https://www.census.gov/content/dam/Census/library/working-papers/2014/adrm/carra-wp-2014-08.pdf.

Administrative Records Research and Applications pursued state health and human services program data. Dozens of datasets from state Supplemental Nutrition Assistance Programs, Women, Infant, and Children programs, and Temporary Assistance for Needy Families programs were accessed and harmonized. But according to its May 2020 memo, the Census Bureau does not plan to use any of these files for 2020 count imputation.

23. Increased reliance on administrative data in the post-processing period would require careful combination of sources and sufficient time to do it right. With the truncated schedule, there is not sufficient time. How administrative data would be summed when household members appear in multiple program files would need to be resolved. Adding sources together to get a total count may be appropriate in some households, but could erroneously reflect household size and composition in others. For example, a multigenerational household may have multiple tax returns, Medicare, and Housing and Urban Development mortgage administrative data, all reflecting a family under one roof. If the Census Bureau only counts one or two of these sources, family members would be missed and administrative data business rules would exacerbate an undercount. Research from Pew Research Center indicates that many multi-generational households are households with Hispanic, Black, and Asian heads, as well as immigrant households.[5] Based on my knowledge and experience, it is unlikely that the Census Bureau has developed business rules or algorithms that properly blend sources together to accurately reflect household rosters. Such business rules and algorithms were not in place when I left in 2017 and have not been publicly shared since.

[5] Paul Taylor, et al., Fighting Poverty in a Tough Economy, Americans Move in with Their Relatives, Pew Research Center, Chapter 3: Demographics of Multi-Generational Households (Oct. 3, 2-11), https://www.pewsocialtrends.org/2011/10/03/chapter-3-demographics-of-multi-generational-households/.

VII. CONCLUSION

24. Because of insufficient quality administrative records available to address the various shortcomings resulting from a truncation of field operations and post-processing, based on my experience and knowledge, the Census Bureau must adhere to the requested plan extending statutory deadlines. Based on my knowledge and experience, the truncated schedule does not provide adequate time to meet these challenges, particularly given that career professionals at the Census Bureau said they needed until April 30, 2021, and the result of adhering to the truncated schedule will be a failure to conduct an actual enumeration of the population.

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

Amy O'Hara

Executed on August 31, 2020 at Silver Spring, Maryland.

APPENDIX 1

August 2019

AMY O'HARA

Curriculum Vitae

Massive Data Institute
Georgetown University
Washington DC 20057

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EMPLOYMENT

Georgetown University

Research Professor, Massive Data Institute, 2018 - present
Director, Federal Statistical Research Data Center, 2018 - present

Stanford University

Senior Research Scholar, Stanford Institute for Economic Policy Research, 2017- 2018
Associate Director for Data, Stanford Center for Population Health Sciences, 2017-2018

U.S. Census Bureau

Chief, Center for Administrative Records Research and Applications, 2014-2017
Acting Chief, Center for Administrative Records Research and Applications, 2011-2014
Economist and Statistician, 2004-2011

EDUCATION

University of Notre Dame

Ph.D. in economics, 2003
M.A. in economics, 1998

State University of New York College at Buffalo

B.S. in economics, 1996

PUBLICATIONS

Medalia, Carla, Bruce Meyer, Amy O'Hara, and Derek Wu. 2019. "Linking Survey and Administrative Data to Measure Income, Inequality, and Mobility." *International Journal of Population Data Science*, 4(1):1-8.

Massey, Catherine, Katie Genadek, J. Trent Alexander, Todd Gardner, and Amy O'Hara. 2018. "Linking the 1940 U.S. Census with Modern Data." *Historical Methods: A Journal of Quantitative and Interdisciplinary History,* 51(4):246-257.

O'Hara, Amy, and Carla Medalia. 2018. "Data Sharing in the Federal Statistical System: Impediments and Possibilities." *The ANNALS of the American Academy of Political and Social Science,* 675(1):138-150.

Culbertson, Adam, Satyender Goel, Amy O'Hara et al. 2017. "The Building Blocks of Interoperability: A Multisite Analysis of Patient Demographic Attributes Available for Matching." *Applied Clinical Informatics* 8(2):322-336.

O'Hara, Amy, Rachel Shattuck, and Robert Goerge. 2017. "Linking Federal Surveys with Administrative Data to Improve Research on Families." *The ANNALS of the American Academy of Political and Social Science* 669(1):63-74.

Jarmin, Ron, and Amy O'Hara. 2016. "Big Data and the Transformation of Public Policy Analysis" and "Counterpoint to 'Big Data For Public Policy: The Quadruple Helix. " *Journal of Policy Analysis and Management* 35(3): 715-721 and 725-727.

Jones, Maggie, and Amy O'Hara. 2016. "Do Doubled-Up Families Minimize Household-Level Tax Burden?" *National Tax Journal* 69(3): 613-640.

Johnson, David, Catherine Massey, and Amy O'Hara. 2014. "The Opportunities and Challenges of Using Administrative Data Linkages to Evaluate Mobility." *The ANNALS of the American Academy of Political and Social Science* 657(1): 247-264.

WORKS IN PROGRESS

Fidler, Fiona, Simine Vazire, Alexander Etz, Gary Klein, Richard Lempert, Arthur Lupia, Amy O'Hara et al. "Developing, Validating, and Obtaining Stakeholder Buy-in for Criteria for Applying Social Science to Policymaking." OSF Preprints.

O'Hara, Amy. "Administrative Data Censuses in US States." In preparation.
O'Hara, Amy and Quentin Brummet. "The Differential Privacy Corner: What Has the US Backed Itself Into?" In preparation.

O'Hara, Amy. "Observing and Linking Household Relationships Across US Data Sources." In preparation. Uses decennial census, IRS 1040, Medicare, and Social Security Administration data.

REPORTS AND PERMANENT WORKING PAPERS

Postsecondary Data Infrastructure: What is Possible Today. Institute for Higher Education Policy. June 2019.

Developing, Validating, and Obtaining Stakeholder Buy-in for Criteria for Applying Social Science to Policymaking. With Fiona Fidler, Simine Vazire, Alexander Etz, Gary Klein, Richard Lempert, and Arthur Lupia. OSF Preprints. November 2018.

Preliminary Research for Replacing or Supplementing the Income Question on the American Community Survey with Administrative Records. With C. Adam Bee and Joshua Mitchell. 2016. American Community Survey Research and Evaluation Report Memorandum Series #ACS16-RER-6.

Using the Census to Evaluate Administrative Records and Vice Versa. With J. David Brown and Jennifer H. Childs. 2015. Proceedings of the 2015 Federal Committee on Statistical Methodology Research Conference.

Challenges to Evidence-Based Policy Making in the Decentralized U.S. Statistical System. With Nancy Potok and Ron Jarmin. 2014. Invited Paper for the Ninth International Conference on Teaching Statistics.

Person Matching in Historical Files using the Census Bureau's Person Validation System. With Catherine G. Massey. 2014. Center for Administrative Records Research and Applications Working Paper No. 2014-11.

The Nature of the Bias When Studying Only Linkable Person Records: Evidence from the American Community Survey. With Brittany J. Bond, J. David Brown, and Adela Luque. 2014. Center for Administrative Records Research and Applications Working Paper No. 2014-08.

2010 Census Match Study. With Sonya Rastogi. 2012. 2010 Census Program of Evaluations and Experiments, 2010 Census Planning Memoranda Series No. 247.

Taking Account of Housing in Measures of Household Income. With Kathleen Short and Scott Susin. 2007. Social, Economics, and Household Statistics Division Working Paper No. 2007-02.

The Effects of Taxes and Transfers on Income and Poverty in the United States: 2005. With Joseph Dalaker. 2007. P-60 Census Bureau Report.

Allocated Values in Linked Files. 2007. Proceedings of the 2007 Federal Committee on Statistical Methodology Research Conference.
Tax Variable Imputation in the Current Population Survey. 2006. Proceedings of the 2006 IRS Research Conference.

Evaluation of CPS Tax Simulation Using Administrative IRS Data. 2005. Proceedings of the 2005 Federal Committee on Statistical Methodology Research Conference.

New Methods for Simulating CPS Taxes. 2004. Census Bureau Working Paper.

ORIGINAL DATA RESOURCES

Census Longitudinal Infrastructure Project (CLIP), Preliminary Release. U.S. Census Bureau. 2015. Co-founded CLIP to provide linked microdata from three decennial censuses, two household surveys (Current Population Survey and American Community Survey), and administrative records files from seven federal programs for researchers.

Parent-Child Pointer File (Census Kidlink), Preliminary Release. U.S. Census Bureau. 2013. The Census Kidlink file consists of parent-child linkages observed in Social Security card application data validated with IRS 1040 data. Census Bureau linkage keys are appended to mother-child and father-child relationships. The data are currently used in research projects, survey operations, and decennial census operations.

INVITED PRESENTATIONS

How Might Government Data be Leveraged for the Public Good? Brown Policy Lab, Rhode Island Office of Management and Budget. June 2019.

Supporting Data Access Within and Across Agencies. Committee for National Statistics. National Statistics for Public Policy Seminar. May 2019.

Implementation Issues for Secure Multiparty Computation. Will Secure Multiparty Computation Reshape Data Privacy? Open Technology Institute. April 2018.

Merging "Organic" and Administrative Data with Traditional Social Science Data. National Science Foundation Directorate for Social, Behavioral, and Economic Sciences Advisory Committee Meeting. October 2017.

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The Opportunities and Challenges of Using and Linking Data. White House Office of Social Innovation Workshop. September 2016.

The Census Bureau Linkage Infrastructure. Joint Statistical Meetings. August 2016.

The Census Bureau Linkage Infrastructure. Pay for Success Convening, U.S. Department of Education. June 2016.

Use of Administrative Records to Reduce Burden and Improve Quality. Workshop on Respondent Burden in the American Community Survey. March 2016.

Census Bureau Efforts to Utilize and Share Data. The Promises and Challenges of Administrative Data in Social Policy Research, Department of Health and Human Services. October 2015.

Person Identification Validation System: the 2010 Census and the Coverage of Administrative Records. Inter-American Development Bank Conference on the Statistical Use of Administrative Registers. September 2015.

American Community Survey Administrative Records Research, Association of Public Data Users. September 2015.

Help Wanted. Keynote for Federal Computer Assisted Survey Information Collection Workshop. March 2015.

Data Integration to Evaluate Food Security Programs. Staff briefing for House Agriculture Committee. March 2015.

Data Access for Statistical Use of the National Directory of New Hires. Staff briefing for Senate Finance Committee. May 2015.

Information is Driving Innovation: How the Census Bureau is Integrating Administrative Records in the 2020 Census and Beyond. Staff briefing for House Appropriations Committee. March 2015.

Census Bureau Uses of New Data Sources. Privacy Working Group. February 2014.

Acquiring and Protecting Administrative Records: Current Programs and the Future. Future of Privacy Forum. September 2014.

GRANTS AND INSTITUTIONAL AWARDS

State Population Estimate Benchmarking (Co-Principal Investigator), funding by the Alfred P. Sloan Foundation, 2019-2021, $600,000

Administrative Data Research Institute (Principal Investigator), funded by the Alfred P. Sloan Foundation, 2018-2020, $1.7 million

2013 Gold Medal, U.S. Department of Commerce
2012 Arthur S. Flemming Award for Leadership and Management in Government Service
2010 Bronze Medal, U.S. Department of Commerce

PROFESSIONAL SERVICE

Invited Member, Health and Retirement Survey Data Monitoring Committee, 2019-2021
Invited Member, Evaluation Advisory Group, Future Skills Centre, 2019-2024
Canadian Future Skills Centre Evaluation Advisory Committee, 2019-present
Dutch Open Data Infrastructure for Social Science and Economic Innovations Advisory Board, 2020-2024
Invited Member, Panel on Improving Consumer Data for Food and Nutrition Policy Research for the Economic Research Service, 2018-present
Member, National Bureau of Economic Research Conference on Research in Income and Wealth
Invited Member, Panel on Modernizing the Nation's Crime Statistics, National Academies of Science, Engineering, and Medicine, 2013-2018
Criminal Justice Administrative Records System Board of Directors, University of Michigan, 2016-present
Manuscript reviewer for Journal of Human Resources, International Journal of Population and Data Science, Journal of Research on Educational Effectiveness, and Statistics and Public Policy

EXHIBIT C

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

LA UNIÓN DEL PUEBLO ENTERO, et al., *Plaintiffs*, v. DONALD J. TRUMP, sued in his official capacity as President of the United States, et al., *Defendants*.	Civil Action No. 8:19-CV-02710-PX

EXPERT DECLARATION OF DR. WILLIAM P. O'HARE

Overview

1. This report makes six key points:

   a. Over the past several U.S. Censuses, the empirical evidence shows that groups with lower self-response rates have higher net undercounts and omission rates. This indicates that states and groups with lower self-response rates in the 2020 Census are likely to have higher net undercount and omission rates.

   b. Census tracts where Hispanics and Blacks are the plurality of the population have lower self-response rates in the 2020 Census than tracts where Non-Hispanic Whites are the plurality of the population in the 2020 Census. This

indicates Hispanics and Blacks are likely to have higher net undercounts and omissions rates than Non-Hispanic Whites in the 2020 Census.

c. Census tracts where the foreign-born population is a disproportionately high share of the tract population have lower self-response rates in the 2020 Census and are likely to have higher net undercounts and omissions rates than the native-born population in the 2020 census.

d. Based on data from the 2010 and 2020 Census, households that respond later in the Census data collection period are disproportionately Hispanic, Asian, and Black rather than Non-Hispanic White. This means changes at or near the end of the data collection period are likely to have bigger impact on Hispanics, Asians, and Blacks.

e. Net undercounts and omissions in the U.S. Census have important implications for the groups missed at the highest rates.

f. Changing the end date of data collection in the 2020 Census from October 31, 2020 to September 30, 2020, will negatively impact the enumeration of Hispanic, Asians, and Blacks more than Non-Hispanic Whites.

Background

2. I have more than forty years of experience using Census data in a variety of professional settings, including experience in non-profits, philanthropy, state government, and university settings. Since 1987, I have worked at the Population Reference Bureau, the University of Louisville, and the Annie E. Casey Foundation.

3. I have a Bachelor of Science Degree from Michigan State University in Multi-Disciplinary Social Science. I have a master's degree from Michigan State University in Multi-disciplinary Social Science, I have a Ph.D. from Michigan State University in Sociology.

4. I have published many articles in scientific journals and written many books and book chapters based on Census Bureau data. I have authored more than a dozen monographs on subjects such as the well-being of children, poverty, and minorities in America. I have also made many presentations using Census data at professional conferences. While serving as the Director of the KIDS COUNT project within the Annie E. Casey Foundation from 1993 to 2006, I supervised the use of Census data related to measuring and reporting on the well-being of children.

5. I have been a member of the Population Association of America, the Southern Demographic Association, and the American Statistical Association since the 1970s.

6. I served on the Board of Directors and was President of the Southern Demographic Association. I was a founding member of the International Society of Child Indicators, and served on their Board of Directors for many years.

7. From 1995 to 2001, I was a representative from the American Statistical Association on the Census Bureau's Professional Advisory Committee. From 2008 to 2011, I was a representative from the Association of Public Data Users on the Census Bureau's 2010 Census Advisory Committee.

8. I was awarded a National Science Foundation/American Statistical Association/Census Bureau Research Fellowship to do research on census undercounts at the Census Bureau from 2011 to 2013.

9. In 1980, I was awarded a Fulbright Scholarship to teach demographic and social science research methods at the University of San Carlos in the Philippines during their 1980-81 school year.

10. I have been retained by Plaintiffs in *La Unión del Pueblo Entero v. Trump et al.*, Case No. 8-19-cv-02710 (D. Md.). I was asked to assess the impact of truncating the schedule for the 2020 Census, including moving the end date for 2020 Census data collection from October 31, 2020 to September 30, 2020.

11. I am being compensated at a rate of $100 per hour.

I. The Link Between Self-Response Rates and Census Accuracy.

1.1 Key Concepts and Terms

12. Before presenting the analysis and results in this section of my report, it is important to define some key concepts and terms used in this report. The descriptions in this section of the report focus on census operations prior to the 2020 Census. Analysis in this section focuses on the relationship between census self-response and census accuracy. In the next sections, I focus on the 2020 Census.

1.1.2 Self-Response Rates

13. Briefly, the U.S. decennial Census can be thought of as having two major data collection phases: 1) a self-response phase and 2) a non-response followup (NRFU) phase. The self-response phase consists of households returning the questionnaire that was mailed to them from the Census Bureau. In the 2020 Census for the first time in the history of the decennial census, major modes of self-response operation will include internet and telephone responses

along with mail responses.[1] According to the U.S Census Bureau, (2020d) as of August 16, 2020, 80 percent of the responses submitted have been by Internet, 18.5 percent by paper, and 1.5 percent by telephone.

14. Several weeks after Census day (April 1) the second phase of the Census begins, and households that did not return a completed Census questionnaire are visited by a Census enumerator to gather the information needed for the Census. This is referred to as Nonresponse Followup ((NRFU) operation or phase by the Census Bureau.[2] A few people belatedly self-respond during the NRFU phase. There are also other Census operations (like update leave and update enumerate)[3] that are outside of these two operations, but the vast majority of Census respondents are captured in the self-response and NRFU operations of the Census.

15. Self-response rates reflect the percent of households that return a completed Census questionnaire. In my analysis of the 1990, 2000 and 2010 Decennial Censuses, self-response is measured by two closely related indicators: mail return rates and mail response rates (because historically mail has been the primary mode of self-response). Detailed descriptions of mail return rates and the mail response rates are provided by the Census Bureau (2014b, page 61). In simple terms, the mail return rate is the percentage of occupied households that return competed Census questionnaires. Mail response rates are the percentages of Census questionnaires that were returned from all households whether they were occupied or not.

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[1] In the 2010 Census, there were a very small number of people who were able to respond on the internet, but the internet option was not widely available

[2] The NRFU operational design in the 2020 Census will also use administrative records and third-party data to enumerate occupied housing units. *See* U.S. Census Bureau, *2020 Census Detailed Operational Plan: 18.* Nonresponse Followup Operation (NRFU), April 2018 at 9, *available at* https://www2.census.gov/programs-surveys/decennial/2020/program-management/planning-docs/NRFU-detailed-operational-plan.pdf.

[3] The Update/Leave operation is conducted in places without regular mail delivery. A census enumerator verifies a housing unit at the address and leaves a paper questionnaire for the household to complete. The Update/Enumerate operation is conducted in very remote areas.

Where available, my analysis uses mail return rate to measure self-response rates. However, the mail return rate was not available in the 1990 Census, so I use the mail response rate to reflect the self-response rate in 1990. As stated earlier, in the 2020 Census, other self-response modes, such as the internet and telephone, are available.

16. The mail return rates, and the mail response rates are calculated by the Census Bureau and these rates have been used by data analysts at the Census Bureau. The mail return rate was used by U.S. Census Bureau (2018d) to measure self-response in a study of the impact of a citizenship question on the 2020 Census questionnaire. In another Census Bureau analysis of the impact of a potential citizenship question on the 2020 Census, (2018b) Census Bureau staff also used self-response for both the 2010 and 2000 Census for which mail was the only self-response option, and for the American Community Survey (ACS) for which mail and internet self-responses were options.

1.3 Net Undercounts and Omissions

17. Net undercount and omissions rates are both measures of Census accuracy, but they capture different parts of Census accuracy (O'Hare 2019b).

18. The net undercount is a balance between people missed (omissions), those included erroneously (meaning those double counted and those inappropriately included in the census, like foreign tourists), and those imputed.[4] If the number of omissions is higher than the number of erroneous inclusions and whole person imputations, there is a net undercount. If the number of erroneous inclusions and whole person imputations is larger than the number of omissions, there is a net overcount.

[4] Imputations are people added to the Census count based on some evidence they exist. For example, if a housing unit looks occupied, but there is no self-response, and no one responds to an enumerator, the Census Bureau may impute people into the Census count.

19. In the 2010 Census there were 10,042,000 erroneous enumerations, 5,993,000 whole person imputations, and 15,999,000 omissions (U.S. Census Bureau 2012b, Table 3).

20. Omissions capture the number and share of a population that are missed in the Census and are defined by the Census Bureau (2012b, page 12), "omissions are people who should have been enumerated in the United States Census but were not." In some ways omissions are a better reflection than net undercount rates of who is missed in the Census. For example, if 10 percent of Hispanics in a state are missed, while an equal number of Non-Hispanic Whites are double counted, the net undercount would be zero, but that does not reflect the fact that a large number of Hispanics were missed. The net undercount for a state can mask important differences in the accuracy of the census data across geographic subunits (like cities and counties) of the state.

21. It is important to understand the net undercount does not tell you how many people were missed in the Census and it is worth noting that even when a net undercount for a group is zero, there are often omissions. For example, the net undercount of Asians in the 2010 Census was essentially zero, but there was an omissions rate of over 5 percent for Asians in the 2010 Census. The net undercount for young children in the 2010 Census was 4.6 percent, but the omissions rate was 10.3 percent (O'Hare 2019a).

22. Undercounts have sometimes been reported as a negative number by the Census Bureau (Velkoff 2011; King et al. 2018; Jensen et al. 2018) and sometimes as a positive number by the U.S. Census Bureau (2012b). In this report, net undercounts are reported as a positive number and net overcounts as a negative number. Measuring net undercounts here as a positive number makes the correlations and the figures easier to interpret.

1.1.4 Correlations

23. Much of the analysis in this report relies on correlation coefficients to show relationships between two variables such as self-response rates and net undercount rates. More specifically, I use the Pearson Product-Moment Correlation Coefficient (Blalock 1972, page 376). This is probably the most widely used correlation calculation.

24. There are three dimensions of correlation coefficients: direction, magnitude, and statistical significance. Direction is indicated by a positive or a negative sign. A positive correlation indicates a higher value on one variable is associated with a higher value in the other variable. The relationship between height and weight reflects a positive correlation, i.e., taller people usually weigh more. A negative sign indicates that a higher value on one variable is associated with a lower value in the other variable. For example, the relationship between exercise and obesity reflects a negative correlation, i.e., people who exercise more are less likely to be obese.

25. The magnitude of a correlation coefficient varies from 0 to 1. A magnitude of zero means no relationship between the two variables and a value of 1 means a perfect correlation between the two variables. The higher the magnitude or value of the correlation coefficient the stronger the relationship between the two measures being examined. When you put direction and magnitude together the value can range from a -1 to +1, and the closer the correlation coefficient is to -1 or +1, the higher the correlation.

26. Statistical significance testing is done to assess how likely the observed results are due to chance. Researchers use different levels of statistical significance depending on the analysis. In this report, all the correlation coefficients deemed statistically significant are significant at the 0.10 level or higher (higher level of significance). This is a commonly used benchmark in social science research and the same level that the Census Bureau typically uses.

The standard used by the Census Bureau in its publications (U.S. Census Bureau 2017b, page 2) and on its website (U.S. Census Bureau 2018a, page 22) is 0.10, which means if something is statistically significant the results would occur by chance alone less than one time out of ten.[5] Another way of saying this is that with a 0.10 level of significance we can be ninety percent confident the results reflect a real or true relationship between two measures. If the observed results are statistically significant, they are unlikely to be due to chance, and it is highly likely that a correlation coefficient that is statistically significant at the 0.10 level reflects a real relationship, and these are not random results. Most of the correlations in this report are statistically significant at a much higher level than 0.10

27. Since the key element of information needed for my analysis is to determine if a correlation coefficient is negative and statistically significant, a one-tailed test of significance is used. A one-tailed test implies we are only interested in seeing if the correlation is negative and statistically different from zero. This contrasts to a two-tailed test which would tell us if the correlation was statistically different from zero in either direction, that is positive or negative.

28. The statistical significance is largely determined by the size of the correlation and the number of observations upon which the correlation is based. Higher magnitude and more observations lead to a higher-level statistical significance.

1.2. Self-Response and Census Accuracy

29. In this section, I examine the relationship between self-response rates and Census accuracy, as measured by net undercount and omissions rates. The 1990, 2000, and 2010 Census

[5] ACS "uses the Census Bureau's standard 90% confidence level." *See* American Community Survey Statistical Testing Tool, *available at* https://www.census.gov/programs-surveys/acs/guidance/statistical-testing-tool.html. "The Census Bureau uses 90 percent confidence intervals and 0.10 levels of significance to determine statistical validity." Sources and Accuracy Estimates for Income and Poverty in the United States: 2016 and Health Insurance Coverage in the United States: 2016, *available at* https://www2.census.gov/library/publications/2017/demo/p60-259sa.pdf.

provide statistical data that can be used to examine this relationship from an empirical perspective. Relationships are shown graphically as well as statistically, as it may be easier to grasp a relationship from a visual presentation.

1.2.1 Examination of Data from the 2010 Census

30. Table 1.1 shows the self-response rates and net undercount rates for eight demographic groups defined by race, Hispanic origin, and tenure (i.e., owner or renter). These are the only demographic groups for which I could find all three measures (self-response, net undercount, and omissions rates) in consistently classified groups.

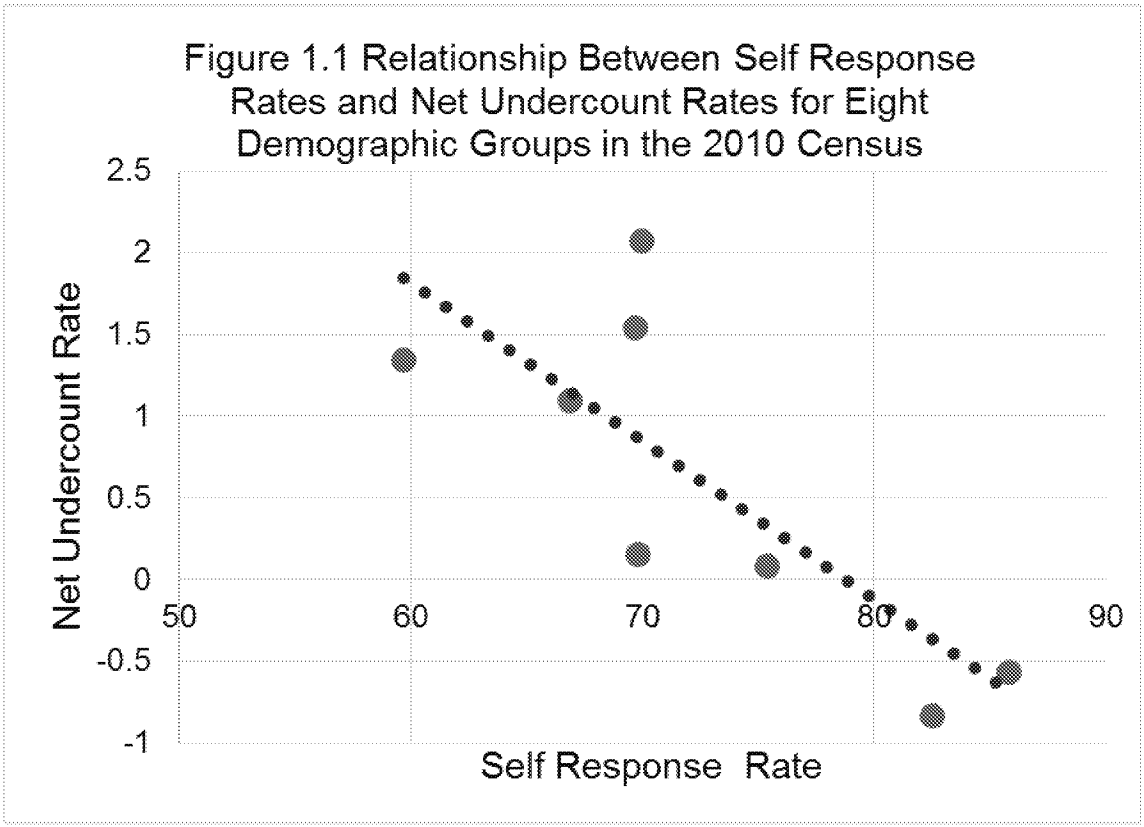
31. The correlation coefficient between the self-response rate and the net undercount rate for the eight groups shown in Table 1.1 is -0.78. This correlation is statistically significantly different than zero at a 90 percent confidence level. This correlation means groups with lower self-response rates have higher net undercount rates.

32. The data in Table 1.1 are very consistent. All the demographic groups that have higher than average self-response rates have net overcounts and all groups with lower than average self-response rates have net undercounts.[6]

[6] Asians essentially have self-response rates the same as the total population and essentially have a net undercount rate of zero.

Table 1.1 Self-Reponses Rates and Net Undercount Rates for Eight Demographic Groups in the 2010 Census		
	Self-Response Rates (Mail Return Rates*)	Net Undercount Rates**
Total	79.3	-0.01
White Alone***	82.5	-0.84
Black Alone	70.0	2.07
American Indian and Alaskan Native Alone	69.8	0.15
Asian Alone	75.4	-0.08
Native Hawaiian or Pacific Islander Alone	59.7	1.34
Hispanic	69.7	1.54
Population in Owner-Occupied Housing Units	85.8	-0.57
Population in Renter- Occupied Housing Units	66.9	1.09
* Source; U.S. Census Bureau (2012) 2010 Census Mail Response/Return Rates Assessment Report. 2010 Census Planning Memorandum Series, No. 198, Tables 10 and 12 (Race groups are Non-Hispanic)		
** This is the net undercount as a percent of the population. Source: U.S. Census Bureau (2012) 2010 Census Coverage Measurement Estimation Report: Summary of Estimates of Coverage for Persons in the United States. , DSSD 2010 CENSUS COVERAGE MEASUREMENT MEMORANDUM SERIES #2010-G-01 Tables 7 and 10 (Net Undercounts shown as a positive number)		
*** for the Net Undercount Rates, this is Non-Hispanic White Alone		

33. The relationship is shown graphically in Figure 1.1. Figure 1.1 shows that groups with lower self-response rates have higher net undercount rates.



34. The red dotted line shown in Figure 1.1 (and all other figures) is the trend line that reflects the statistical relationship between the two measures shown in the Figure. The closer the points are to the line, the higher the correlation.

35. Table 1.2 shows 2010 Census self-response rates and omissions rates for the same eight demographic groups shown in Table 1.1. The correlation coefficient between the self-response rates and the omissions rates for the eight groups in Table 1.2 is -0.86 and it is statistically significantly different from zero at a 90 percent confidence level. The correlation means groups with lower self-response rates have higher omissions rates.

Table 1.2 Self-Reponses Rates and Omission Rates for Demographic Groups in the 2010 Census

	Self-Response Rates (Mail Return Rates*)	Omission rates**
Total	75.8	5.3
White Alone***	82.5	3.8
Black Alone	70.0	9.3
American Indian and Alaskan Native Alone	69.8	7.6
Asian Alone	75.4	5.3
Native Hawaiian or Pacific Islander Alone	59.7	7.9
Hispanic	69.7	7.7
Population in Owner-Occupied Housing Units	85.8	3.7
Population in Renter- Occupied Housing Units	66.9	8.5

* Source; U.S. Census Bureau (2012) 2010 Census Mail Response/Return Rates Assessment Report. 2010 Census Planning Memorandum Series, No. 198, Tables 10 and 12

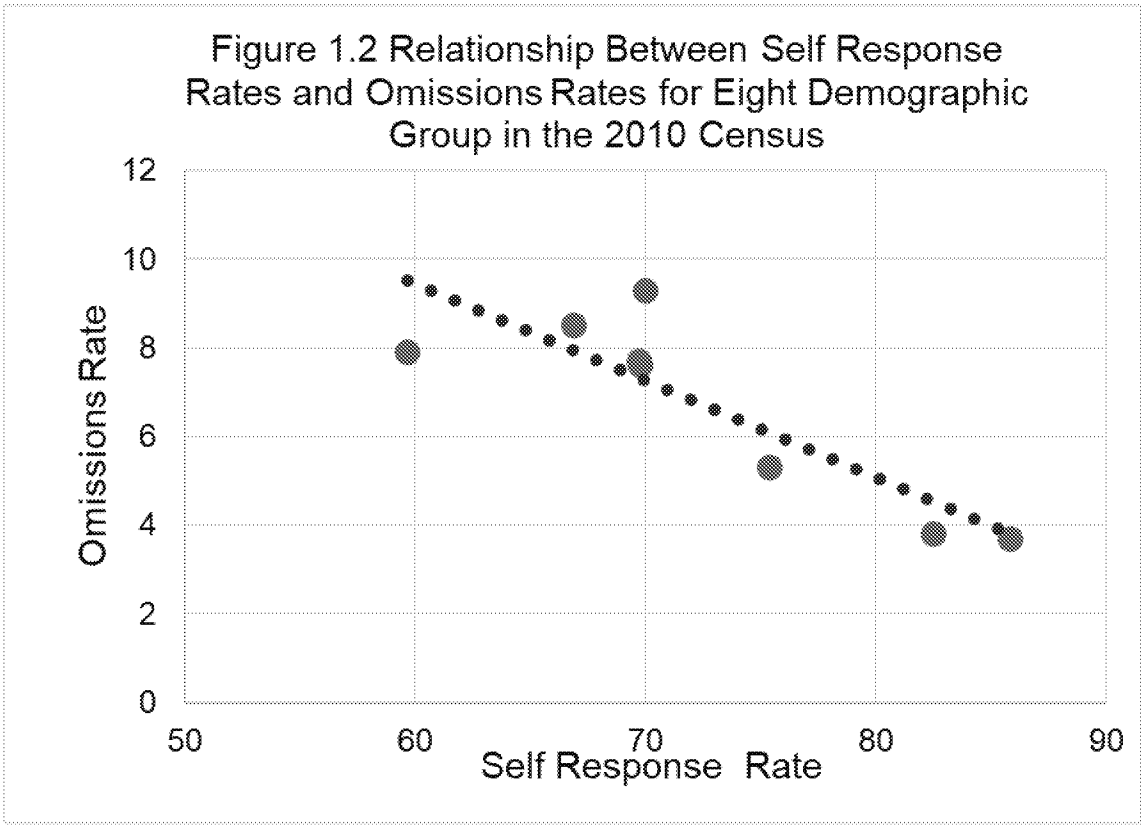
** This is the number of people missed as a percent of the total population. Source: U.S. Census Bureau (2012) 2010 Components of Census Coverage for Race Groups and Hispanic Origin by Age, Sex and Tenure in the United States, DSSD 2010 CENSUS COVERAGE MEASUREMENT MEMORANDUM SERIES #2010-E-51, Tables A and B

*** for the Omissions Rates, this is Non-Hispanic White Alone

36. All the groups that have a higher than average self-response rates have below average omissions rates and all the groups with lower than average self-response rates have higher than average omissions rates as shown in Table 1.2.[7]

37. The correlation can be seen graphically in Figure 1.2. This figure shows that groups with lower self-response rates have higher omissions rates.

[7] Asians essentially have self-response rates that are the same as that total population and have an omissions rate exactly equal to the total population.



38. Table 1.3 shows the self-response rates and net undercount rates for states along with the District of Columbia. Note that none of the net undercount rates in Table 1.3 are statistically significantly different from zero (U.S. Census Bureau 2012c, Table 5). This indicates that the net undercount from state to state was roughly equal in 2010.

39. Given the lack of measurable variation in the state-level net undercount rates in the 2010 Census, correlation with self-response rates is expected to be low. Indeed, the correlation between self-response rates and net undercount rates across the states is 0.06, which is not statistically significantly different from zero. Given the low correlation between self-response rates and net undercount rates for states, the data are not shown graphically so there is no Figure 1.3.

Table 1.3. 2010 Census Self-response Rates and Net Undercount Rates by State

State	Self Response Rates (Mail Return Rate*)	Net Undercount Rate**		State	Self Response Rates (Mail Return Rate*)	Net Undercount Rate**
Alabama	78.4	0.13		Montana	80.4	-0.65
Alaska	74.8	-0.85		Nebraska	82.5	-0.54
Arizona	77.6	-0.42		Nevada	76.3	-0.04
Arkansas	77.0	-0.41		New Hampshire	79.4	0.6
California	76.9	0.26		New Jersey	78.1	-0.36
Colorado	79.1	-0.29		New Mexico	73.8	-0.16
Connecticut	79.1	-0.45		New York	75.8	-0.79
Delaware	80.0	0.55		North Carolina	80.7	0.52
District of Columbia	78.3	2.23		North Dakota	83.1	0.09
Florida	80.2	0.45		Ohio	80.8	-0.83
Georgia	77.2	0.91		Oklahoma	75.5	-1.08
Hawaii	76.8	-0.44		Oregon	79.8	0.02
Idaho	82.6	-0.03		Pennsylvania	82.3	0.14
Illinois	80.7	-0.48		Rhode Island	77.7	-0.81
Indiana	82.2	-0.67		South Carolina	81.4	0.41
Iowa	83.3	-0.28		South Dakota	82.7	0.1
Kansas	81.2	-0.67		Tennessee	80.3	0.12
Kentucky	81.0	-0.13		Texas	76.5	0.97
Louisiana	74.5	-0.38		Utah	80.4	-0.48
Maine	81.1	0.65		Vermont	79.7	1.29
Maryland	80.3	0.94		Virginia	80.8	0.57
Massachusetts	78.9	-0.52		Washington	79.9	-0.1
Michigan	83.7	-0.66		West Virginia	75.6	-1.43
Minnesota	85.6	-0.56		Wisconsin	85.1	-0.17
Mississippi	76.4	0.24		Wyoming	79.9	-0.51
Missouri	81.1	-0.66		**Total**	**79.3**	**-0.01**

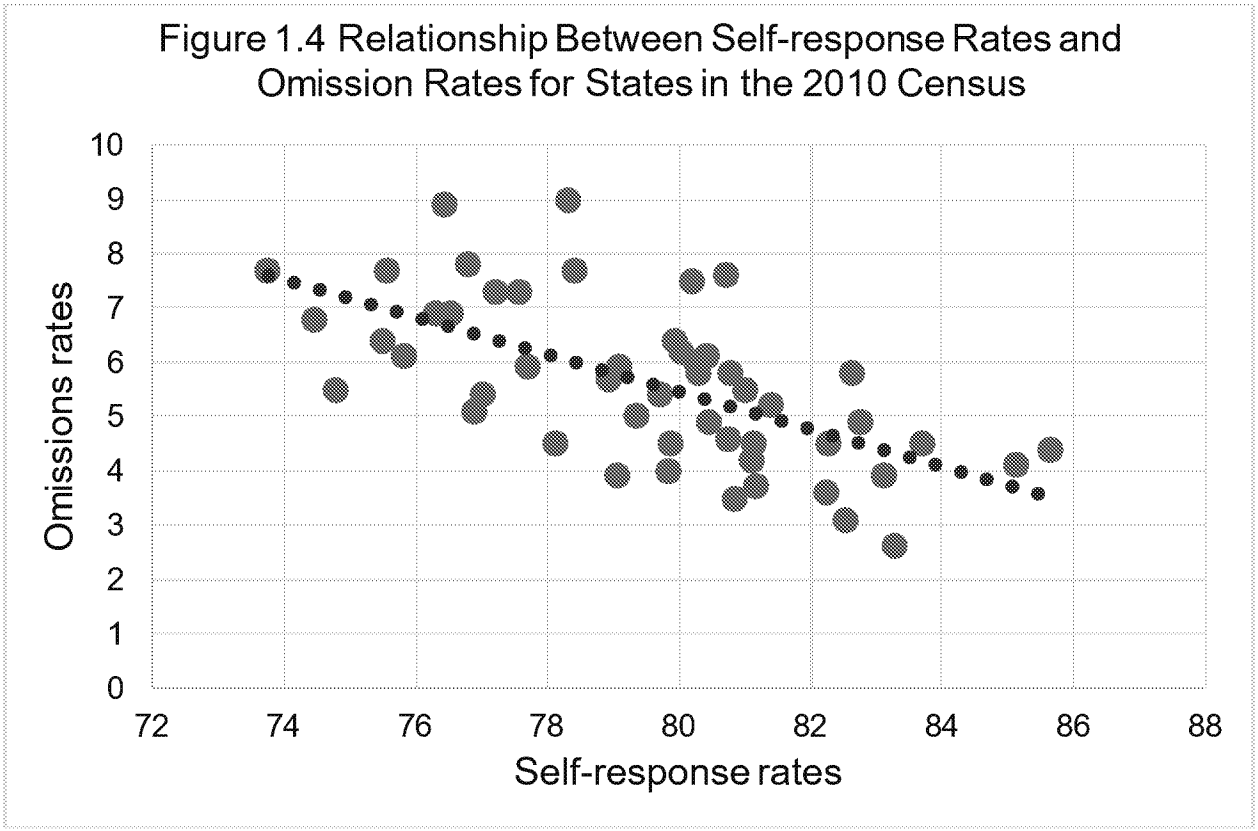
* Source: U.S. Census Bureau, State Mail Return Rates 2010 Census downloaded on August 21 at https://www2.census.gov/dssd/2010_census_public_rates/excel/

** Net undercount as a percent of the total population. Source: U.S. Census Bureau (2012)." 2010 Census Coverage Measurement Estimation Report: Summary of Estimates of Coverage for Persons in the United States," DSSD 2010 Census Coverage Measurement Memorandum Series #2010-G-01. U.S. Census Bureau, Washington, DC. G-01 Table 14 (Net undercounts are shown as a positive number)

40. Table 1.4 shows self-response rates and omissions rates for states and the District of Columbia in the 2010 Census. The correlation between self-response rates and omissions rates is -0.63, and it is statistically significantly different from zero at a 90 percent confidence level. States that have lower self-response rates have higher omissions rates.

Table 1.4. 2010 Census Self-response Rates and Omissions Rates by State						
State	Self Response Rates (Mail Return Rate*)	Omissions Rate**		State	Self Response Rates (Mail Return Rate*)	Omissions Rate**
Alabama	78.4	7.7		Montana	80.4	6.1
Alaska	74.8	5.5		Nebraska	82.5	3.1
Arizona	77.6	7.3		Nevada	76.3	6.9
Arkansas	77.0	5.4		New Hampshire	79.4	5.0
California	76.9	5.1		New Jersey	78.1	4.5
Colorado	79.1	5.9		New Mexico	73.8	7.7
Connecticut	79.1	3.9		New York	75.8	6.1
Delaware	80.0	6.2		North Carolina	80.7	7.6
District of Columbia	78.3	9.0		North Dakota	83.1	3.9
Florida	80.2	7.5		Ohio	80.8	3.5
Georgia	77.2	7.3		Oklahoma	75.5	6.4
Hawaii	76.8	7.8		Oregon	79.8	4.0
Idaho	82.6	5.8		Pennsylvania	82.3	4.5
Illinois	80.7	4.6		Rhode Island	77.7	5.9
Indiana	82.2	3.6		South Carolina	81.4	5.2
Iowa	83.3	2.6		South Dakota	82.7	4.9
Kansas	81.2	3.7		Tennessee	80.3	5.8
Kentucky	81.0	5.5		Texas	76.5	6.9
Louisiana	74.5	6.8		Utah	80.4	4.9
Maine	81.1	4.2		Vermont	79.7	5.4
Maryland	80.3	6.0		Virginia	80.8	5.8
Massachusetts	78.9	5.7		Washington	79.9	4.5
Michigan	83.7	4.5		West Virginia	75.6	7.7
Minnesota	85.6	4.4		Wisconsin	85.1	4.1
Mississippi	76.4	8.9		Wyoming	79.9	6.4
Missouri	81.1	4.5		**Total**	**79.3**	**5.3**
* Source: U.S. Census Bureau, State Mail Return Rates 2010 Census downloaded on August 21 at https://www2.census.gov/dssd/2010_census_public_rates/excel/						
** Number of people missed as a percent of total population. Source: U.S. Census Bureau (2012)." 2010 Census Coverage Measurement Estimation Report: Summary of Estimates of Coverage for Persons in the United States," DSSD 2010 Census Coverage Measurement Memorandum Series #2010-G-01. U.S. Census Bureau, Washington, DC. G-01 Table 14 Net undercounts are shown as a positive number)						

41. Figure 1.4 shows the relationship between self-response rates and omissions rates for states in the 2010 Census graphically. Figure 1.4 shows that states with lower self-response rates have higher omissions rates.



1.2.2 Examination of Data from the 2000 Census

42. Table 1.5 shows self-response rates and net undercount rates from the 2000 Census for eight demographic groups. Note that the racial groups are not defined exactly the same in the two Census Bureau reports from which the data were taken but they are very similar. This is a minor point and unlikely to impact the correlation.

43. The correlation coefficient between self-response rates and net undercount rates in Table 1.5 is -0.97, which is extremely high and statistically significantly different from zero at a 90 percent confidence level. This means that demographic groups that have low self-response rates have high net undercount rates.

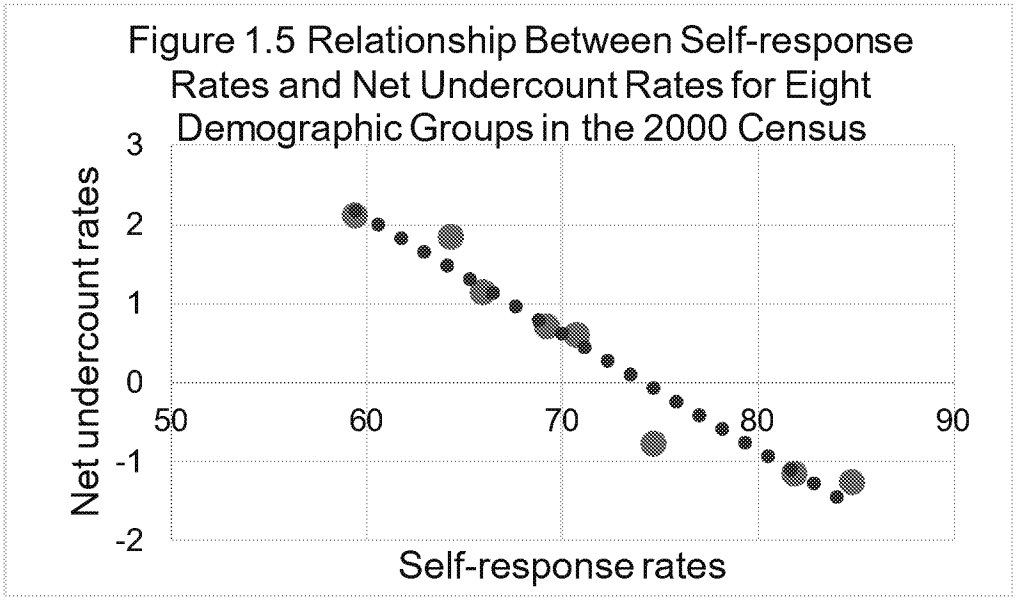
Table 1.5 Self-Response Rates and Net Undercount Rates in the 2000 Census for Eight Demographic Groups

Groups	Self Response Rates (Mail Return Rate)*		Groups	Net Undercount Rates (A.C.E. Revision II)**
White Alone	81.8		Non-Hispanic White	-1.13
Black Alone	64.3		Non-Hispanic Black	1.84
Asian Alone	74.6		non-Hispanic Asian	-0.75
Pacific Islander Alone	59.4		Hawaiian or Pacific Islander	2.12
Hispanic	69.2		Hispanic	0.71
American Indian Alone	70.7		AIAN Off Reservations	0.62
Owner-Occupied	84.8		Homeowner	-1.25
Renter-Occupied	65.9		Renter	1.14

* Source: U.S. Census Bureau (2003) Census 2000 Mail Return Rates, Census 2000 Evaluation A.7.b, Herbert Stackhouse and Sarah Brady, January 30, Tables 10 , 12 and 16

**Source: Net undercount as a percent of the total population.U.S. Census Bureau : DSSD A.C.E. REVISION II MEMORANDUM SERIES #PP-54, Table 1. (Net undercounts are shown as positive numbers)

44. The relationship between self-response rates and net undercount rates is shown graphically in Figure 1.5. This figure shows that groups that have lower self-response rates have higher net undercount rates.



45. Table 1.6 shows the self-response rates and net undercount rates for states and the District of Columbia in the 2000 Census. State omissions rates were not available in 2000. The correlation between self-response rates and net undercount rates across the states is -0.66, which is statistically significantly different from zero at a 90 percent confidence level. States with low self-response rates have high net undercount rates.

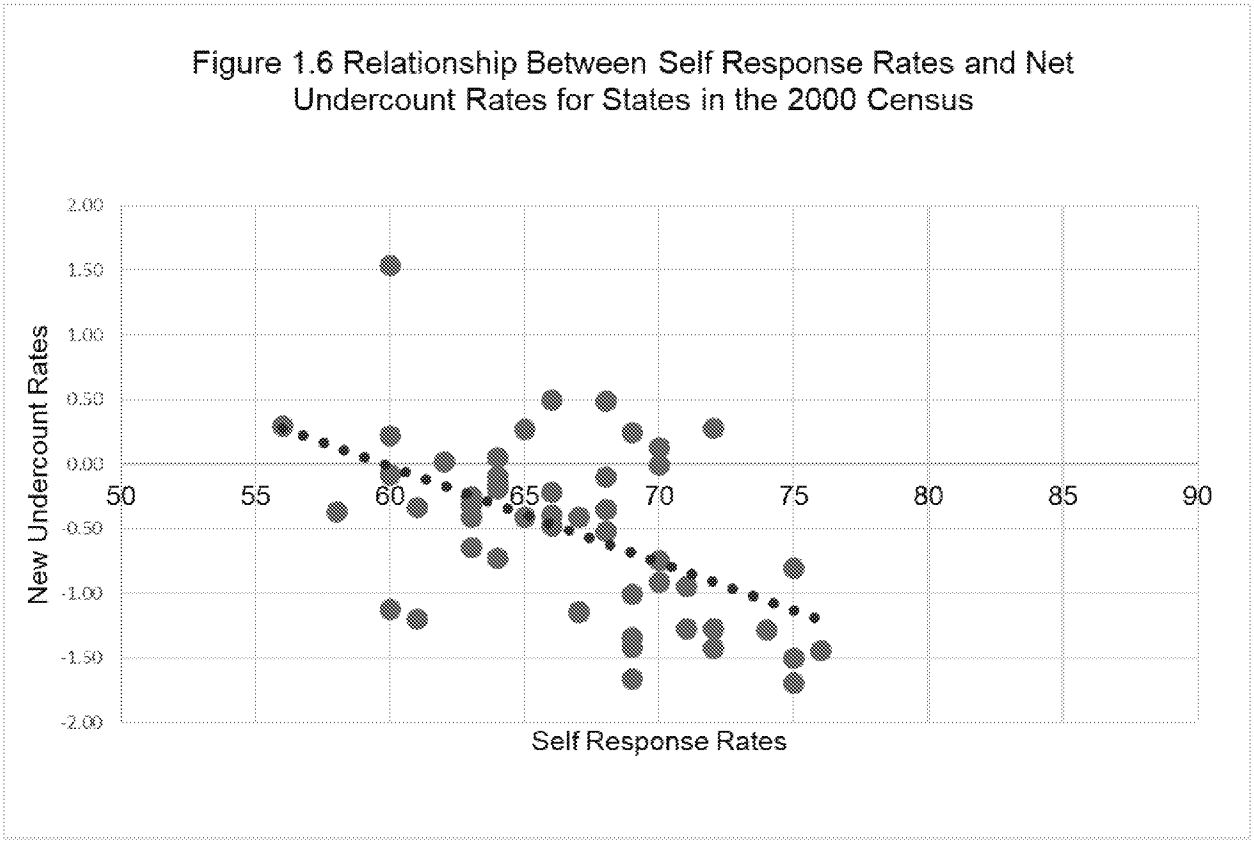
Table 1.6 Census 2000 Self-Response Rates and Undercount Rates for States

State	Self-Response Rates (Mail Return Rates)*	Net Undercount Rates**		State	Response Rates (Mail Return)	Net Undercount Rates
Alabama	76.9	-0.34		Montana	83.2	0.49
Alaska	76.1	0.29		Nebraska	84.6	-0.81
Arizona	76.9	-0.32		Nevada	75.0	0.50
Arkansas	79.0	-0.09		New Hampshire	80.5	-1.15
California	78.6	0.13		New Jersey	78.7	-0.52
Colorado	80.8	-0.01		New Mexico	78.1	0.02
Connecticut	80.2	-0.75		New York	75.2	-0.25
Delaware	78.0	-0.32		North Carolina	78.3	-0.15
District of Columbia	72.1	1.54		North Dakota	85.4	-1.43
Florida	77.8	-0.64		Ohio	82.1	-1.27
Georgia	79.1	0.27		Oklahoma	77.9	-0.20
Hawaii	75.7	0.22		Oregon	81.1	-0.35
Idaho	83.5	-0.41		Pennsylvania	82.4	-0.91
Illinois	80.2	-1.42		Rhode Island	76.9	-1.14
Indiana	81.6	-1.66		South Carolina	76.5	-0.36
Iowa	85.6	-1.44		South Dakota	86.8	-1.28
Kansas	81.8	-1.28		Tennessee	77.1	-0.41
Kentucky	79.9	-0.48		Texas	75.3	0.05
Louisiana	75.2	-0.09		Utah	79.6	-0.10
Maine	80.1	-1.20		Vermont	81.1	-1.12
Maryland	79.3	0.25		Virginia	81.3	0.27
Massachusetts	79.0	-1.00		Washington	78.6	-0.21
Michigan	83.7	-0.95		West Virginia	80.7	-0.73
Minnesota	86.1	-1.70		Wisconsin	87.3	-1.50
Mississippi	78.3	-0.41		Wyoming	83.6	-0.39
Missouri	82.2	-1.35		United States	78.4	0.48

*Source: U.S. Census Bureau, State Mail Return Rates 2010 Census downloaded on August 21 at https://www.2.census.gov/dssd/2010_census_public_rates/excel/

**Net undercount as a percent of the total population. Source: U.S. Census Bureau (2003) A.C.E. Revision II- Adjusted Data for States, Counties, and Places, DSSD A.C.E. REVISION II MEMORANDUM SERIES #PP 60, Table 1 (Net Undercounts Shown as a positive number)

46. This relationship is shown graphically in Figure 1.6. This figure shows that states that have lower self-response rates have higher net undercount rates.



1.2.3. Examination of Data from the 1990 Census

47. The only self-response rates available for states in the 1990 Census were mail response rates. Mail response rates are slightly different than the mail return rates (as explained in Section 1.1), but both are measures of self-response used by the Census Bureau.

48. Table 1.7 shows self-response rates and net undercount rates in the 1990 Census for seven demographic groups. The correlation between the self-response rates and the net undercount rates is -0.60, which is statistically significantly different from zero at a 90 percent confidence level. The direction of the correlation indicates that groups with lower self-response rates have higher net undercount rates.

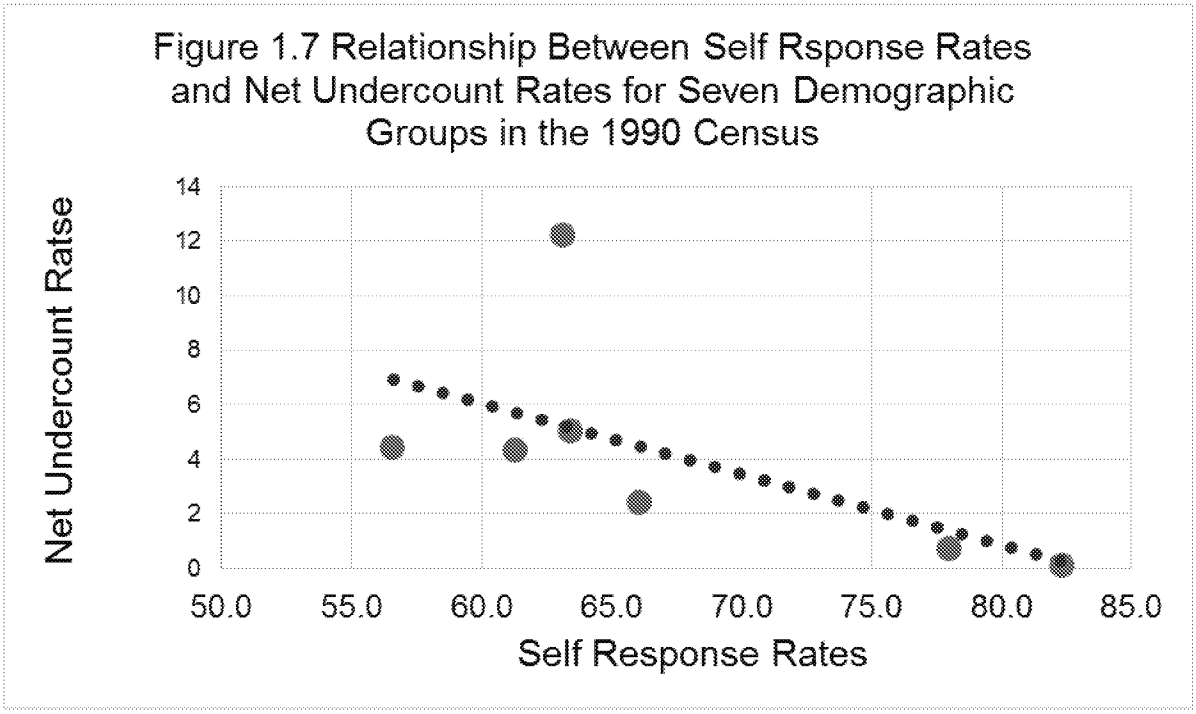
Table 1.7 1990 Census Self Response Rates and Net Undercount Rates for Seven Demographic Groups

	Self Response Rates (Mail Reponses Rates)*			Net Undercount Rate **
Non-Hispanic White	78.0		Non-Hispanic White	0.7
Black	56.6		Black	4.4
American Indians, Eskimo and Aleut	63.1		American Indian, Eskimo and Aleut	12.2
Asian and Pacific Islanders	66.1		Asians and Pacific Islander	2.4
Hispanic Origin	63.4		Hispanic Origin	5.0
Owners	82.3		Owners	0.1
Renters	61.3		Renters	4.3

*Source: Derived from Word, D.L., (1997) "Who Responds ? Who Doesn't?: Analyzing Variation in Mail Response Rates During the 1990 Census, Population Division Working Paper No . 19, Table 2.0

**Net undercount as a percent of the total population. Source: Hogan, H. and Robinson G., (1993) What the Census Bureau's Coverage Evaluation Programs tell Us About Differential Undercounts ; Paper Delivered at the 1993 Research Conference on Undercounted Ethnic Populations, May 5-7, Richmond VA. , Table 3 (net undercounts shown as a positive number)

49. This relationship is shown graphically in Figure 1.7. This figure shows that groups that have low self-response rates have higher net undercount rates.



50. Table 1.8 shows 1990 Census self-response rates and net undercount rates for states and the District of Columbia. Omissions rates were not available in 1990. The correlation coefficient between self-response rates and net undercount rates, shown in Table 1.8, is -0.56, which is statistically significantly different from zero at a 90 percent confidence level. This means that states with lower self-response rates have higher net undercount rates.

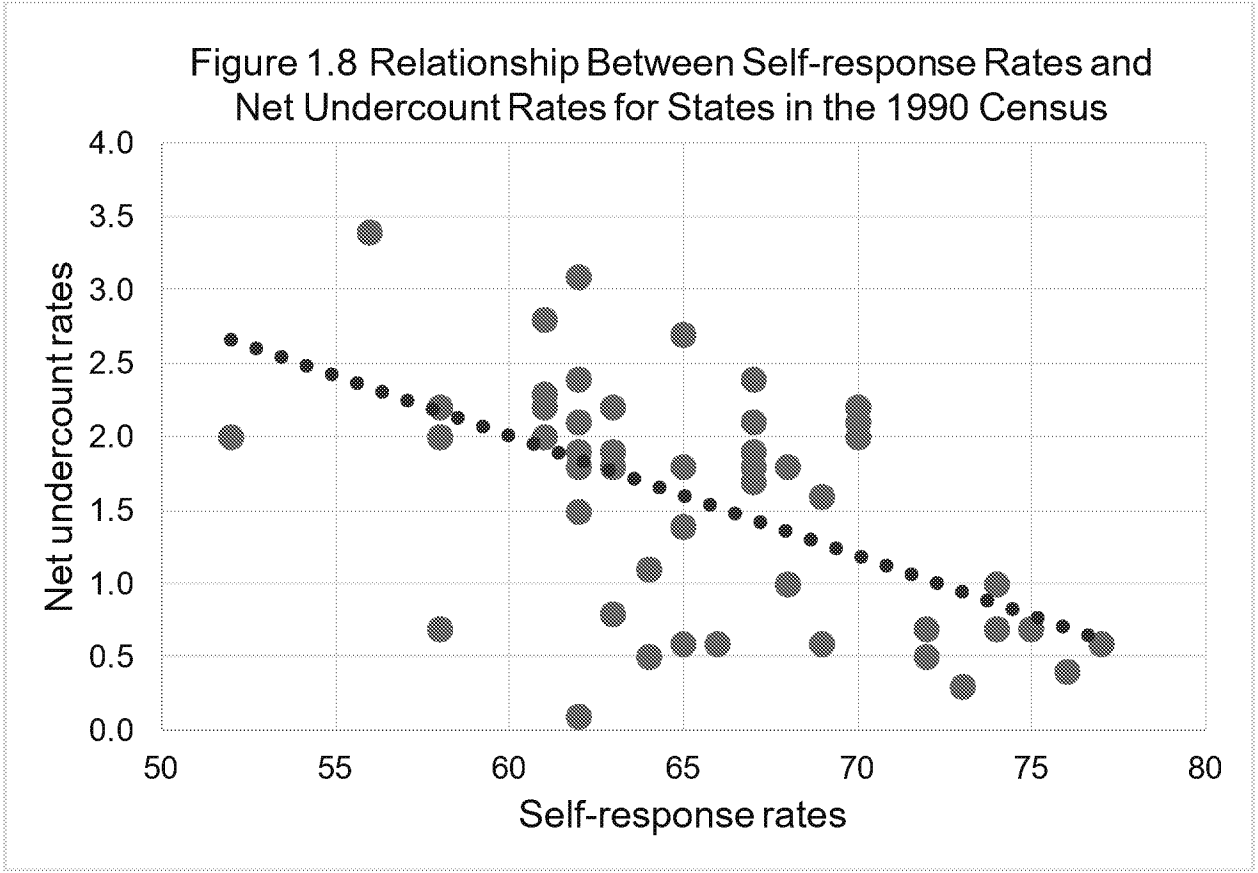
Table 1.8 1990 Census Self-response Rates and Net Undercount Rates for States

state	Self Response Rates (Mail Response Rates)*	1990 Net Undercount of Persons**		state	Self Response Rates (Mail Response Rates)*	1990 Net Undercount of Persons**
Alabama	62.0	1.8		Montana	67.0	2.4
Alaska	52.0	2.0		Nebraska	74.0	0.7
Arizona	62.0	2.4		Nevada	61.0	2.3
Arkansas	65.0	1.8		New Hampshire	63.0	0.8
California	65.0	2.7		New Jersey	65.0	0.6
Colorado	67.0	2.1		New Mexico	62.0	3.1
Connecticut	66.0	0.6		New York	62.0	1.5
Delaware	68.0	1.8		North Carolina	63.0	1.9
District of Columbia	56.0	3.4		North Dakota	72.0	0.7
Florida	61.0	2.0		Ohio	75.0	0.7
Georgia	63.0	2.2		Oklahoma	63.0	1.8
Hawaii	62.0	1.9		Oregon	67.0	1.9
Idaho	70.0	2.2		Pennsylvania	73.0	0.3
Illinois	68.0	1.0		Rhode Island	62.0	0.1
Indiana	72.0	0.5		South Carolina	58.0	2.0
Iowa	76.0	0.4		South Dakota	74.0	1.0
Kansas	72.0	0.7		Tennessee	65.0	1.8
Kentucky	69.0	1.6		Texas	61.0	2.8
Louisiana	58.0	2.2		Utah	67.0	1.7
Maine	58.0	0.7		Vermont	64.0	1.1
Maryland	70.0	2.1		Virginia	70.0	2.0
Massachusetts	64.0	0.5		Washington	67.0	1.8
Michigan	72.0	0.7		West Virginia	65.0	1.4
Minnesota	76.0	0.4		Wisconsin	77.0	0.6
Mississippi	62.0	2.1		Wyoming	61.0	2.2
Missouri	69.0	0.6		U.S. Total		1.6

* Source: U.S. Census Bureau 1990 Census Page (/main/www.cen1990.html) 1990 Mail Response rates by 1990 Geography Boundaries.

**Net undercount as a percent of the total population. Source: U.S. Census Bureau https://www.census.gov/dmd/www/pdf/understate.pdf (Net undercount shown as a positive number)

51. Figure 1.8 shows the relationship between state 1990 mail response rates and net undercount rates graphically. This figure shows that states that have lower self-response rates have higher net undercount rates.



1.2.4 Summary of Relationship between Self-response Rates and Census Accuracy.

52. Table 1.9 summarizes the correlations between self-response rates and census accuracy for the 1990, 2000 and 2010 Decennial Censuses. Of the eight correlations shown in Table 1.9, all but one of the correlations were in the predicted direction and statistically significant. Based on my 40 plus years of experience as a professional data analyst I would call the correlations coefficients in Table 1.9 (except for 0.06) moderate to high by social science standards.

Table 1.9 Summary of Statistical Relationships between Census Self-Response Rates and Census Accuracy (Net Undercount Rates and Omissions Rates)	
Correlation between Self-Response Rates and:	Correlation Coefficient
2010 Eight Demographic Groups Net Undercount	**-0.78**
2010 Eight Demographic Groups Omissions	**-0.86**
2010 States Net Undercount Rates	0.06
2010 States Omissions Rates	**-0.63**
2000 Eight Demographic Groups	**-0.97**
2000 States Net Undercount Rates	**-0.66**
1990 Seven Demographic Groups	**-0.61**
1990 States Net Undercount Rates	**-0.56**
Note correlations in **BOLD** are statistically significant at the .10 level or higher.	

53. Using this analysis to predict the exact increase in net undercounts and omissions based on self-response rates would depend on which correlation in Table 1.9 one relies on. But exact predictions are unnecessary. The preponderance of evidence clearly shows there will be an increase in net undercounts and omissions if there are lower self-response rates in the 2020 Census. The magnitude of the correlations varies from one Census to the next, but they are consistent in showing a negative correlation between self-response rates and census accuracy, which means states and groups with lower self-response rates have higher net undercounts and omission rates.

54. The empirical relationship between self-response rates and census accuracy (net undercounts and omissions) has been recognized by the Census Bureau. The Census Bureau Task Force on the Undercount of Young Children (U.S. Census Bureau 2014a, page ii) concluded, "Research suggests that areas with lowest levels of cooperation have higher levels of coverage and nonresponse error." A Census Bureau Working Paper (Word 1997, page 1) notes that "response rates and net undercount rates may be causally linked . . .."

55. The connection between self-response rates and census accuracy is underscored by the Census Bureau's decision to use a self-response related measure to identify Hard-to-Count areas in the 2020 Census. The Low-Response Score developed by Erdman and Bates (2017) is based on the mail return rates in the 2010 Census. In describing the Low-Response Score the Census Bureau (2014b, page 4) states, "This score identifies Block Groups and Tracts whose characteristics predict low Census Mail Return Rate and are highly correlated (negatively) with Census and survey participation." The implicit association here is that areas where self-response rates are low are more difficult to enumerate. Several characteristics of the kinds of populations and places where it is difficult to get an accurate enumeration are provided by O'Hare (2019a, page 46). This is not a complete list, but some of the characteristics include racial and ethnic minority populations, communities where there are high levels of poverty and unemployment, high levels of renter households and multi-unit structures, and large numbers of undocumented or recent immigrants.

56. It is easy to understand why the relationship between low self-response rates and lower census accuracy exists. Households that do not self-respond end up in the non-response followup (NFRU) universe where the Census Bureau must send out an enumerator to get information from a nonresponding household. Data collected in the NRFU phase of the Census

is more likely to omit a person than data gathered in the self-response phase. In the 2010 Census, 88 percent of the NRFU responses were correct, compared to 97 percent of self-responses (author's calculation from U.S. Census Bureau 2012b, Table 14).

57. In addition, NRFU responses may have to rely on a proxy response. A proxy response is when the information for a housing unit is provided by someone not living in that housing unit, such as a neighbor or landlord. A U.S. Census Bureau paper (2018d, page 42) shows that the responses from the self-response portion of the Census are much more accurate than responses from the NRFU proxy response portion (U.S. Census Bureau 2018d, Table 12). This data showed that 97.3 percent of the responses from the Mailout/Mail back portion of the Census were correct, as compared to just 70.2 percent of those from the NRFU proxy responses. Some of the NRFU proxy response errors are people who are not counted in the Census when they should have been counted.

58. Social scientists typically look for four elements to show causation. First, that the causal agent (referred to as the independent variable by scientists) occurs prior in time to the thing that it is causing (referred to as the dependent variable by scientists); second, that there is an association or correlation between the causal agent and the thing being caused; third, that intervening mechanisms linking the independent variable and the dependent variable can be clearly specified; and finally that other potential explanations have been controlled.

59. My analysis satisfies three out of four of these elements. Self-response occurs prior in time to net undercounting, the self-response rate is moderately to highly correlated with net undercounting, and the intervening mechanism is the fact that groups with lower self-response rates have a higher share of their population counted in the NRFU operation which generates less accurate data, including higher rates of net undercounts and omissions. The only

element my analysis does not address is the need to control for all other potential explanations. The inability to control for all other potential explanations is common in social science research because there are legal and ethical restrictions on how much people can be manipulated for research purposes. The way to control for all other possible explanations is through a randomized control trial ("RCT"). However, the Census Bureau, which is best positioned to conduct an RCT, has not conducted any such RCT measuring the relationship between self-response and undercounting. My analysis evaluates the relationship between self-response rates and census accuracy with best available data, and shows there is a strong robust relationship between self-response and Census accuracy; namely groups that have lower self-response rates have higher net undercount and omissions rates.

60. The magnitude of the correlations varies from one Census to the next, but they are consistent in showing a negative correlation between self-response rates and census accuracy, which means states and groups with lower self-response rates have higher net undercounts and omission rates.

61. The consistency of the correlation (7 out of 8 observations) across multiple Censuses, demographic groups, and states is illustrative of a consistent relationship over time. The analysis demonstrates a clear pattern in the relationship between self-response and undercount rates. While there is some uncertainty in these data (as with all data), uncertainty typically reduces the likelihood of finding a correlation. But here, my analysis demonstrates a correlation despite measurement uncertainty, providing further proof that the relationship is real.

62. The empirical relationship between self-participation rates and census accuracy has been recognized by the Courts. *See New York v. Dep't of Commerce*, 351 F.Supp.3d 502, 591 (S.D.N.Y. 2019) ("The Court concludes just that: Dr. O'Hare's testimony provides

affirmative evidence that self-response declines among specific subpopulations directly cause net undercounts of those subpopulations. For the purposes of this litigation, a preponderance of the evidence supports that conclusion."); *see also Kravitz v. Dep't of Commerce*, 366 F.Supp.3d 681, 717 (D.Md. 2019) ("Thus, the Court is comfortable finding that Plaintiffs have demonstrated a causal relationship between decreased Census participation and an increased likelihood of net undercounting by a preponderance of the evidence.").

63. It is my conclusion, that over the past several U.S. Censuses the empirical evidence shows groups with lower self-response rates have higher net undercounts and omission rates. This relationship is important in understanding the significance of self-response rates in the 2020 Census. Furthermore, groups with lower self-response rates in the 2020 Census would benefit disproportionately if the end of the data collection period was October 31, 2020 instead of September 30, 2020, as the Census Bureau had planned a couple of months ago. Conversely, truncation of the data collection period in the 2020 Census will result in greater omissions and net undercounts in groups with lower self-response rates.

2) Self-Reporting Rates in the 2020 Census Indicate Same Patterns as the Past

64. In the following sections, I focus on differences between the largest racial and ethnic minority groups (Hispanics, Blacks, and Asians) in comparison to Whites and Non-Hispanic Whites. These are the groups for which the data are most reliable. States also show wide variations in self-response rates based on currently available data, explained below.

65. The primary measures of 2020 census accuracy (net undercounts and omissions) will not be available until 2021. One metric of census quality that is available now is self-response rates (O'Hare et al. 2020). Self-response rates reflect the extent to which households complete and return the Census questionnaires before they are visited by a census enumerator in

the NRFU operation. In the 2010 Census, when mailing back a completed census questionnaire was the only option for self-response, these were called mail return rates. In the 2020 Census, the self-response could be online, by phone, or by mail.

66. The predictive value of self-response rates was shown in the previous section where empirical evidence linked variations in self-response rates for groups with variations in census accuracy for those groups; namely groups with low self-response rates have higher net undercount and omissions rates.

67. Other demographers have also noted the importance of self-response rates. In the context of the U. S. Census, Swanson (2019, page 6) indicates self-response rates are a key indicator of census success. New York City Demographer Joe Salvo (2020, page 1) also links self-response rates to Census accuracy when he states, "If an area has a low self-response rate, it means:

- More census enumerators will need to knock on doors to count residents in persons: and,
- It is more likely people in the area may be missed or counted inaccurately."

68. In the 2010 Census, the Census Bureau stopped soliciting self-responses when it started the Nonresponse Followup (NRFU) operation in early May. For the 2020 Census, the Census Bureau is continuing to allow people to self-respond during the NRFU period. However, most of the 2020 Census self-response data shown here is from the 2020 Census data collection period prior to the start of the NRFU operation in early August.

69. Since March 20, 2020, the Census Bureau has been producing 2020 Census self-response rates for many geographic areas including census tracts (U.S. Census Bureau 2020a). A census tract is defined by the Census Bureau (2020b) as "small, relatively permanent statistical

subdivisions of a county," each with a unique numeric code, and an average of about 4,000 inhabitants, but between a minimum population of 1,200 and maximum population of 8,000. In the 2020 Census there are about 84,000 census tracts in the country.

70. At this point in the 2020 Census cycle there are no publicly available data on self-response rates by the race or Hispanic Origin of the householder but response rates have been developed related to the race and Hispanic composition of census tracts. The staff at Center for Urban Research at the Graduate Center, City University of New York (CUNY) have downloaded and analyzed response rates provided by the Census Bureau and combined them with other information from the Census Bureau about the racial and Hispanic composition of the census tract. Through regular briefings they have made analysis of that information available to the public (Census Funders Initiative 2020).

71. Staff at the Center for Urban Research at the Graduate Center, City University of New York determined the plurality of the population in each census tract by race and Hispanic Origin.[8] The plurality of the population in a census tract is the largest race or Hispanic Origin population in the census tract. [9]

72. The racial compositions of populations in the tracts are based on the U.S. Census Bureau's 2014-2018 American Community Survey (ACS). Since the ACS data are produced from a sample of the population, they include sampling error. ACS sampling error for individual tracts indicate large potential errors for these estimates, but when tracts are used collectively, like they are here, sample error is minimal. This is the best data we currently have for calculating the racial/Hispanic composition of the Census tracts in the 2020 Census.

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[8] A small number of census tracts, where were less than 100 people, were not included.

[9] If one used only tracts where a single race or Hispanic Origin group were the majority rather than the plurality, it would greatly limit the number of tracts available for analysis. By using the plurality, nearly every census tract in the country is included in the analysis.

73. Race and Hispanic Origin are measured in the U.S. Census as dictated by U.S. Office of Management and Budget (1997). Race and Hispanic Origin are two separate concepts in the definitions used by the federal government. In the Census, respondents are first asked if they are Hispanic or not, then they are asked about what race group(s) they identify with. Starting in 1997, people have been allowed to mark as many race groups as they feel apply. For people who mark only one race, this is referred to as "race alone," for example Black Alone or Asian Alone. For people who mark more than one race they fall into categories labeled "Alone or in Combination" for example, "Black Alone or in Combination." In this construction, people can be in more than one group. Someone who marked both Black and White would be included in both Black alone or in combination and the White alone or in combination. Slightly different racial definitions are used in different tables in this report based on what was made available by the Census Bureau. For example, sometimes the Census Bureau reports data for Non-Hispanic White population and sometimes for the White population.

74. In general, these differences are not particularly important in terms of understanding the results of my analysis, but there are couple of clarifications I want to offer. The way the Census Bureau classifies people by race and Hispanic Origin has two key implications for the data reported in the next three sections. Sometimes data were available for all the people who selected the "White" race and sometimes the data was available for Non-Hispanic Whites. Since some Hispanics select the White race, data for all Whites includes some Hispanics. Using data for Non-Hispanic Whites in comparison to minorities is preferable to using data for Whites, but sometimes that was not possible. The distinction between race alone and race alone or in combination is of little significance for the racial groups analyzed here (White, Asian, and Black).

75. Analysis of 2020 Census self-response rates through August 2020 indicates that many of the self-participation patterns from past Censuses are being seen again in the 2020 Census. This suggests that differential census accuracy in the 2020 Census is likely to follow patterns seen in the past censuses and that groups with low self-response rates are likely to experience greater rates of omissions and undercount.

76. Data shown in Table 2.1 indicate the mean self-response rates for Black and Hispanics plurality census tracts are substantially lower than the mean self-response rate for tracts where Non-Hispanic Whites are the largest population of the tract.[10] The self-response rates for Non-Hispanic White plurality tracts (66.6 percent) is 9.7 percentage points higher than that for Hispanic plurality tracts (56.9 percent), and 13 percentage points higher than Black plurality tracts (53.6 percent). The mean response rate for tracts where Asians are the plurality of the population (67.6 percent) is one percentage point higher than that of tracts where Non-Hispanic Whites are the plurality of the population.

77. Since lower self-response rates are related to higher net undercounts and omissions, as shown in Section 1 of this report, the lower self-response rates in the 2020 Census for Hispanics and Blacks shown in Table 2.1 indicate those groups are on course to have higher net undercount and omissions rates in the 2020 Census. If efforts to improve the accuracy of the 2020 Census are reduced by early termination of the data collection period, it is likely to have a disproportionately negative impact on Hispanics and Blacks who have lower self-participation rates.

[10] Table 2.1 shows data released by the Center for Urban Research at the Graduate Center, City University of New York based on self-response rates through August 20, 2020.

Table 2.1. Mean 2020 Census Tract-Level Self-Response Rates by the Plurality of the Population by Race and Hispanic Origin	
Pluraility of the Population in the Tract*	Mean Self-Response Rates for Census Tracts by Plurality of Population by Race and Hispanic Origin (through August 20, 2020)
Non-Hispanic White	66.6
Hispanic	56.9
Non-Hispanic Black	53.6
Non-Hispanic Asian	67.6
Source: Obtained from Steve Romalewski, CUNY	
* tract where this population was there largest race or Hispanic Origin group.	

78. Note that the response data shown in Table 2.1 are for census tracts rather than individual households. Nonetheless, it is reasonable to assume an association between the largest population in a census tract and self-response rates in those tracts. In addition, the pattem seen in 2020 is like that seen in previous censuses.

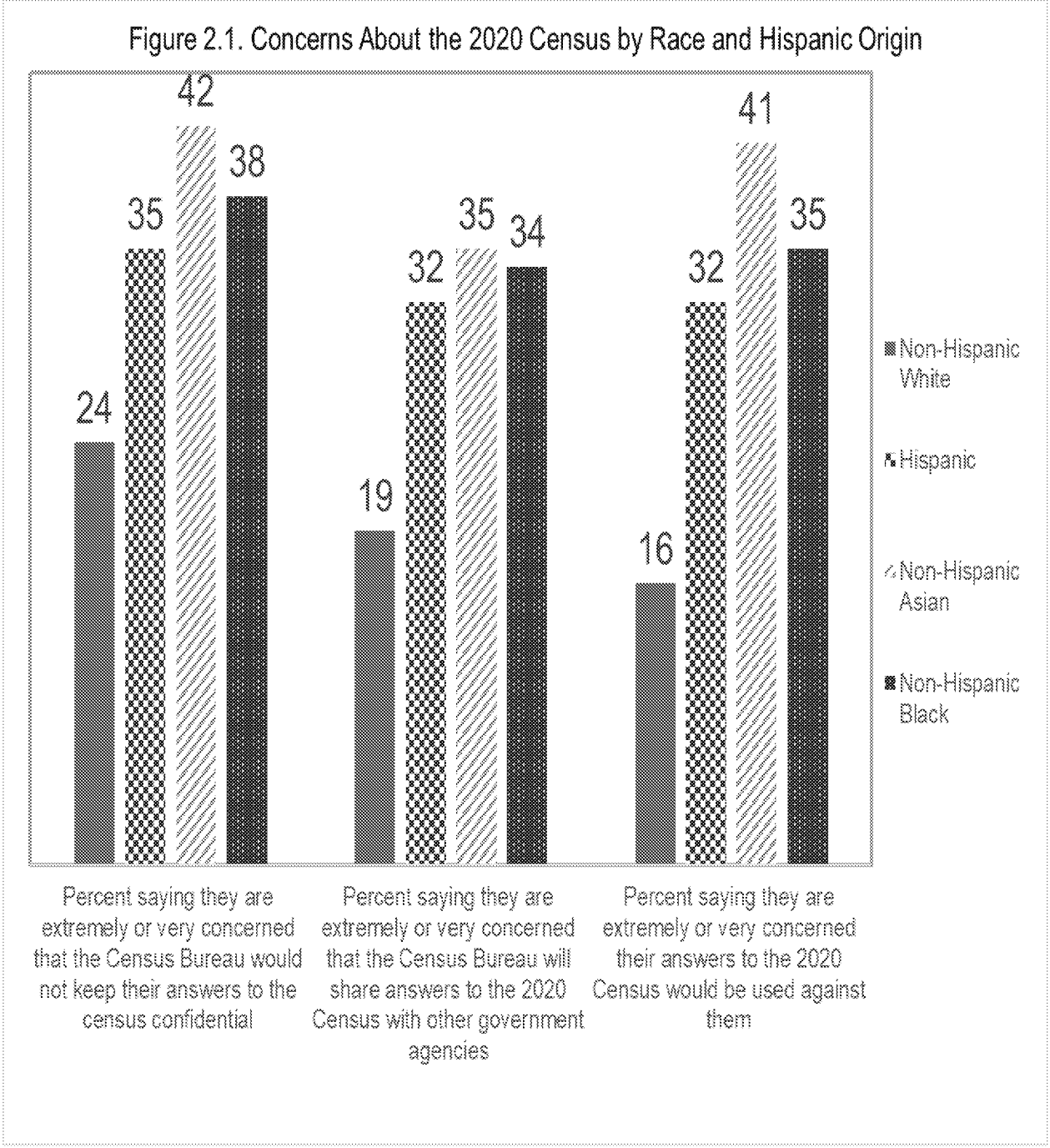
79. While Table 2.1 shows that Asian plurality census tracts have a slightly higher self-response rates than Non-Hispanic White plurality tracts, it is important to recognize that the Asian population is highly diverse and response rates for the overall Asian population are likely to mask big differences among subgroups (U.S. Census Bureau 2012e). One recent report on the Asian population (Lopez, et al. 2017) states, "The U.S. Asian population is diverse. A record 20 million Asian Americans trace their roots to more than 20 countries in East and Southeast Asia and the Indian subcontinent, each with unique histories, cultures, languages and other characteristics." Some of these differences among Asian subgroups have implications for how the groups interact with census-taking operations (O'Hare 2017 & 2020c: Population Bureau References). Data for the overall Asian population masks important differences for subgroups. For example, poverty is one variable associated with census undercounts and O'Hare (2020c)

shows the young child (age 0 to 9) poverty rates among Asian subgroups vary from a low of 5 percent for Asian Indians to 30 percent in the Hmong population. Consequently, the data for Asians shown in Table 2.1 may not reflect the experiences of many Asian subgroups.

80. One example of this is revealed by noting that Asian plurality tracts in the largest cities of metropolitan areas (over 1 million) have a mean self-response rate (58.8 percent) well below the national response rate (64 percent) and the mean self-response rates for Asian plurality tracts in rural areas (56.9 percent) is well below the national average. On the other hand, Asian plurality tracts in medium-sized cities in metropolitan areas have a mean response rate (71.1 percent) well above the national average. If efforts to improve the accuracy of the 2020 Census are reduced by early termination of the data collection period, it is likely to have a disproportionately negative impact on Asian Americans in the largest cities of metropolitan areas and in rural areas, who have lower self-participation rates. This data is from Center for Urban Research at the Graduate Center, City University of New York.

81. Figure 2.1 shows data from a Census Bureau report (U.S. Census Bureau 2019) indicating the level of concern about the 2020 Census expressed by race and Hispanic Origin groups. Asians, Hispanics, and Blacks express much more concern about the 2020 Census than do Non-Hispanic Whites. These concerns help explain the relatively low self-response rates for

Hispanic and Blacks seen in Table 2.1.



82. The U.S. Census Bureau (2019) Census Barriers and Motivator Survey (CBAMS) survey found 53 percent of respondents thought census data was used "[t]o locate people living in the country without documentation." And 63 percent thought the Census was used "to help

police and FBI keep track of people who break the law." Moreover, 28 percent of the CBAMS respondents thought the Census Bureau would not keep answers confidential and 24 percent thought the Census Bureau would share answers with other government agencies. People with this level of distrust in the Census were unlikely to self-respond and resist responding to an enumerator in the NRFU process.

83. With respect to the 2020 Census it is important to note that the foreign-born population and people living in households with foreign-born people are particularly vulnerable to being missed. It is also noteworthy that 34 percent of the people born outside the U.S. are extremely or very concerned that the data they provide in the 2020 Census will be used against them compared to 20 percent of people born in the U.S. (U.S. Census Bureau 2019).

84. Census tracts where the foreign-born population are a disproportionately large share of the total population have lower self-response rates. Data from the Center for Urban Research at the Graduate Center, City University of New York (CUNY) indicates that census tracts where the foreign-born population is more than one-third of the total population had a mean response rate of 59.4 percent on August 20, 2020, compared to a national response rates of 64 percent.[11]

85. Table 2.2 shows the distribution of the foreign-born population by race and Hispanic Origin. The data in Table 2.2 show that Asians and Hispanics make up the majority (71.4 percent) of the foreign-born population. So, difficulties in getting a complete and accurate

[11] The one-third cutoff point for tracts in this analysis was used because it was high enough to make sure the foreign-born was a clearly significant portion of the census tract population but low enough to make sure there were enough tracts meeting the criterion to provide a reliable estimate. Tracts where the foreign-born population was 50 percent or more of the population had even lower mean self-response rates

count of the foreign-born population will affect Hispanics and Asians more than others.

Table 2.2. Foreign-Born Population in the U.S. by Race and Hispanic Origin: 2018	
	Percent of the Foreign-Born Population in 2018
Non-Hispanic White*	17.7
Black*	9.5
Asian*	27.1
Hispanic	44.3
Source: U.S. Census Bureau, 2018 American Community Survey Table S0501, retrieved from Data.census.gov on August 4 2020	
* Race Alone, Hispanic may be included in appropriate race categories	
Total number of foreign-born people	44,728,721

86. The difficulties in getting complete and accurate count of people in immigrant communities is partly due to a fear of interacting with the federal government. The climate of fear among immigrants has greatly escalated since 2010. Even before there were discussions about adding a citizenship question to the 2020 Census, Census Bureau researchers (Meyer and Goerman 2018; U.S. Census Bureau 2017c and 2017d) found respondents less willing to cooperate given the growing climate of fear and mistrust. After careful review, Meyers and Goerman (2018 Slide 24) conclude, "During multilingual pretesting studies conducted in 2017 and 2018, respondents expressed concerns about participating in the Census Bureau surveys because of fears about their confidentiality."

87. Based on a series of interactions with interviewees and reports from Census Bureau field staff, the Census Bureau (2017c, page 7) concluded, "Overall, these findings, in various languages from respondents, Field Representatives, and Field Supervisors across the country who have participated in recent projects are raising concerns with CSM regarding potential barriers to respondents participation in the 2020 Census, as well as other Census Bureau surveys."

88. In a series of focus groups among Latino adults regarding the 2020 Census conducted by National Association of Latino Elected Officials (2018, slide 4), the study, which included a potential citizenship question, concluded, "Hesitation, fear and cynicism arose among focus group participants when they saw a version of the questionnaire." Data from a recent National Association of Latino Elected Officials survey (2020) indicate nearly half of all Hispanics thought the citizenship question was still on the 2020 Census questionnaire.

89. In addition to low self-response rates, the difficulty in getting a complete and accurate count of Hispanics and Blacks in the 2020 Census is also reflected in the population composition of census tracts with the lowest self-response rates. Table 2.3 shows the composition of the 20 percent of census tracts with the lowest self-response rates as of August 6, 2020. Hispanics and Blacks are over-represented in these hard-to-count tracts meaning it will be a particularly difficult task to get a complete count of these groups compared to Non-Hispanic Whites.

Table 2.3. Racial and Hispanic Origin Composition of the 20 Percent of Census Tracts with the Lowest Response Rates Compared to U.S. Population

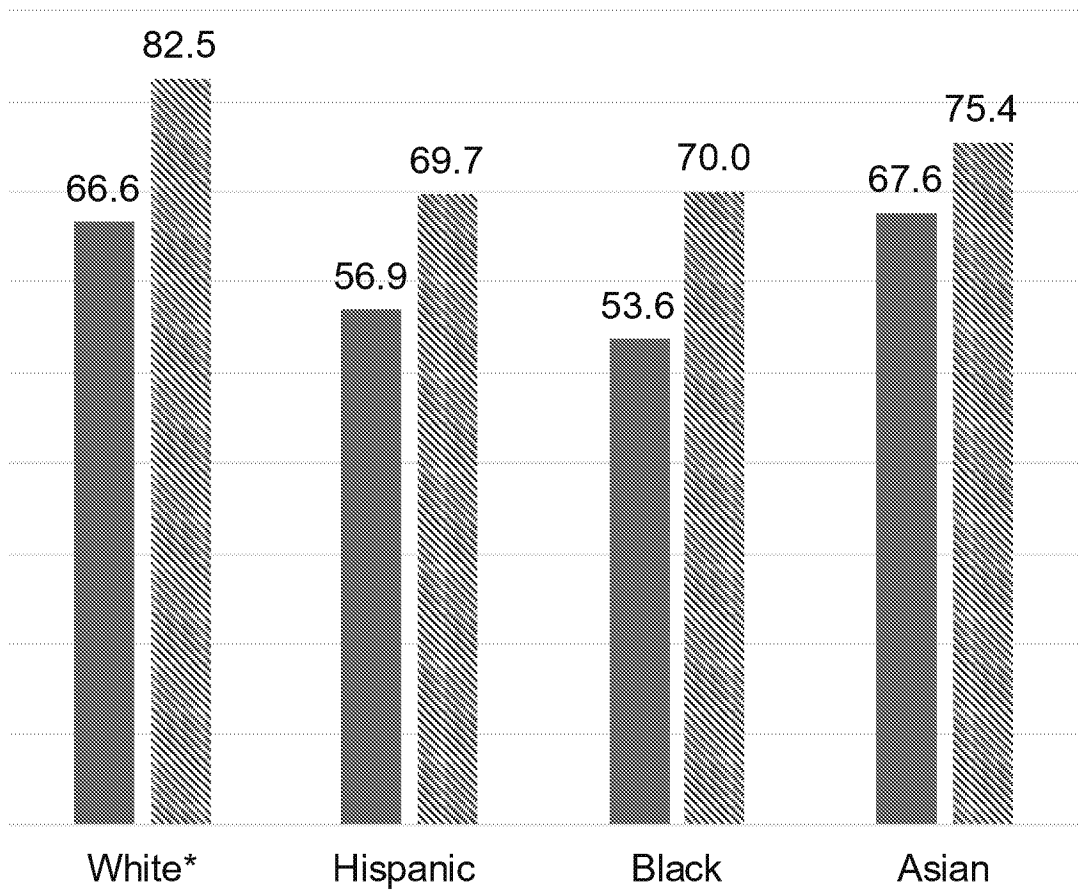
	Race and Hispanic Origin in the 20% of the Tracts with the lowest self-response rates as of August 6	Race and Hispanic Origin in U.S. Population
Non-Hispanic Whites	44.1	60.2
Hispanics	25.8	18.3
Non-Hispanic Asians	3.5	6.0
Non-Hispanic Black	22.2	12.3

Source: Funders Census Initiative 2020, (August 6 presentation)

90. Figure 2.2 shows the 2020 Census tract-level self-response rates and the 2010 mail return rates by race and Hispanic Origin. Self-response rates and mail return rates are both measures of census participation. Data for 2010 reflect the race of the householder while data for 2020 reflect the plurality of the population in a census tract.

91. Data in Figure 2.2 show that the pattern of participation in the 2020 Census is similar to that in the 2010 Census with respect to race and Hispanic Origin status. In both the 2010 and 2020 Census, the participation rate for Whites is the highest while the rates for Hispanics and Blacks are lower in both years. This underscores the extent to which patterns and relationships seen in past censuses are being repeated thus far in the 2020 Census. It is reasonable to believe the differential response rates seen so far in the 2020 Census are likely to lead to higher net undercounts and omissions for groups with low self-response rates like they have in past censuses. Furthermore, it is reasonable to believe that early truncation of census data collection in the 2020 Census means there will be less time to gather more census responses and the households that are missed, are likely to be disproportionately Hispanic and Black.

Figure 2.2. Self-Response Rates in the 2020 Census and the 2010 Census by Race and Hispanic Origin



* All Whites in 2010 and but only Non-Hispanic Whites in 2020

Source: Table 2.1 and U.S. Census Bureau 2012d

92. The data in Tables 2.1, 2.2, and 2.3 focus on demographic groups, but there are also large variations in the self-response rates by geography. Self-response rate variations by state and counties are addressed below.

93. There is a lot of variation in self-response rates across the states. Data released by the Census Bureau (2020e) on August 27, 2020, show 12 states (Alaska, Arkansas, Louisiana, Maine, Mississippi, Montana, New Mexico, Oklahoma, South Carolina, Vermont, West Virginia,

and Wyoming) have self-response rates below 60 percent. On the other hand, there are 4 states (Minnesota, Nebraska, Washington, and Wisconsin) with self-response rates at 70 percent or above. Some of the variation across states is related to the share of their population that is meant to be captured in Update/leave operation rather than the self-response operation. The Update/Leave operation was delayed because of the COVID-19 pandemic.

94. Given the connection between self-response rates and census accuracy based on data from the 1990, 2000 and 2010 Censuses (shown in Section 1) the states with lower self-response rates in 2020 are likely to have higher net undercount and omissions rates. The remaining part of the 2020 Census data collection process is particularly important for states with low self-response rates.

95. For example, Texas is one of the states where self-response rates in the 2020 Census are well below the national average. U.S. Census Bureau (2020e) data from August 27, 2020, shows the self-response rate for Texas is 60 percent compared to 64.6 percent for the nation as a whole. An undercount because of low self-response rates could cost Texas a congressional seat in the re-apportionment process and their fair share of federal funding.

96. New York is another state with below-average self-response rates in the 2020 Census. The 2020 Census self-response rate on August 27, 2020, was 60.7 percent for New York. A high net undercount in the 2020 Census due to low self-response rates in New York could impact the Congressional seats they get in 2020 Census reapportionment, as well as their share of federal funding.

97. It is worth noting that a lower self-response rate and a higher undercount rate in a large state like Texas or New York, will result in a larger number of people missed in the Census

than the same self-response and undercount rates in a small state. In other words, a high net undercount rate in a large state harms more people than the same rate in a small state.

98. In early August, the Census Bureau started the NRFU operation nationwide. But that has not erased differences across the states. Of the fifty states, 12 have enumerated (including self-response and NFRU) less than 75 percent of the population as of August 27, 2020. If the end of the data collection period remains September 30, 2020, this means they must still enumerate more than 25 percent of the households in their state with slightly more than one month remaining. These states captured less than 75 percent of their population in the first 24 weeks of the 2020 Census data collection period but must capture more than 25 percent in about five weeks.

99. It is important to recognize that substate areas vary even more than states in self-response rates. Data retrieved from the Census Bureau (2020e) on August 21, 2020, shows there are 25 counties where the self-response rate is 80 percent or more and 12 counties where the self-response rates is under 20 percent. The connection between self-response rates and census accuracy discussed in Section 1 of this report indicates that variation in self-response rates among geographic areas makes it more likely that some areas will have net undercounts and omissions in the 2020 Census. States rely on census data to draw state legislative districts and census undercounts result in seats shifting away from regions in which people are undercounted. Communities that suffer high net undercounts due to low self-response rates are unlikely to get their fair share of political power in the redistricting process which takes place after every census, and their fair share of federal funding.

100. It is my conclusion that as of August 24, 2020, Census tracts where Hispanics and Blacks are the plurality of the population have lower self-response rates in the 2020 Census than

tracts where Non-Hispanic Whites are the plurality of the population. This indicates Hispanics and Blacks are on a trajectory to have higher net undercounts and omissions rates in the 2020 Census. Ending the 2020 Census data collection period on September 30, 2020, instead of October 31, 2020, means there will be less time available to address data collection improvements for the demographic groups, such as Hispanics and Blacks, with the lowest self-response rates, and will result greater in omissions and undercounts for these demographic groups. If states and groups with low self-response rates had more time for data collection, there would be more time to recover from the racial and Hispanic and state differentials in data collection that we see so far in the data collection process.

3) Reduction in Differentials in 2010 Census and 2020 Census Self-Response Over the Census Data Collection Period

101. Data from the 2010 Census show Hispanic, Asians, and Blacks were a larger share of the population responding later in the data collection period than those responding in the earlier portion of the data collection period. Consequently, changes to the end of the data collection period impact Hispanics, Asians, and Blacks more than Non-Hispanic Whites.

102. A U.S. Census Bureau (2012d) report provides mail return rates for a date around the middle of the 2010 Census self-response period (April 19, 2010) and at the end of the self-response period (September 7, 2010) by race and Hispanic Origin status. The April 19, 2010 date was used by the Census Bureau because that is when the Census Bureau determined which housing units they would follow up with a visit from a census enumerator. They call this the NRFU universe. The September 7, 2010 date reflects all self-responses in the 2010 Census.

103. The indicator of census participation used in Table 3.1 is the mail return rate. According to the Census Bureau (2012d, page vi) "Mail Return Rates reflect the percentage of

occupied housing unit that returned their questionnaire in time to avoid enumeration in Nonresponse Followup."

104. Data in Table 3.1 show that between April 19, 2010 and the end of the data collection on September 7, 2010 the mail return rates for Whites increased by 3.2 percent points compared to 4.6 percent for the Black population, 4.5 percentage points for the Hispanic population, and 4.4 percent for the Asian population. In other words, Blacks, Hispanics, and Asians were responding at a higher rate than Whites during the latter part of the data collection period (April 19, 2010 to September 7, 2010). Hispanics, Asians, and Blacks were a disproportionately high share of those responding between April 19, 2010 and the end of data collection period than they were between the start of data collection and April 19, 2010. Given the higher response rates of Hispanics, Asians, and Blacks near the end of the data collection process, changes in the collection process near the end of the data collection process are more likely to impact those groups.

Table 3.1 Percentage Point Difference Between the Middle and the End of Self-Response Phase of the 2010 Census by Race and Hispanic Origin

	Mail Return Rates*			
	as of April 19, 2010	as of September 7, 2010		Percentage Point Changes from April 19 to September 7 2010
White* Alone	79.3	82.5		3.2
Black Alone	65.4	70.0		4.6
Asian Alone	71.0	75.4		4.4
Hispanic	65.2	69.7		4.5

* Source;: U.S. Census Bureau (2012). "2010 Census Mail Response Rate/Return Rates Assessment Report," 2010 CENSUS PLANNING MEMORANDUM SERIES, No. 198, U.S. Census Bureau, Washington DC.

* Data for Non-Hispanic Whites not available

105. There is another way of looking at this data that leads to the same conclusion. Table 3.2 shows the percentage point gap between the mail return rates of Whites and minorities

(Hispanic, Asians and Blacks) around the middle of the 2010 Census data collection period (April 19, 2010) and at the end of that period (September 7, 2010). For Hispanics, Asians and Blacks, the gaps between their self-response rates and those of Whites are smaller at the end of the data collection period than it was at the middle of the data collection period. This suggests that the longer the data collection period lasts, the smaller the gap between self-response rates of minorities and Whites.

Table 3.2 Percentage Point Difference Between Middle and End of Self-Response Phase of the 2010 Census by Race* and Hispanic Origin of the Householder					
	Mail Return Rates			Percentage Point Difference Between White and Minorities April 19, and September 7, 2010 (Minority-White)	
	as of April 19, 2020	as of September 7, 2020		as of April 19, 2020	as of September 7, 2020
White Alone*	79.3	82.5			
Black Alone	65.4	70.0		-13.9	-12.5
Asian Alone	71.0	75.4		-8.3	-7.1
Hispanic	65.2	69.7		-14.1	-12.8
Source: U.S. Census Bureau (2012). " 2010 Census Mail Response Rate/Return Rates Assessment Report," 2010 CENSUS PLANNING MEMORANDUM SERIES, No. 198, U.S. Census Bureau, Washington DC.					
* Data for Non-Hispanic White not available					

106. The Census Bureau data for 2010 Census mail return rates are not available for Non-Hispanic Whites, only for Whites. This is important because some Hispanics are counted in the White race category but are not included in the Non-Hispanic White category. Since Hispanics have lower self-response rates than Whites, including some Hispanics in the White category depresses the White rate and leads to false comparison between minorities and the majority population. Since the data for "Whites" include data for some Hispanics these figures do not reflect the real difference between minorities and Non-Hispanic Whites. The difference

between Whites and minorities shown in Table 3.1 and 3.2 would undoubtedly be larger if we had data for Non-Hispanic Whites.

107. Data from the 2020 Census show a similar pattern to the 2010 Census with respect to a larger share of the population responding later in the data collection period being Hispanic, Asian, and Black. Table 3.3 shows the mean response rates on April 30, 2020, and August 20, 2020, for tracts by the race and Hispanic Origin plurality of the population in the tract. From April 30, 2020, to August 20, 2020, the percentage point increase in the mean response rates for Hispanic plurality tracts, Asian plurality tracts, and Black plurality tracts was larger than for Non-Hispanic White plurality tracts. The increase was 7.4 percentage points for tracts where Non-Hispanic Whites were the plurality of the tract, compared to 9.6 percentage points for Hispanic plurality tracts, 10.3 percentage points for Asian plurality tracts, and 8.3 percent for Black plurality tracts.

Table 3.3. 2020 Census Self-Response Rates by Race and Hispanic Origin Plurality of Tracts by Date			
	Self-Response Rates		Percentage Point Change May 1, 2020 to August 20, 2020
	as of April 30, 2020	as of August 20, 2020	
Plurality of Population In Tract			
Non-Hispanic White*	59.2	66.6	7.4
Hispanic	47.3	56.9	9.6
Non-Hispanic Asian*	57.3	67.6	10.3
Non-Hispanic Black*	45.3	53.6	8.3
Source: Data from April 30, 2020 Funders Census Initiative 2020 and data for August 20, 2020 obtained from Steve Romalewski at CUNY			
*Race Alone or in Combination			

108. Table 3.4 shows differences between Whites and minorities (Hispanic, Asians and Blacks) in terms of 2010 Census mail return rates, net undercount rates, and omission rates. The

intervening census operation that occurs after mail return rates and the calculation of census accuracy measures (net undercount and omission) is the NRFU operation. The fact that the differences between Whites and minorities are smaller for net undercounts and omission than for mail return rates, means minorities were a disproportionately large part of the population counted in NRFU. Meaning Blacks, Hispanics and Asians were a disproportionately large share of the population counted later in the data collection period (i.e. during NRFU) rather than earlier in the data collection period. This suggests that a shorter data collection period in 2020 will be more harmful to Blacks, Hispanics, and Asians than for Non-Hispanic Whites.

Table 3.4. Differences in Mail Return Rates, Net Undercounts, and Omissions in the 2010 Census By Race and Hispanic Origin

	2010 Census Mail Return Rates (September 7)	Net Undercount Rates	Omissions Rates	Percentage Point Difference Between Minorities and Whites in Mail Return Rates (September 7, 2020) Minority Rate Minus White Rate	Percentage Point Difference Between Minorities and Whites in Net Undercount Rates Minority Rate Minus White Rate	Percentage Point Difference Between Minorities and Whites in Omissions Rates Minority rate Minus White Rate
White*	82.5	-0.84	3.8			
Black Alone	70	2.07	9.3	-12.5	2.9	5.5
Asian Alone	75.4	-0.08	5.3	-7.1	0.8	1.5
Hispanic	69.7	1.54	7.7	-12.8	2.4	3.9

Source: Data for Mail Return Rates is from U.S. Census Bureau (2012d) and source for net undercounts and omissions is O'Hare (2019_)

* Data for Non-Hispanic White not available for Mail Return Rates, but Net Undercount and Omissions Rates reflect non-Hispanic Whites.

109. In addition to the lower self-response rates, data analysis by Center for Urban Research at the Graduate Center, City University of New York indicate minority populations are over-represented in the census tracts that are hardest to count. As of August 6, 2020, analysis by the Center for Urban Research at the Graduate Center, City University of New York show the population in the hardest to count census tracts (i.e. those in the bottom 20 percent of self-response rates) was only 44.1 percent Non-Hispanic White even though Non-Hispanic Whites are 60.2 percent of the total population of the U.S. Thus, 65.9 percent of the population in the

hardest to count tracts were minorities (i.e. those other than Non-Hispanic Whites) even though they are only 39.8 percent of the population. In other words, racial and Hispanic minorities are a disproportionately high share of the population in the hardest to count census tracts as of early August 2020.

110. There is a consistent pattern of responses over the data collection period in the 2010 and 2020 Censuses. Non-Hispanic Whites are a disproportionately large share of the responses early in the data collection period, and Hispanics, Asians and Blacks are a disproportionately large share of the responses near the end of data collection period. This means the end of the data collection period contributes more to the final census count of Blacks, Hispanics, and Asians than for Non-Hispanic Whites.

111. It is my conclusion based on data from the 2010 and 2020 Censuses that households responding later in the Census data collection period are disproportionately Hispanic, Asian, and Black rather than Non-Hispanic White. Early truncation of census data collection in the 2020 Census means there will be less time to gather more census responses and the households that are missed are likely to be disproportionately Hispanic, Asian, and Black. Thus, truncating data collection and NRFU operations one month early is likely to result in a failure to enumerate households that would have been captured if the data collection period and NRFU continued through the end of October, and that will increase the undercount of minorities more than the undercount of Non-Hispanic Whites.

4) Impact of NRFU Truncation on Count of Hispanics Asians and Blacks in the 2020 Census

112. Collecting data in the NRFU operation is different than collecting data in the self-response operation. The portion of the population that is most willing to respond to the Census typically does so early in the self-response phase. The population less willing to respond to the

census is concentrated in the NRFU population. This means data collection in NRFU is typically more difficult than in the self-response phase. With respect to the NRFU process relative to the self-reporting operation in the 2020 Census, former Census Bureau Director Kenneth Prewitt (2020) stated, "The census self-reporting phase successfully reached 62 percent of the population. An achievement to applaud. But the next phase is orders of magnitude more difficult. We're in the NRFU/Hard-to-count territory."

113. One indicator of the difficulty in getting data from the final segment of households is reflected in the 2010 Census NFRU evaluation (U.S. Census Bureau 2012a, Table 18) which shows there were about 8 million households that required four or more contact attempts in the 2010 Census.

114. Another reflection of the difficulty in getting respondents to participate in the NRFU operation is the large share of responses that are "proxy" responses. Proxy responses involve someone other than a household member providing data for the household. According to the U.S. Census Bureau (2012a, page 66), "Information we collected for more than half of all NRFU housing units by proxy respondent – either someone who moved in after April 1, or a neighbor or other proxy (landlord, property manager, etc.)". In the 2010 Census NRFU process, data was collected from a household member only 47 percent of the time. Data collected by proxies is less accurate than data collected from a household member. Ending the NFRU operation a month earlier than previously planned is likely to increase reliance on proxy responses in the 2020 Census and thus result in less accurate data with more omissions and counting higher net undercount.

115. The 2010 Census NRFU workload was an estimated 48 million housing units (U.S. Census Bureau 2012a) and it was conducted in about ten weeks. In describing the 2010

NRFU operation, the U. S. Census Bureau (2012a) stated, "The first Nonresponse Followup operation in the field was Nonresponse Followup and officially began on May 1, although a few areas began work before that date. All but one of 494 local census offices reported finishing Nonresponse Followup by July 9th."

116. As of August 6, 2020, there were approximately 56 million non-responding housing units in the 2020 Census. In the 2020 Census, the U.S. Census Bureau (2020d) says they are now planning on only 7 weeks for NRFU (August 11 to September 30). Truncation of the data collection and NRFU operations in 2020 means the Census Bureau will try to visit and enumerate 8 million more homes than in 2010, in 7 weeks instead of 10. The number of housing units to visit increased by 8 million while the number of weeks devoted to the NRFU process was shortened by 3 weeks. The truncation of the data collection period means the Census Bureau has less time to do more work.

117. The Census Bureau is allowing people to self-respond through the end of the data collection period. The self-response rate only increased by 0.6 of a percentage point from August 19 to 27, 2020. This indicates that the vast majority of census responses in the remaining data collection period will come from NRFU.

118. In addition to the possible early truncation of the NRFU operation in the 2020 Census, there are several reasons why one might expect the 2020 Census NRFU operation to be more difficult than the NRFU operation in the 2010 Census.

119. It is widely acknowledged that the COVID-19 pandemic has made census data collection more difficult. The pandemic has resulted in delayed census data collection and has complicated getting responses from household ln personal visits. The pandemic has also negatively affected census hiring.

120. Natural disasters such as hurricanes and forest fires have also made 2020 census data collection more problematic. When hundreds of thousands of people leave their homes when a hurricane hits or threatens, they are not available to respond to a census enumerator. In addition, some housing units that were occupied on April 1 no longer exist after a hurricane. It is easy to understand how this complicates a complete and accurate census. Typically, the decennial census data collection is over before the heart of the hurricane seasons hits. Shortening the amount of time for data collection will compound these problems and produce higher net undercounts and omission rates. The U.S. Census Bureau's truncation of data collection in the 2020 Census from October 31, 2020, to September 30, 2020 is likely to impact the NRFU operation more than the self-response operation (U.S. Census Bureau 2020d). This change shortens the NRFU period by about one third (one month out of three) but it only shortens the self-response phase by about one-sixth (one month out of six).

121. The NRFU operation is always challenging and reducing the time available to collect data will make a difficult situation worse. Since Hispanics, Asians, and Blacks are more dependent on the NRFU process this change will likely result in higher net undercount and omission rates for those groups. Shortening the NRFU period by a month, is also likely to have a disproportionate negative impact on the foreign-born population by reducing the number of those who are counted in the Census.

5) Implications of Net Undercounts and Omissions in the Census

122. According to the U.S. Census Bureau, data from the Decennial Census (U.S. Census Bureau 2017e) is used for:

- Allocating political representation
- Distribution of federal funds through funding formulas

- Civil rights enforcement
- Business applications
- Post-Census population estimates and projections
- Providing weights for sample surveys
- Denominators for rates
- Community planning
- Economic and social science research

123. In particular, it is noteworthy that communities that experience a census undercount do not get their fair share of political representation and federal dollars distributed through funding formulas dependent on the Census counts (O'Hare 2019, Chapter 2). They also miss getting their fair share of dollars distributed by state governments based on census population counts (O'Hare 2020). According to Reamer (2019) there are 316 federal programs that distribute funds on the basis of census-related data, and they distributed more the $1.5 trillion in Fiscal Year 2016. In addition, there are more than 10,000 single member political districts which are drawn on the basis of census data (O'Hare, 2019). Often it is the communities most in need of assistance that do not get their fair share of help because they are undercounted in the census.

124. Census undercounts and omissions are likely to have multiple negative ramifications for states and localities. Communities that are undercounted do not get their fair share of government resources such as political representation and money, and they are often overlooked in private sector decision-making as well.

6) Conclusion

125. The preponderance of empirical evidence from the 2010, 2000 and 1990 Census shows lower self-participation rates leads to higher net undercount rates and omissions rates. The differential self-response rates in the 2020 Census by race and Hispanic Origin suggests that differential undercount patterns by race and Hispanic Origin seen in the past are likely to be repeated in the 2020 Census. Thus, Hispanics and Blacks are on track to have higher net undercount rates and omissions rates that Non-Hispanic Whites in the 2020 Census.

126. Evidence indicates Hispanics, Asians and Blacks are a disproportionately large share of the population counted at the end of the data collection period. Consequently, reducing data collection efforts at or near the end of the data collection period will result in greater omissions and undercounts for Hispanics, Asians, and Blacks compared to Non-Hispanic Whites.

127. Given the facts laid out above, it is my conclusion that changing the end of the 2020 Census data collection period from October 31, 2020, to September 30, 2020, will result in greater omissions and undercounts for Hispanics, Blacks, and Asians compared to Non-Hispanic Whites (and exacerbate differential net undercounts among these groups) in the 2020 Census. States with lower self-response rates will result in higher net undercounts and omissions compared to state with higher self-response rates in the 2020 Census.

Executed on August 9, 2020 at Cape Charles, Virginia.

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

William P. O'Hare

APPENDIX 1

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EXHIBIT B

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

LA UNIÓN DEL PUEBLO ENTERO, PROMISE ARIZONA, LYDIA CAMARILLO, JUANITA VALDEZ-COX, ROGENE GEE CALVERT; ZEENAT NISHA HASAN; CANDY L. GUTIERREZ; EUGENE WU, DEBORAH CHEN, ORGANIZATION OF CHINESE AMERICANS-GREATER HOUSTON, DAVID CHIU, PHILLIP TING, ALBERT MURATSUCHI, KENNY CHU, YICHENG WU, CYNTHIA CHOI, VINCENT PAN, JOHN PARK, JEFFREY D. HSI, JACINTA TITIALII ABBOTT, VENGHAN TANG, RAJ MUKHERJI, SHARON TOMIKO SANTOS, MIA GREGERSON, JENNIFER REYES, RAYMOND SANCHEZ, MARICELA LECHUGA, MARTY RAMIREZ, FELIPE CRUZ, ALEXANDRA ROSY PALOMO-PUJOL, MARCO ABARCA, COALITION FOR HUMANE IMMIGRANT RIGHTS OF LOS ANGELES, RALPH CARMONA, and JAVIER GASTON-GREENBERG,

Plaintiffs,

v.

DONALD J. TRUMP, sued in his official capacity as President of the United States,

WILBUR L. ROSS, sued in his official capacity as U.S. Secretary of Commerce,

STEVEN DILLINGHAM, sued in his official capacity as Director of the U.S. Census Bureau,

U.S. DEPARTMENT OF COMMERCE, and

U.S. CENSUS BUREAU,

Defendants.

Civil Action No. 8:19-CV-02710-PX

SWORN EXPERT DECLARATION OF HOWARD HOGAN

I. QUALIFICATIONS

1. I am currently retired from the U.S. Census Bureau, where I worked for 39 years in positions of increasing responsibility. During my career I have worked on and studied all aspects of the census process, including coverage and content. This work has included responsibility for key aspects of post data collection processing. I am a recognized expert in how coverage errors occur, their impact on census accuracy, and how post data collection processing can address them. I have supervised a large software development operation.

2. My most recent position at the Census Bureau was as its Chief Demographer, where I served as the Census Bureau's senior scientist on technical and statistical demography. I served as principal consultant to Census Bureau staff on methodological problems, and as a liaison to academic and other outside demographers.

3. Previously as Associate Director for Demographic Programs, I led the Census Bureau's programs that provide demographic, social and economic data about the nation's population and households and led the statistical programs that produce population projections and estimates. I supervised the Population Division where Count Review was redesigned and implemented. I was also responsible for the International Programs Center, the Housing and Household Economic Statistics Division, the Demographic Statistical Methods Division, and the Data Integration Division.

4. Earlier as Chief of the Economic Statistical Method and Programming Division, I managed the development of software for the Census Bureau's economic programs including monthly indicator surveys, annual surveys, and the economic census, successfully moving towards adopting modern software development processes. I provided leadership to all

mathematical statisticians working in the Economic Directorate.

5. During the 2000 Census, I served as Chief, Decennial Statistical Studies Division. I led the group of mathematical statisticians and programmers who were responsible for the statistical design of Census 2000, including statistical quality control design, coverage improvement activities, software quality control, count imputation, content sampling, undercount measurement, and census adjustment. I assisted three U.S. Solicitors General, and provided expert testimony cited in Supreme Court Case: *Utah v. Evans*.

6. Earlier, as Chief of the Undercount Research Staff, Statistical Research Division, I led the Census Bureau's effort to research, develop and implement methods to correct the 1990 Census for undercount. This multiyear research program included developing a research plan to address all issues concerning coverage measurement and adjustment for the 1990 Census. I designed and managed a large and complex survey, the 1990 Post Enumeration Survey, including questionnaire design, processing plan, matching process design, imputation, post-stratification plan, estimation design, and census adjustment.

7. I hold a Ph.D. from Princeton University, studying at its Office of Population Research, and a Master of Public Affairs degree from its Woodrow Wilson School. I have been a Professorial Lecturer at the Department of Statistics of The George Washington University. I served as Chair of the Survey Research Methods Section of the American Statistical Association (ASA), and also served as Chair of its Committee on Professional Ethics. I am an elected Fellow of the ASA, a designation that recognizes an individual's outstanding service to and leadership in the field of statistical science. Each year, ASA's Committee on Fellows, a peer group, can only elect one-third of one percent of the total membership as Fellows. I have consulted with the statistical offices of the UK, India, Sweden, Mauritius, Morocco and Canada, and led a United

Nations task force on demographic statistics.

II. SUMMARY AND CONCLUSION

8. The purpose of this declaration is to describe the grave risks to an accurate enumeration caused by the shortened schedule for post data collection processing. Specifically, the currently proposed schedule, based on my knowledge and experience, will not allow the Census Bureau to meet its stated goal: "The goal of the 2020 Census is to count everyone once, only once, and in the right place."[1]

9. Furthermore, these risks will have a disproportional impact on the poor, the rural, and ethnic and racial minorities. This will result in what is known as a 'differential undercount,' that is, the undercount of some, primarily minority, groups is larger than that of the other groups. For example, the Census Bureau has documented over the decades that the undercount for Blacks, Asians, Latinos (also referred to by the Census Bureau as "Hispanics"), and Native Americans is larger than that for non-Hispanic Whites.[2] Although a differential undercount has been measured in all recent U.S. censuses, the compressed schedule for post data collection processing carries a grave risk of a greatly increased differential undercount.

10. Post data collection processing refers specifically to those activities that take place after the completion of Census field work that are necessary to deliver accurate statistical results. In this declaration, I focus on the Apportionment Counts. These are the total population by state,

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[1] U.S. Census Bureau, *2020 Census Operational Plan: A New Design for the 21st Century*, Version 4.0 (Dec. 2018) https://www2.census.gov/programs-surveys/decennial/2020/program-management/planning-docs/2020-oper-plan4.pdf (hereinafter "2020 Census Operational Plan v. 4.0").

[2] *See, e.g.*, Hogan, *The 1990 Post-Enumeration Survey: Operations and Results*, 88 J AM. STAT. ASS'N 423, 1047-60 (Sept. 1993) http://links.jstor.org/sici?sici=0162-1459%28199309%2988%3A423%3C1047%3ATIPSOA%3E2.0.CO%3B2-8; and Howard Hogan, Patrick J. Cantwell, Jason Devine, Vincent T. Mule Jr. and Vitoria Velkoff, *Quality and the 2010 Census*, 32 POPULATION RES. POL'Y REV. 637 (2013) https://link.springer.com/article/10.1007/s11113-013-9278-5?shared-article-renderer#citeas.

including the overseas federally affiliated population, necessary to allocate the 435 Congressional seats to the 50 individual states.

11. The Census Bureau itself has implicitly admitted that its current schedule is insufficient to conduct the Census with its usual statistical standards. This can be seen in their three different proposed schedules for post data collection processing:

a. *Original Schedule*: five months (August 1 through December 31)

b. *Previous Revised Schedule*: six months (November 1 through April 31)

c. *Current Schedule*: three months (October 1 through December 31)

12. The original schedule was based on decades of experience and years of planning and testing. This schedule was developed to allow five months for post data collection processing before the delivery of the Apportionment Counts. When COVID-19 hit and Census field and processing operations were suspended, the Census Bureau proposed a revised schedule asking for six months; that is, an additional month for post data collection processing. The Census Bureau did not announce its reasons for this additional month, but a reasonable inference is that the special challenges caused by COVID-19 would require extra care in post data collection processing. Thus the current three month schedule allows only half the time that the Census Bureau publicly stated that it needed. Rather than allowing more time to deal with the unique problems and additional challenges of COVID-19, the current schedule gives less time than the Census Bureau planned for before the pandemic.

13. Schematically, post data collection processing needed to produce the Apportionment Counts includes the following activities:

a. Scanning in paper questionnaires.

b. Checking for completeness: e.g. returned blank questionnaires or questionnaires

with insufficient data.

c. Merging the files: internet returns, telephone, paper and results from field enumeration.

d. Processing census responses not directly tied to a census identification number, known as "non-ID Processing." This includes people who took advantage of the opportunity to self-respond even though they did not know their census ID. It also includes people interviewed at locations other than their usual residence, but who provided their usual residence address.

e. Unduplicating multiple responses for the same housing unit: for example from a mailed-back questionnaire and the result of a field visit. This activity is known as the Primary Selection Algorithm (PSA).

f. Unduplicating multiple enumerations for the same person at two or more locations, as necessary: for example college students sent home before April 1 or people who may have left their urban residence for a rural second home.

g. Supplementing response data with administrative records for those cases that had been identified by administrative data as occupied, but for which a nonresponse follow-up attempt was unsuccessful and no subsequent self-response was received.

h. Imputing for missing values, specifically any housing unit where the number of residents was not previously determined, called count imputations.

i. Processing of Group Quarters (GQ) enumerations (college dormitories, nursing homes, etc.).

j. Review of Group Quarters results by state demographers, to identify new or

misallocated group quarters or if a GQ reports an improbable number of residents, known as GQ Count Review.

k. Preliminary tabulations, necessary for review steps. In fact, this is done several times for multiple reviews.

l. Review of the aggregate results by trained demographers to identify "systematic or large anomalies." These are, for example, where the preliminary census population greatly exceeds or greatly falls short of what other sources show.

m. Merging of the overseas federally affiliated population, such as military personnel.

n. Tabulation of the 50 state population totals.

o. Computation, as a courtesy, of the Congressional Apportionment, using the method known as 'Equal Proportions'

p. Submitting the results to the President.

14. Each of these steps is necessary to produce accurate Apportionment Counts. Skipping or rushing one step can impact the next. For example, failure to properly handle non-ID cases can impact the need for the use of administrative records. Failure to implement the administrative records process can lead to higher count imputations. Failure of any of these steps can lead to systematic errors, which the review is designed to catch. Failure to carry out these processes risks not just an undercount, but an undercount that disproportionally affect areas with minority populations. Not only is a particular logical order implied, but also a pre-specified operational order. That is, systems, including software systems, and processes have been developed and tested for a particular order. Skipping steps to save time means running an untested system, with all the inherent risks.

15. In this Declaration, I will focus on those steps with the greatest risk to mis-counting the poor, rural, and racial and ethnic populations. I enumerate problems and risks occurring with this compressed time schedule and the probable impact upon the Black, Latino, Asian, Pacific Islander and Native American populations.

16. The Census Bureau has not fully explained and documented it plans to meet the current truncated schedule, even though OMB Statistical Policy Directive 4 mandates: "Information to help users interpret data accurately, including transparent descriptions of the sources and methodologies used to produce the data, must be equitably available for Federal statistical products."[3] Because of this lack of transparency in current plans, it is impossible at this time to know what steps the Census Bureau will be forced to skip and which steps will be merely rushed. The Census Bureau leadership talks only of "Streamlining backend processing to deliver apportionment counts by the statutory deadline of December 31, 2020."[4] What is clear is that the professionals at the Census Bureau will not have the time to properly carry out the processes that they have deemed necessary for meeting their goal of an accurate enumeration of the U.S. population. And, as mentioned above, on-the-fly "streamlining" of a tested system raises a grave risk of a fatally flawed and failed census.

17. The Census Bureau has an experienced, skilled and dedicated staff, fully capable of addressing these problems if they are given adequate time. Each step takes time and care, with a limited number of staff on-board and trained to accomplish it. Unlike field work, it is not

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[3] Statistical Policy Directive No. 4: Release and Dissemination of Statistical Products Produced by Federal Statistical Agencies, 73 Fed. Reg. 12622, 12625 (Mar. 7, 2008), https://www.govinfo.gov/content/pkg/FR-2008-03-07/pdf/E8-4570.pdf.

[4] Albert E. Fontenot Jr. & Timothy P. Olson, *Review of 2020 Operational Plan Schedule*, U.S. Census Bureau, p. 9 (Aug. 17, 2020) https://www.census.gov/content/dam/Census/newsroom/press-kits/2020/2020-operational-plan-schedule-review.pdf.

possible to bring on additional demographers, statisticians and software engineers in order to speed the post data collection processing. The Census Bureau had developed a plan and adapted it to the challenges created by COVID-19. What the Census Bureau's professional staff needs is to be allowed to carry out the plan developed and announced in April 2020.

III. NON-ID PROCESSING AND OTHER PRE-PROCESSING

18. Each dwelling unit on the Master Address File (MAF) contains a unique ID. The Census Bureau has worked to make it easy for people to self-respond, even if they have not received, or cannot find, their census ID. The plan was to make it easy for people to respond "anytime, anywhere to increase self-response rates."[5] However, when these non-ID cases are received, a series of steps must be undertaken. This includes determining which census block contains the units ('Geocoding') and seeing if the unit is already listed on the MAF. If the unit is on the MAF, then the response goes into the next step (the Primary Selection Algorithm, or PSA, discussed below). If the unit is not already on the MAF, then the Census Bureau must verify whether the unit exists, and if it does, add it to the MAF. Each of these steps takes time. Not conducting this process can result in not counting people who have responded.

19. Additionally, there are some cases where the census asks for "Usual Residence Elsewhere." For example, people interviewed at a marina or campground are to be counted there if they have no other 'usual residence,' known as 'usual residence elsewhere' or URE. However, if they have a usual residence, they are asked to report it. This then generates a non-ID response which again must be geocoded, unduplicated and fed to the next step.

20. Failure to carry out non-ID processing affects coverage in several ways. If that was the only response received from the person, then they will be missed from the census entirely, in

[5] 2020 Census Operational Plan v. 4.0, at 108.

spite of the Census Bureau's advertising this as a valid way to respond. Additionally, in the case of the UREs, this can create two problems. First, the person will be counted at the campground, which is not the person's usual residence. Secondly, the person may be missed at the usual residence.

21. The "respond anywhere" option is new, but is was designed, in part, to enumerate those people with looser ties to a particular unit. Not properly including these non-ID cases can disadvantage minorities, as these options were designed for people with less conventional living arrangements. Counting people at marinas and campgrounds is likely to advantage the well-off, who can afford boats and RV campers.

22. Many steps are needed to prepare the files for further processing, and different files are produced for different purposes. The most important files for our discussion are:

a. Decennial Response File (DRF): This contains all 2020 Census responses for the final enumeration universe after additional data processing, GQ matching and unduplication and application of the Primary Selection Algorithm (explained below)

b. Census Unedited File (CUF): All person and household records for the 50 states and D.C. including group quarters records. If the number of occupants in a housing unit is missing or contradictory, imputation procedures are required to complete the household enumeration record, using a variety of data inputs and statistical processes. When the final enumeration data are determined for all dwelling unit records considered to be valid, the resulting dataset is the Census Unedited File (CUF). The CUF is the baseline for the total count of people.

c. Census Edited File (CEF): All person and household records for the 50 states and

D.C., including GQ records and characteristics (such as race and ethnicity). The CEF is the result of consistency edits and imputation of characteristics as needed.[6]

23. In fact, each of these files may exist in several versions resulting from different stages of processing and review. Thus, there is both a DRF-1 and DRF-2.

24. The Self-Response Quality Assurance (SRQA) process must perform automated and interactive checks to identify potentially suspicious returns from self-response that require analyst investigation and/or field follow-up to ensure quality. As the data are received, write-in responses (i.e., alpha characters for race and ethnicity responses) are coded for tabulation purposes. Coding is conducted by both automated and computer-assisted manual processes.[7] During DRF processing, edits must be performed to normalize data received from multiple data capture operations (internet, telephone, paper or NRFU). That is, data coming from different processing systems will have different software formats and can use different codes. "Normalizing" data puts the data into a common format, so that, for example, a '2' in position '3' always means 'female." The DRF aggregates response data received from data capture operations.[8] This is necessary to prepare a single file containing all accepted responses in a uniform format. Without this step, there is no single place where all the results can be found and analyzed together.

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[6] U.S. Census Bureau, Decennial Census Management Division, *2020 Census Detailed Operational Plan for: 23. Count Review Operation (CRO)*, 11 (July 26, 2019) https://www2.census.gov/programs-surveys/decennial/2020/program-management/planning-docs/CRO-detailed-operational-plan.pdf (hereinafter, "2020 CRO Plan").

[7] 2020 Census Operational Plan v. 4.0, at 133-34.

[8] U.S. Census Bureau, Decennial Census Management Division, *2020 Census Detailed Operational Plan for: 19. Response Processing Operations (RPO)*, Version 2.0, 121 (Nov. 2019) https://www2.census.gov/programs-surveys/decennial/2020/program-management/planning-docs/RPO_detailed_operational_plan-v2.pdf (hereinafter, "2020 RPO Plan v. 2.0").

IV. UNDUPLICATING MULTIPLE RESPONSES FOR THE SAME PERSON

25. It is necessary to address duplicate enumerations of the same person in order to achieve the Census Bureau's stated goal of counting people "only once and in the right place." These have been shown to occur in every census where duplications have been measured.

26. It is important to remember that for many purposes, especially including Congressional Apportionment and redistricting, it is the distributional accuracy of the census that matters. Each state needs to get its 'fair share of the pie.' Because of this, it is not just census omissions that matter. Areas where there are disproportionally more duplicates can gain an improper advantage. Ensuring that everyone is counted "only once, and in the right place," is just as important as ensuring that everyone is counted 'once."

27. One form of potential duplication occurs when more than one return is received for the same dwelling unit. These forms could represent two different families or a single family who sent in two responses, for example one via the internet and one on a paper questionnaire. Perhaps one family member sent in a non-ID response when another member had already responded by telephone. The multiple response options, including the option of a non-ID response, will likely make this more of an issue in 2020. This unduplication is known as the Primary Selection Algorithm (PSA). Given that 2020 Census has greatly increased the range of response options, the PSA will play a central role in post data collection processing. The precise parameters of the PSA are administratively restricted and tightly held. However, the importance of this step has long been recognized in census planning, because without it the same person could be included and counted in a unit more than once or two different families could incorrectly be included together as living in one small unit.[9]

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[9] I do not address in this Declaration the actual rules and operations of the PSA as they are administratively restricted.

28. Additionally, unduplication is necessary because the same person can be enumerated at two different locations. There are several reasons for this to occur. Among the reasons are:

a. College students counted at school and at their parents' home.

b. People who move within the period of enumeration, including people who have two or more residences.

c. People counted in two separate housing units because either the Post Office mis-delivered the Census Questionnaire or because the Census follow-up enumerator went to the wrong address, known as Apartment Mix-ups.

d. Other miscellaneous reasons, including for example children in a joint custody arrangement.

29. The Census Bureau has traditionally been conservative in removing probable duplicate enumerations. This reflects essentially a judgment call that the risk of possibly removing a unique enumeration outweighs the benefit of removing probable duplicates. It also reflects the difficulty in many cases of determining which of the two (or more) enumerations is "in the right place."

30. The importance of taking the time to analyze and understand the level of census duplication during post data collection processing is illustrated by a special procedure carried out for the 2000 Census. During the 2000 Census, analysis during the post data collection processing identified an unexpectantly large number of duplicated households enumerated at different addresses. The Census Bureau took, and had the time to analyze these enumerations and determine which one to delete from the Census counts.[10] This was a special operation, not

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[10] *See* Fay F. Nash, *Overview of the Duplicate Housing Unit Operations*, Census 2000 Information Memorandum No. 78 (Nov. 7, 2000); Susan M. Miskura, *Results of Reinstatement Rules for the Housing Unit Duplication Operations*, Memorandum for Preston J. Waite (Nov. 21, 2000).

originally planned for 2000, but demonstrates an important point. With sufficient time during post data collection processing, the Census staff is able to identify and correct unexpected problems.

31. Rather than *ad hoc*, as it was in 2000, unduplication across records was a planned activity for 2020, as the Response Processing Operation will use "computer-based person matching software to unduplicate multiple responses for the same person across census records. Then, a Primary Selection Algorithm is run to establish the single enumeration record for a case when multiple responses are received."[11]

32. I now address those special issues that make the level of duplicate enumerations a larger issue for this census than in previous censuses, and the need for sufficient time to assess and, as necessary, correct the level of duplication.

33. Missing characteristics can greatly complicate the process of unduplication. A complete response to all items is not necessary for a response to be counted. Although the exact number of reported characteristics is not publicly known for 2020,[12] in earlier censuses full name and date of birth were not necessarily required. This means that the data required to count a response may be less than what is required to determine whether the person has already been counted. It is highly probable that the level of missing reported characteristics, especially of complete names, is especially high in 2020. For example, the issue with the citizenship question, the Presidential Memorandum on "Excluding Illegal Aliens," the protests across the country, and the general issue of border and immigration enforcement will almost certainly increase the number of people

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[11] 2020 Census Operational Plan v. 4.0, at 134.

[12] Albert E. Fontenot Jr. & Timothy P. Olson, *Review of 2020 Operational Plan Schedule*, U.S. Census Bureau (Aug. 17, 2020) https://www.census.gov/content/dam/Census/newsroom/press-kits/2020/2020-operational-plan-schedule-review.pdf.

unwilling to share their name. This will also affect the ability of PSA to be correctly implemented. Carefully understanding these new conditions and their impact on the Census Bureau's ability to 'count everyone only once,' will take extra, not less, time.

College students counted at school and at their parents' home.

34. Since 1950, college students living away to attend school have been counted at their 'college' address. This includes both those living on campus and those living off campus. This makes sense as, even if they are home on break on the Census Reference Date of April 1, they maintain a 'usual' residence at school. Still, even in a 'normal' census, many parents list their college student erroneously with the family at home.

35. However, nothing is usual in 2020. Many schools closed in early March, that is, before the Census Reference Day. Many students, if not most, returned to their parents' home. With colleges failing to re-open for on-site learning, many students are still living at home. Others, no doubt have established independent living arrangements, far from their former college address.

36. The Census Bureau decided to count college students at their college location, essentially where they were living in early March.[13] This modification assumed that the colleges' closure was temporary, and that the college would remain the students 'usual residence' on Census Day, April 1. However, many students left college residences before Census Day, never to return. Others perhaps hoped to return, but established other residences in the months to come. Based on my knowledge and experience, I conclude that these special rules, no longer focused on the residence as of Census Day, April 1, no doubt increased the confusion on the part of many respondents. Again, in my experience many parents' responses ignore the census 'fine print' and

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[13] Press Release, U.S. Census Bureau, "Census Bureau Statement on Modifying 2020 Census Operations to Make Sure College Students are Counted (March 15, 2020), https://www.census.gov/newsroom/press-releases/2020/modifying-2020-operations-for-counting-college-students.html

report their family as they conceive it, including their children living away at college. The fact that the student is now semi-permanently living at home can only make the situation worse.

37. Therefore, it seems highly probable that even more parents will include in their Census response, their children as residing permanently at home on April 1. With Non-response Follow-Up (NRFU) restarting five months after the students left college, there is the possibility of significantly increased duplication of these students and former students. These students will have been living away from college for months and, many still not allowed to return. The concept that their old college address remained their 'usual residence' will not be obvious to their parents. Again, in my experience in studying census coverage and residence rules, although the instructions to the respondents and census takers can be clear in the details, respondents often give the answer that most makes sense to them.

38. Besides the general impact on census accuracy, counting these college students twice will tend, obviously, to improperly advantage areas of sufficient resources to send large numbers of their children away to college. This will disadvantage areas comprised of the poor and less educated. Given the structural inequality of American society, this will tend to disadvantage racial and ethnic minorities.

39. Let me note that a large increase in duplicate enumerations included in the final census counts is not inevitable. The Census Bureau has the technology to identify many of these duplicate enumerations. What it will need is the time to study the problem, identify solutions and implement the corrections. It is not enough to simply run the computer programs and go onto the next step. Each census brings unique and unexpected changes to how people respond. Further, this is a new process not previously run on a large scale. It cannot be rushed—if rushed or abandoned, the quality of the census will suffer, particularly for racial and ethnic minorities.

People who move within the period of enumeration

40. Unless, as is done in some countries, the census is conducted all in one day, there will always be some people who move, either individually or as part of a family, during the period of enumeration. This has been shown in every U.S. census where it has been measured. However, there is reason to believe that this problem will be much greater in 2020.

41. For practical purposes, the census began collecting enumerations in early March, when people received a mailer and were asked to respond right away via the internet. Responses came in with a surge before April 1, and slowly levelled off to reach around 64 percent of the eligible households by mid-August.[14] The remaining 36 percent of the 'self-response' universe of housing units is to be contacted during August and September. This creates a five or six month period for people to self-respond at one address, move to a new address, and be contacted by a NRFU enumerator there. This increases the chances of a person or family being counted twice.

42. In addition to true movers, there is the problem of people with two or more residences. A (currently) unknown number of such people will be counted at both their winter and their summer residences. Even though census rules are clear as to which residence is the correct, people do not always follow all the rules. This includes both the respondents and some of the temporary staff hired as census takers.

43. The effect of the double counting of movers on the differential undercount is unclear, although the stretched out schedule in 2020 will increase the problem. The people who are double counted are those who initially respond and move into a housing unit that did not respond. Those who are missed are those who lived in the second unit on April 1. Since initial

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[14] U.S. Census Bureau, Response Rates, https://www.2020census.gov/en/response-rates.html (last visited Aug. 20, 2020).

self-response is differential by race and ethnicity, it is likely that this double counting will disproportionately result in minorities being missed. The effect of double counting of people with two or more residence will obviously advantage those with sufficient resources to maintain two residences. People who had the resources to flee the urban areas for their summer homes because of COVID-19 will make the problem worse.

Apartment mix-ups

44. The post-office will occasionally mis-deliver the census package. The family who receives that incorrect package sometimes fills it out and sends it back or otherwise self-responds, for example through the internet. This response is then associated with one Census ID number. Later, a NRFU census taker will visit the unit and, now, correctly enumerate the family, with a second Census ID number. This results in the family being counted twice. Also, occasionally, the NRFU census taker will go to the wrong unit and collect an interview from a family that has already responded. These are colloquially known as "Apartment Mix-Ups" as these have long been known to frequently occur in small apartment buildings with poor or no obvious identification of the individual units. These may also impact non-ID processing (discussed above).

45. The effect of these Apartment Mix-Ups on the differential undercount is unclear. Often the double-counted will have, approximately, the same racial and ethnic characteristics as the missed family. However, it is not always clear that there were two distinct units. It was from carefully studying this situation in the 2000 census that a larger problem was identified and corrected. Given the current schedule, it is doubtful that there is time for an adequate analysis to verify that the problem is under statistical control.

Other miscellaneous reasons

46. There are a number of other reasons that a person can be mis-counted. Historically, the numbers have been small and the impact on the differential undercount unclear. For example, children in a joint custody arrangement are often counted by both parents. Children born after Census Day should not be included but sometimes are.

47. Two historically small problems may be worsened by COVID-19. First, people, including students, living in a foreign country on April 1 are not to be included. (Federally affiliated personnel are included in the Apportionment Counts, but via a separate process based on administrative records for the relevant agency.) Because of COVID-19, many of these people returned to the United States after April 1. It is likely that some will be counted in NRFU. Second, people who were alive and residing in the U.S. on April 1 are, obviously, to be included. It is probable that many, if not most, of those who die between April 1 and NRFU will be missed. And with COVID-19 disproportionately impacting the Black, Latino, Asian, Pacific Islander and Native American populations, this impact of COVID-19 will differentially undercount racial and ethnic communities.

48. Again, these other miscellaneous reasons for erroneous inclusions may be small and either easily ignored or corrected. However, without sufficient time for the Census Bureau staff to analyze the results, no one will know in time to assess, and as necessary, correct for these errors.

V. COUNT IMPUTATIONS

49. At a basic (schematic) level, the main steps of a modern U.S. Census start with carefully preparing a list of dwelling units, known as the Master Address File or MAF. Each unit on the list is contacted by mail and asked to self-respond. In 2020, self-response could be via the internet, telephone or mail. Then census takers, known as enumerators, are sent to each non-

responding unit (NRFU). Among census takers' job is to determine whether the unit is real and that it was a dwelling unit on April 1, then to determine whether it is occupied and vacant on April 1, and ultimately, to determine the number of occupants, if occupied. Finally, the Census Bureau determines the characteristics (such as race and ethnicity) of the occupants. Given the late and rushed dates for 2020 NRFU and, in many communities, a strong mistrust of any government agent, this is sure to prove harder than ever in 2020.

50. Along the way, mistakes happen. As a result, there is usually a small number of units on the address list for which no response was gathered. At other times, missing or contradictory information occurs during the post data collection processing, for example by errors in scanning a paper questionnaire. In terms of determining the apportionment counts, three situations are especially important:

a. Undetermined Household Size: When Census Bureau records indicated that a housing unit was occupied, but did not show the number of residents. For example, the residents refused to cooperate and all the neighbors would say was that there were people living there.

b. Undetermined Occupancy: When Census Bureau records indicated that a housing unit existed, but not whether it was occupied or vacant. This might occur when the NRFU enumerator sees curtains on the windows but cannot find any respondent or proxy to say whether anyone still lives there.

c. Undetermined Status (referring to housing-unit status): When Census Bureau records demonstrated some evidence of the physical existence of a unit, but conflicting or insufficient information about whether the address represented a valid, non-duplicated housing unit. That is, has the garage been converted into a

possibly 'illegal' dwelling unit? Is it still a dwelling unit or now only a garage? Does a separate entrance into the basement indicate a dwelling unit or simply another way into the basement? The housing-unit status "nonexistent" includes more than simply a vacant lot. Other possibilities include buildings used only for business purposes and structures that were not (or not yet) fit for habitation.

51. Each of these situations is more likely to occur in older, poor neighborhoods with unconventional housing and distrustful residents, and so more likely to affect areas with large numbers of rural, immigrant, poor, and racial and ethnic minorities

52. The Census Bureau's plans called for "Supplementing response data with administrative records for those cases that had been identified as [Administrative Record] AdRec Occupied but for which a nonresponse follow-up attempt was unsuccessful and no subsequent self-response was received."[15] Accurately linking census returns with administrative records is a multi-step process, and one new to this census. Linkage must be done in a way to fully protect the protected personal information from the administrative records. It is also dependent on the quality of the identifying information (e.g. name and date of birth) collected in the census. Rushing this step could drive up the number of returns requiring count imputations. That is, if a useable response is not collected in the field, gaining the information from administrative records is the only alternative to Count Imputations. However, a rushed administrative records ("AdRec") supplementation has the potential of including the well-off, stable and connected population, and it could potentially make the differential undercount worse because quality AdRecs are disproportionately unavailable for Latinos, Asian Americans, and immigrants.

53. During Count Imputation a value is statistically assigned to each of these records:

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[15] 2020 CRO Plan, at 32.

a. Status Imputation: if status is missing, a status of valid or deleted is imputed.

b. Occupancy Imputation: if the process has determined or imputed to be a valid record and occupancy is missing, a value of occupied or vacant in imputed.

c. Household size imputation: if the process has determined or imputed the record to be valid and occupied, but household size is missing, the number of Census Day residents is imputed.

54. Count Imputation occurs after the response file is generated, merging the different modes of collection (internet, telephone, paper, NRFU) and the responses are unduplicated through PSA or other processes. If, as mentioned above, administrative records are available and used to account for missing response count data, this must also be done before Count Imputation. Units with missing count data most likely occur in areas with high levels of NRFU and with older, less "conventional" dwelling units. Thus, Count Imputation is vital for minimizing, if not avoiding, a differential undercount. In fact the characteristics (such as race and ethnicity) of some respondents will also be imputed, but this is not relevant to the apportionment counts, which only include the number of people by state and not their characteristics.

55. The 1960 Census was the first to use computers to produce the apportionment count. Not surprisingly, it was also the first census to use count imputation to resolve occasional discrepancies between expected and actual numbers of computer records. Count Imputations have been used ever since. The percent of Count Imputations has fluctuated by decade but has tended to be less than 0.5 percent. Still, Count Imputations have been considered an integral part of census post data collection processing. The Census Bureau has long argued that not statistically imputing a number of residents is equivalent to imputing a housing unit size of zero. The legality and constitutionality of count imputations was reviewed and validated by the

Supreme Court in *Utah v. Evans* (2002).

56. Although no one will know until the Decennial Response File (DRF), that is the merged and unduplicated file of responses including housing units and GQ, is prepared, it is probable that the need for Count Imputations will be higher in 2020 than in earlier censuses. This is because NRFU is taking place months after the Census Reference Date of April 1, 2020.[16]

57. The Census Bureau and its field staff face an enormous if not impossible task to meet their goal of counting everyone "once, only once, and in the right place," that is, the usual residence as of April 1, when visiting a housing unit in August and September. A "garage apartment" that existed in April, may now be just a garage. A separate "Mother-in-Law" apartment may now be just a part of the house. A unit may be vacant now, but was it vacant in April? If someone is living in the unit in September, did they live there in April? If not, who did? If respondents and neighbors are not knowledgeable or not cooperative, the NRFU enumerator can be faced with the choice between simply guessing or not reporting a status. Either way, the accuracy of the census is compromised. Therefore it is necessary to not just conduct Count Imputations but to take the time to review the results.

58. The Census Bureau has announced its goal of "[a]chieving an acceptable level of accuracy and completeness, with a goal of resolving at least 99% of Housing Units in every state, comparable with previous censuses."[17] Since the enumeration of Black, Latino, Asian American and other minority communities is differentially pushed to this delayed NRFU and because cooperation by residents and neighbors can be difficult in these situations (for example, because

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[16] Albert E. Fontenot Jr. & Timothy P. Olson, *Review of 2020 Operational Plan Schedule*, U.S. Census Bureau (Aug. 17, 2020) https://www.census.gov/content/dam/Census/newsroom/press-kits/2020/2020-operational-plan-schedule-review.pdf.

[17] *Id.*

of government distrust and the pandemic), these communities will be differentially affected. Given the difficulty of the task, based on my experience and knowledge, it is hard to see how the Census Bureau will meet this goal.

59. Count Imputations will likely mainly impact areas where the population is poor, rural, non-English speaking or of racial and ethnic minorities. This is because Count Imputations most often arise from problems in NRFU. Areas with a higher NRFU workload are at greater risk of a relatively high number of cases requiring Count Imputations. Also, the census takers will have greater difficulty in resolving a case in areas where distrust of government is high. Given the controversies over the "Citizenship Question" and the Presidential Memorandum to exclude "Illegal Aliens," distrust of the Census may be heightened in areas with a large Latino and Asian American population.[18] This could easily lead to a much higher number of unresolved cases requiring Count Imputations, with a quite skewed distribution disfavoring areas with poor, rural, and racial and ethnic minority populations.

60. The shortened time for post data collection processing will likely mean that Count Imputations cannot be carefully and accurately done or that there may be pressure to skip this step in order to meet the December 31st deadline.

61. If Count Imputations is not done properly, this result will distort both the Apportionment Counts and the statistics needed for redistricting (PL-94-171 files).

VI. COUNT REVIEW

62. Another important part of post data collection processing is the Count Review Operation (CRO). In Count Review, the preliminary results of the census are compared with outside

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

information to detect anomalies, and if possible correct any large errors that are identified.

63. Post data collection Count Review has two components:

a. In the Census Count and File Review (CCFR), previously known simply as Count Review, Census Bureau demographers review the files for "systematic or large anomalies."[19] This review includes the DRF 1 and 2, Census Unedited File (CUF), and the Census Edited File (CEF). These files are compared against results from the 2000 Census, the 2010 Census, the recent results from the Population Estimates Program and recent results from the American Community Survey.[20]

b. Additionally, Census Bureau demographers were to work with State Demographers to review the results from the Group Quarters Enumeration. The Census Bureau has a long-standing working relationship with state demographers selected by their respective governors. These State Demographers bring an important and unique level of local knowledge to the census. This post data collection review of GQ addresses was designed to identify those GQs that are still potentially missing from the MAF or allocated to the wrong census block, and this was to be done in time for the errors to be corrected.[21]

64. Count Review is an important step in ensuring census accuracy and completeness. As the 2010 Assessment report stated: "The program did improve the accuracy of the census by identifying 73,716 missing housing units and having them counted in the census. It also identified 310 missing group quarters and had them counted in the census. Additionally, 173

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[19] 2020 Census Operational Plan v. 4.0., at 145.

[20] 2020 CRO Plan, at 11.

[21] 2020 Census Operational Plan v. 4.0., at 145.

group quarters misallocated to the wrong collection block were identified and updated."[22] The current plan is for NRFU to run through September 30 compared to the original schedule of ending on July 31 and the first revised schedule proposed by the Census Bureau of October 31. The current schedule has GQ enumeration lasting until September 3 compared to the original date of June 5.

65. The Census Bureau has only a limited number of trained demographers ready to carry out this vital quality check. Similarly, there are only a limited number of State Demographers, who certainly have other commitments as well. It is unclear that GQ Count Review can even be run due to the truncated schedule.

66. Count Review is not a process where one can double the resources and complete in half the time, nor is it a step that can be safely skipped.

VII. OTHER RISKS

67. Any changes to the planned work-flow to postpone steps bring increased risk. Any change to the tested processing flow, such as postponement, curtailment, or abandonment, in order to save time increases risk of a 'failed' census. As mentioned above, the Census Bureau's plans to 'streamline' the process increases the risk not only of errors along the way, but also, by implementing an untested system, catastrophic failure. "There is no such thing as a small software change."

68. Finally, the Census Bureau has traditionally provided not just the population totals but the allocation of Congressional seats to the states. This allocation is done by a complex algorithm known as the "Method of Equal Proportions." Since only whole seats can be allocated, this is

[22] U.S. Census Bureau, 2010 Census Planning Memoranda Series No. 203, Memorandum from Burton Reist on 2010 Census Count Review Program Assessment Report (June 26, 2012) https://www.census.gov/content/dam/Census/library/publications/2012/dec/2010_cpex_203.pdf.

known as an integer problem. As such, it must be carefully programmed and the program is extensively tested. Even small 'rounding' errors can mis-allocate a Congressional seat. The Census Bureau takes great pride and extreme care in this responsibility. As long as the Census Bureau is able to carry out the allocation of Congressional seats using rigorously-tested programs and long established quality checks, there is no reason to believe that it will not be properly done.

69. In this Declaration, I have described the risks of a greatly increased differential undercount and an inaccurate census that arise from the compressed time schedule being forced upon the Census Bureau professionals. These risks are not speculative, but real. Not all risks will result in a failure, but small failures can add up and cascade into a major crisis. If failures occur, the nation will suffer for the decade to come. The Census Bureau staff has worked a decade or more on its original plan, only to see it disrupted by COVID-19 and other developments. The Census Bureau's professional staff has clearly stated that the current schedule is unworkable. It does not take into account the extra challenges caused by COVID-19 and the current climate of distrust of government. The Census Bureau staff have been given three months where they clearly stated that they need six. The consequences for the nation of a badly flawed census are enormous. The consequences for racial and ethnic minorities are graver still. Given sufficient time and independence, the Census Bureau professional staff have a long history of working to produce accurate statistics and to minimize the differential undercount. Unfortunately, based on my knowledge and expertise, the truncated schedule does not provide sufficient time.

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

_____

Howard Hogan

Executed on August _27___, 2020 at Owings, Maryland.

APPENDIX 1

Howard Hogan

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Owings MD 20736
howard.hogan@gmail.com

PROFESSIONAL EXPERIENCE

U.S.CENSUS BUREAU, Washington, DC **1979 – 2018**

Chief Demographer 2011 - 2018

The Chief Demographer served as the Census Bureau's senior scientist on technical and statistical demography. He served as principal consultant to Bureau staff on methodological problems, and as a liaison to academic and other outside demographers. His research included the measurement of population change using the population estimates and the American Community Survey, the classification of race, and the measurement of coverage error. Served as mentor to junior staff.

Associate Director for Demographic Programs 2005 - 2011

As Associate Director, Dr. Hogan led the U.S. Census Bureau's programs that provide demographic, social and economic data about the nation's population and households and leads the statistical programs that produce population projections and estimates. He is responsible for the International Programs Center, the Population Division, the Housing and Household Economic Statistics Division, the Demographic Statistical Methods Division and the Data Integration Division. Under his leadership, important advances were achieved in the small area estimation of poverty, in the production of population estimates, and in the use of administrative records for statistical estimation. As the U.S. Government spokesman for 300 million population event, he dealt effectively with television, radio and print media.

Chief, Economic Statistical Methods and Programming Division 2002 - 2005

Dr. Hogan managed the development of software for the Census Bureau's economic programs including monthly indicator surveys, annual surveys, and the economic census, successfully moved towards adopting modern software development processes. He provided leadership to all mathematical statisticians working in the Economic Directorate. He led the international group that organized the Third International Conference on Establishment Surveys.

Chief, Decennial Statistical Studies Division 1998 - 2001

Dr. Hogan led the group of mathematical statisticians and programmers who are responsible for the statistical design of the Decennial Census, including statistical quality control design, coverage improvement activities, software quality control, content sampling, undercount measurement and census adjustment. He assisted three U.S. Solicitors General, and provided testimony cited in Supreme Court Case: *Utah v. Evans*. He successfully dealt with national print media on sensitive statistical issues, concerning Census methodology.

Assistant Division Chief, Research and Methodology, Business Division 1993 - 1998

He developed a program of research to apply statistical principles and methods to the Census Bureau's surveys of retail trade, wholesale trade, service industries and transportation. He developed methods to eliminate the area sample from the business establishment frame, saving millions annually. He led his team to develop new estimation methods for transportation survey, to revised the sample design for retail and wholesale surveys, and to improve sampling process, reducing the needed time by one year. Additionally, he developed exploratory and graphical methods to improve editing.

Chief, Undercount Research Staff, Statistical Research Division 1983 - 1993

He led the Census Bureau's effort to research, develop and implement methods to correct the 1990 Census for undercount. This multiyear research program included developing a research plan to address all issues concerning coverage measurement and adjustment for the 1990 Census. He designing and managing a large and complex survey, the 1990 Post-Enumeration Survey, including questionnaire design, processing plan, matching process design, imputation, post-stratification plan, estimation design, and census adjustment. He developed innovative methods to measure the uncertainty in demographic analysis estimates of population. He was called on to consult for the Swedish, UK and India statistical offices and to give legal depositions in Federal litigation.

Principal Researcher, Statistical Research Division 1979 - 1983
He developed alternative methods to measure the number of people missed in censuses and surveys, and conducted three statistical projects including an administrative records match and a longitudinal tracing study. He evaluated the population statistics system in Mauritius. He advised the Government of Morocco on census evaluation methods, designed a coverage measurement survey, and aided with the testing and development, with all consulting work was conducted in French.

ACADEMIC EXPERIENCE

GEORGE WASHINGTON UNIVERSITY, Washington, DC 1998 - 2015
Adjunct Professor, Department of Statistics
He teaches survey sampling.

WASHINGTON STATISTICAL SOCIETY, Washington, DC 1997
Instructor
He developed and twice taught a well-attended two day course on "Exploratory Data Analysis Using S-Plus."

GRADUATE SCHOOL, USDA, Washington, DC 1984 - 1996
Instructor
He taught courses on data analysis and on demography.

UNIVERSITY OF NORTH CAROLINA, Chapel Hill, North Carolina 1978 -1979
Visiting Scholar, Department of Biostatistics
He evaluated a family planning research project in Bangladesh on behalf of the Agency for International Development. He collaborated on statistical models in demography.

MACQUARIE UNIVERSITY, North Ryde, NSW, Australia 1978
Visiting Research Associate, Department of Statistics,
He conducted research into standard mortality tables.

UNIVERSITY OF DAR ES SALAAM, Tanzania, East Africa 1976 - 1978
Head, Demographic Unit
He taught courses in demography. He wrote and published articles on the demography of Tanzania. He was demographic advisor to the 1978 Census of Population and Housing.

EDUCATION

Pomona College	BA: Economics/Mathematics
Stockholm University	Certificate: Economics
The Woodrow Wilson School	MPA: Public Affairs
Princeton University	MA: Economics
Princeton University	Ph.D.: Economics (Demography) Dissertation: *Age Patterns of Infant Mortality*

PROFESSIONAL RECOGNITION

Jeanne E. Griffith Mentoring Award (2018): The award recognizes the mentoring of junior staff in the statistical community and is awarded annually based on advising, counseling, and motivating junior staff in their career to development, and serving as a role model through expertise, information and insight. The award is supported by the American Statistical Association Government Statistics and Social Statistics Sections, NORC, The Council of Professional Associations on Federal Statistics, Washington Statistical Society, and the Interagency Council on Statistical Policy.

Chair, Committee on Professional Ethics of the American Statistical Association (2013-2016). Awarded special recognition by the ASA Board for his leadership in the first revision in two decades of the Ethical Guidelines for the Practice of Statistics

Fellow of the American Statistical Association (2001): Citation "For outstanding contributions to census methodology, especially to the understanding of coverage and accuracy measurement critical to the Decennial Census; for statistical communication."

Chair, Survey Research Methods Section, American Statistical Association (2010).

Member, Committee on Populations Statistics, Population Association of America (2006 - 2009)

Country Representative, International Association of Survey Statisticians (2006 – now)

Chair of the Organizing Committee, International Conference on Establishment Surveys (2005 - 2007)

Program Chair, Survey Research Methods Section, American Statistical Association (2003)

Secretary, Julius Shiskin Award Committee (1993 - 2002)

Chairman of Nominating Committee, International Association of Survey Statisticians, (1994)

Representative at Large, Washington Statistical Society, (1993 - 1996)

LANGUAGES

French: He has consulted on technical statistical matters in French.

Swedish: He can read articles and engage in conversation.

Portuguese: He can engage in polite conversation.

Swahili: He is able to ask directions, order food and other basic tasks.

SELECTED PAPERS AND PUBLICATIONS

2019 "Babies no Longer: Projecting the 100+ Population", in Developments in Demography in the 21st Century, J. Singelmann, D. L. Poston, Jr (eds.), The Springer Series on Demographic Methods and Population, Analysis 48, https://doi.org/10.1007/978-3-030-26492-5_7 (with Sandra Leigh Johnson)

2017 "Reporting of Race Among Hispanics: Analysis of ACS Data," in *The Frontiers of Applied Demography*, D.A. Swanson (Ed.)

2017 "The coverage of young children in demographic surveys", Statistical Journal of the IAOS 33 (2017) 321–333 321, IOS Press, DOI 10.3233/SJI-170376 (with Eric B. Jensen)

2015 "Projecting Diversity: The Methods, Results, Assumptions and Limitations of the U.S. Census Bureau's Population Projections," *West Virginia Law Review*, Vol 117, (with J. Ortman and S.L. Colby) (https://wvlawreview.wvu.edu/files/d/cf719326-445a-40d7-b1d1-ce7cdd32ca13/hogan-print.pdf)

2014 "Assessing Accuracy in Postcensal Estimates: Statistical Properties of Different Measures," Emerging Techniques in Applied Demography, pp 119-136, (M. Hoque and L.B. Porter, Eds), (with Mary Mulry)

2014 "The Statistical Atlas of the 1870 Census and Other Early Census Visualization," Proceedings of the 2014 Joint Statistical Meetings.

2014, "An Aging Nation: The Older Population in the United States: Population Estimates and Projections," Current Population Reports, Issued May 2014, P25-1140 (with J.M.Ortman and V.A. Velkoff). This paper has been cited over 1,000 times.

2013 "Quality and the 2010 Census", Population Research Policy Review, DOI 10.1007/s11113-013-9278-5 (with Patrick J. Cantwell, Jason Devine, Vincent T. Mule Jr and Victoria Velkoff)

2011 "Do Current Race and Ethnicity Concepts Reflect a Changing America?" *Journal of Race and Social Problems*, forthcoming, (With Karen Humes).

2009 "Measurement of Race and Ethnicity in a Changing, Multicultural America," *Journal of Race and Social Problems*, DOI 10.1007/S12552-009-9011-5 (With Karen Humes).

2008 "Measuring Population Change Using the American Community Survey," *Applied Demography in the 21st Century*," S. Murdock and D. Swanson (eds), The Netherlands: Springer Publications, 13-30.

2004 "The Use of Statistical Methods in the U.S. Census" *The American Statistician*, August 2004, Vol 58, No.3, pp 1-10 (with Patrick Cantwell and Kathleen Styles).

2003 "Software Process Improvement Efforts at the US Census Bureau, Experience of the Economic Directorate," *Survey and Statistical Computing IV: The Impact of Technology on the Survey Process*, edited by R. Banks *et al,* 2003 Association for Survey Computing (with Ellen Soper).

2003 "The Accuracy and Coverage Evaluation: Theory and Design," *Survey Methodology*, December 2003, vol. 29 no. 02.

2000 "The Accuracy and Coverage Evaluation," in *Encyclopedia of the U.S. Census*, Margo Anderson, Ed., CQ Press, Washington, DC.

1999 "Census 2000: Evolution of the Revised Plan," *Chance*, Vol 12, No.4, (with Tommy Wright).

1995 "How Exploratory Data Analysis is Improving the Way We Collect Business Statistics," *Proceedings of the Section on Survey* Research *Methods*, American Statistical Association, 102-107.

1995 "Examining the Revisions in Monthly Trade Surveys Under a Rotating Panel Design," *Proceedings of the Section on Survey Research Methods*, American Statistical Association, 567-572 (with P. Cantwell, C. Caldwell, and C. Konschnik).

1993 "The 1990 Post-Enumeration Survey: Operations and Results," *The Journal of the American Statistical Association*, 88:423, 1047-1060.

1992 "The 1990 Post-Enumeration Survey: An Overview," *The American Statistician*, 46:4, 261-269.

1988 "Measuring Accuracy in Post-Enumeration Surveys," Survey Methodology, 14: 1, 99-116 (with Kirk Wolter).

1981 "Considerations Sur I'Evaluation du Recensement General de la Population et de l'Habitat du Maroc de 1982," *Proceedings of the 43rd Session of the International Statistical Institute*, Vol. XLIX, 1600-1612, Invited Paper (with A. El ghazali).

1977 *The Demography of Tanzania*, Population Council, New York and BRALUP, Dar es Salaam, (with R. Henin and D. Ewbank).

1976 *Age Patterns of Infant Mortality*, Xerox University Microfilms.

APPENDIX 2

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EXHIBIT A

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

LA UNIÓN DEL PUEBLO ENTERO, PROMISE ARIZONA, LYDIA CAMARILLO, JUANITA VALDEZ-COX, ROGENE GEE CALVERT; ZEENAT NISHA HASAN; CANDY L. GUTIERREZ; EUGENE WU, DEBORAH CHEN, ORGANIZATION OF CHINESE AMERICANS-GREATER HOUSTON, DAVID CHIU, PHILLIP TING, ALBERT MURATSUCHI, KENNY CHU, YICHENG WU, CYNTHIA CHOI, VINCENT PAN, JOHN PARK, JEFFREY D. HSI, JACINTA TITIALII ABBOTT, VENGHAN TANG, RAJ MUKHERJI, SHARON TOMIKO SANTOS, MIA GREGERSON, JENNIFER REYES, RAYMOND SANCHEZ, MARICELA LECHUGA, MARTY RAMIREZ, FELIPE CRUZ, ALEXANDRA ROSY PALOMO-PUJOL, MARCO ABARCA, COALITION FOR HUMANE IMMIGRANT RIGHTS OF LOS ANGELES, RALPH CARMONA, and JAVIER GASTON-GREENBERG,

Plaintiffs,

v.

DONALD J. TRUMP, sued in his official capacity as President of the United States,

WILBUR L. ROSS, sued in his official capacity as U.S. Secretary of Commerce,

STEVEN DILLINGHAM, sued in his official capacity as Director of the U.S. Census Bureau,

U.S. DEPARTMENT OF COMMERCE, and

U.S. CENSUS BUREAU,

Defendants.

Civil Action No. 8:19-CV-02710-PX

SWORN EXPERT DECLARATION OF JOHN THOMPSON

I. Introduction

1. On April 13, 2020 the Secretary of Commerce, Wilbur Ross, and the Director of the Census Bureau, Dr. Steven Dillingham, issued a statement on 2020 Census operational adjustments due to the COVID-19 pandemic. This statement concluded that "[u]nder this plan, the Census Bureau would extend the window for field data collection and self-response to October 31, 2020, which will allow for apportionment counts to be delivered to the President by April 30, 2021, and redistricting data to be delivered to the states no later than July 31, 2021."[1]

2. On August 3, 2020 the Director of the Census Bureau, Dr. Steven Dillingham, issued a statement announcing that the Census Bureau would "accelerate the completion of data collection and apportionment counts by our statutory deadline of December 31, 2020, as required by law and directed by the Secretary of Commerce."[2] Based on my experience and expertise, I am extremely concerned that this August 3 decision will adversely affect the quality and accuracy of the 2020 Census.

3. The 2020 Census results will be of great importance to our nation. The Constitution requires that the census be used for reapportioning the House of Representatives and the Electoral College. The 2020 Census will also be used for numerous other functions to support good policymaking and economic growth including: redrawing congressional and state legislative voting districts; allocating over $1.5 trillion of federal funds annually; informing

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[1] U.S. Department of Commerce Secretary Wilbur Ross and U.S. Census Bureau Director Steven Dillingham Statement on 2020 Census Operational Adjustments Due to COVID-19, April 13, 2020.

[2] Statement from U.S. Census Bureau Director Steven Dillingham: Delivering a Complete and Accurate 2020 Census Count, August 3, 2017.

sound policy development; providing critical information for state, local and tribal government planning; and supplying important data to large and small businesses to generate growth and job creation. Inaccuracies or errors in the 2020 Census will have grave consequences on these uses for the subsequent 10-year period.

4. I have carefully reviewed the 2020 Census Operational Plans as well as the documentation that the Census Bureau has issued describing the actions it is taking in response to the COVID-19 pandemic and its recently issued documentation regarding its plans to conclude data collection by September 30, 2020. Based on my experience and expertise, I am concerned that reducing the time for data collection at this late date will have serious consequences for the 2020 Census, because: (1) the time constraints will force the Census Bureau to modify the plans for their data collection operations; (2) these modifications will significantly increase the risk of larger total and differential undercounts for the hard-to-count populations, as well as increase the levels of erroneous enumerations and reduce the overall quality of this census, relative to previous censuses; (3) the Census Bureau's new push to adhere to a truncated schedule reduces not only data collection time frames, but drastically reduces time frames for necessary post data collection processes that ensure an accurate and complete count; and (4) the Census Bureau is not providing timely measures that will allow stakeholders to assess whether the 2020 Census is succeeding in carrying out a fair and accurate enumeration under the limitations imposed by the new push to adhere to a truncated schedule.

II. Qualifications

5. Below I briefly describe specific aspects of my qualifications and work experience that establish my credentials as an accomplished statistician and an expert on the Census Bureau and Decennial Census. I have also attached a copy of my CV to this declaration.

6. I have served both as the Director of the U.S. Census Bureau and as the career senior executive in charge of management of all aspects of the 2000 Decennial Census. I am also a distinguished professional in the areas of statistics and survey design. I have a deep understanding of the processes that are necessary to achieve a complete and highly accurate Decennial Census.

7. I served as the Director of the U.S. Census Bureau from August 2013 to June 2017. Prior to becoming Director, I worked at the Census Bureau for 27 years (from 1975 to 2002). I started my career as a mathematical statistician in 1975. I spent the majority of my employment at the Census Bureau focused on the Decennial Census and ultimately served as the Associate Director for the 2000 Decennial Census, with management responsibility for all phases of the 2000 Decennial Census.

8. The Census Bureau is the country's largest Statistical Agency and produces a wide range of demographic and economic statistics including: the Decennial Census; the American Community Survey; the Current Population Survey; the National Crime Victimization Survey; the National Health Interview Survey; the Economic Census; 13 principal key economic indicators released on a monthly or quarterly basis; and about 100 additional surveys. The Director of the Census Bureau is appointed by the President and confirmed by the Senate.

9. My responsibilities as Director of the Census Bureau included overseeing the research and testing that produced the design for the 2020 Census. During my tenure, the original operational plan for conducting the 2020 Census was released, as was an updated version 2.0 of this plan.[3] In addition, major field tests were conducted in 2013, 2014, 2015 and

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[3] U.S. Census Bureau, *2020 Census Operational Plan, A New Design for the 21st Century,* version 2.0 issued September 2016.

2016. The results of these tests informed the final 2020 Census Design that was tested in the 2018 end-to-end test. This was the final large-scale test in advance of the 2020 Census. It combined the results of all previous tests and could be viewed as a dress rehearsal for the 2020 Census.

10. Prior to being appointed Director of the Census Bureau, I was at National Opinion Research Center (NORC) at the University of Chicago, serving as Executive Vice President from 2002 to 2008 and President from 2008 to 2013. NORC is an objective, non-partisan independent research institution that delivers reliable data and rigorous analysis to guide critical programmatic, business, and policy decisions. Clients include government, corporate, and nonprofit organizations around the world who partner with NORC to transform increasingly complex information into useful knowledge. NORC conducts research in five main areas: Economics, Markets, and the Workforce; Education, Training, and Learning; Global Development; Health and Well-Being; and Society, Media, and Public Affairs. NORC services include designing and conducting surveys (telephone, internet, and in-person), as well as analytical studies.

11. From July 2017 to August 2018, I served as the Executive Director of the Council of Professional Associations on Federal Statistics (COPAFS). COPAFS is an organization with a membership consisting of professional associations and research organizations that depend on and support high quality federal statistics. The Executive Director of COPAFS must have a deep understanding of the Federal Statistical System and the wide range of data products that are produced. Serving as the Executive Director of COPAFS reinforced my appreciation of the importance of high-quality Decennial Census data to the entire Federal Statistical System.

12. In addition to the work experience described above, I am an elected Fellow of the American Statistical Association and was selected to serve on the National Academies of Science, Engineering, and Medicine Committee on National Statistics.

III. Concerns

A. Background on the Decennial Census

13. The uses of the data generated by the Decennial Census are extremely important for all components of our democracy and economy, including: the constitutionally required reapportionment of the House of Representatives; redrawing congressional and state legislative voting districts; allocating over $1.5 trillion in federal funds annually; supporting evidence-based policy making by state, local and tribal governments; and allowing informed decisions by large and small businesses to generate economic growth and job creation. The Census results are also carried forward throughout the decade in the form of population estimates[4] that are used for a number of purposes including ensuring that most public and private household surveys are fully representative of all population groups.[5] Any undercounts in the Census would be carried forward in the population estimates and reflected in the surveys. Inaccuracies or undercounts in Decennial Census data will result in under-representation of the affected population groups not just in the immediate term, but for ten subsequent years until the next Decennial Census results are available.

14. As I discussed above, the Census Bureau spent much of this decade conducting testing and research in order to develop the plans and procedures to be used in the 2020 Census.

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[4] U.S. Census Bureau, https://www.census.gov/programs-surveys/popest.html.

[5] There are many important surveys that provide information that is goes beyond the uses of the Decennial Census that I described above. For example, the Current Population Survey provides measures of unemployment, income and poverty; and the Health Interview Survey tracks health status, health care access, and progress in achieving national health objectives.

The plans for the 2020 Census include a number of operations and programs that are important to achieve a fair and accurate enumeration. I will briefly describe four of these here for background purposes and then discuss the impact of the COVID-19 pandemic and other issues relating to a fair and accurate enumeration in subsequent portions of this declaration. The four operations or programs are as follows:

- Developing a comprehensive address list – The Census Bureau worked this decade to continuously update the address list that supported the 2010 Census. Input is continuously received from sources such as the United States Postal Service and local governments. The Census Bureau also conducted an "address canvassing" operation that concluded in 2019. Address canvassing used field or office workers to find and include additional addresses that may not have been provided from other input sources. The address list is critical because it serves as the control file for most 2020 Census operations including data collection.
- Self-response – Most housing units on the address list received an invitiation to self-respond to the 2020 Census in March 2020. Responses could be submitted by Internet, completing and mailing back a paper questionnaire, or over the telephone.
- Nonresponse Followup – Not all households provide self-responses, requiring the Census Bureau to conduct an operation to collect information from these self-nonresponding housing units. The Census Bureau refers to this operation as "Nonresponse Followup" or NRFU. NRFU requires recruiting and hiring a large staff of enumerators to visit the nonresponding housing units and obtain a response and is the most expensive and labor-intensive operation that the 2020 Census will carry out. As of August 16, the national self-response rate was 63.8 percent, which meant that over 36 percent—or over 50 million housing units and their

occupants must still be enumerated.[6] Prior to the COVID-19 pandemic, the Census Bureau estimated that it would need to deploy at least 260,000 enumerators to conduct NRFU for a workload of this size.[7] As I will discuss below, the hard-to-count populations are disproportionately represented in the nonresponse universe. Hard-to-count populations include young children, minorities, immigrants, low income renters, limited English speakers, residents of hard to reach rural areas; these include Asians and Latinos, and American Indian Reservations or Alaska Native Villages. A failure to obtain a complete enumeration in NRFU would result in disproportionate undercounts of these populations. Therefore, I view a successful NRFU as one of the most important census operations to ensuring a fair and accurate count.

- Developing and deploying an integrated communications and partnership program – The Census Bureau has conducted extensive research to develop a communications program, using paid adverting and digital media, coupled with a local partnership program to encourage self-response and participation in the 2020 Census. The goal of the program is to get out messages on a local level that the 2020 Census is important to local communities, and that respondent information is completely confidential. The Census Bureau will not share identifiable information for any person to any outside entity, including law and immigration enforcement. The Census Bureau was very successful in recruiting over 300,000 national and local partners for the 2020 Census. Many of these partners planned to hold local events to promote 2020 Census self-response.

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[6] U.S. Census Bureau 2020 Census daily response rate tracker, https://2020census.gov/en/response-rates.html (last accessed August 16, 2020).

[7] U.S. Census Bureau, *2020 Census Detailed Operational Plan for: 18. Nonresponse Followup Operation (NRFU),* Version 2.0 Final, July 15, 2019.

B. The requirement to end data collection by the end of September 2020 will force the Census Bureau to modify data collection procedures, resulting in a less complete enumeration compared to previous censuses.

15. The COVID-19 pandemic forced the delay of key 2020 Census operations out of concerns for the safety of both census workers and the general public. Of particular concern was the delay of the NRFU.

16. The NRFU operation had been scheduled to start on May 15, 2020 and run through July 31, 2020. However, as a result of the COVID-19 pandemic, the Census Bureau rescheduled it to start in most of the United States on August 11, 2020 and initially planned to complete it by October 31, 2020.

17. In order to accommodate this delay, the Census Bureau had requested, through the Department of Commerce, a four-month extension of the deadlines[8] to deliver Apportionment and redistricting data. For apportionment, the requested extension was from the current deadline of December 31, 2020 to April 30, 2021. For redistricting, the requested extension was from March 31, 2021 to July 31, 2021.

18. However, the Census Bureau has now announced that the deadlines will not be extended, and that NRFU will now be completed by September 30, 2020.[9] The Census Bureau will have to take steps to complete NRFU more rapidly than it planned, given that it has already lost over a third of the schedule that the career staff had developed under the original plan.

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[8] Title 13, US Code, Section 141, (b) and (c).

[9] Statement from U.S. Census Bureau Director Steven Dillingham: Delivering a Complete and Accurate 2020 Census Count, https://www.census.gov/newsroom/press-releases/2020/delivering-complete-accurate-count.html, August 3, 2020.

19. The Census Bureau recently released a review of the 2020 Census Operational Plan Schedule[10] that describes actions being taken to complete all data collection, including NRFU, by September 30, 2020. According to the review, these actions include:

- Starting NRFU in all areas by August 9, 2020
- Sending enumerators to make up to six visits to attempt to obtain an interview with occupied housing units
- Offering bonuses to NRFU enumerators to maximize staff production hours
- Making efforts at "Keeping Staff Levels Up"
- Implementing outbound telephone calling to supplement in-person contact attempts as a means of enumerating hard-to-count populations

20. The review document had a serious lack of detail regarding how NRFU would be actually implemented under the revised and shortened time schedule. The Census Bureau had prepared detailed information regarding how it was going to conduct NRFU under the original schedule and time frame. For example, the Census Bureau described three NRFU phases – Phase 1, Phase 2, and Closeout for the 2020 Census.[11] For each phase, criteria and dates were provided that described how each would start. There is no such discussion included in the review of the Operational Plan, nor is there even a mention as to whether there will still be three phases.

21. I am concerned that taking the actions described in the review of the Operational Plan will not effectively address the constraints imposed by the revised timelines for completing

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[10] U.S. Census Bureau, *Review of 2020 Census Operational Plan Schedule,* https://www.census.gov/content/dam/Census/newsroom/press-kits/2020/2020-operational-plan-schedule-review.pdf, August 17, 2020.

[11] U.S. Census Bureau, *2020 Census Detailed Operational Plan for: 18. Nonresponse Followup Operation (NRFU),* Version 2.0 Final, July 15, 2019.

NRFU. My concerns are informed by my experiences in managing all aspects of the 2000 Census and by directing the research and development necessary to plan the 2020 Census. My concerns are as follows:

- The staffing levels will not be adequate to complete NRFU without accepting lower quality enumerations and incompletely enumerating the traditionally hard-to-count populations. The Census Bureau has lost over 30 percent of the time that had been planned for NRFU, and my experience and knowledge lead me to conclude that the Census Bureau will need significantly more staff to complete this critical undertaking. However, the plan being put forth to end data collection by September 30 is to maintain staffing, at levels determined before the advent of the COVID-19 pandemic. The Department of Commerce Office of the Inspector (OIG) has recently reviewed the progress of staffing for the NRFU and stated:

  > "Bureau management have stated that their target number of enumerators, needed by the end of August 2020 to complete NRFU production, is just above 300,000. As of August 17, 2020, the Bureau has just under 220,000 enumerators trained and ready to start working on the NRFU operation that is underway—this represents approximately 73 percent of the estimated number of enumerators needed to complete NRFU production. However, 132 out of 248 total Area Census Office (ACOs) are less than 75 percent toward reaching their estimated goals; of those 132 ACOs at less than 75 percent, 37 are less than 50 percent toward reaching their goal."[12]

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[12] Zabarsky, Mark H, Principal Assistant Inspector General for Audit and Evaluation, ***2020 Census Alert****: The Census Bureau Faces Challenges in Accelerating Hiring and Minimizing Attrition Rates for Abbreviated 2020 Census Field Operations Final Memorandum No. OIG-20-041-M.,* Memorandum for Steven D. Dillingham, Director, U.S.. Census Bureau, August 18, 2020.

To explain briefly, the Census Bureau has established Area Census Offices (ACO) to carry out the 2020 Census field operations, including NRFU. There are 248 ACOs, each of which has a significant portion of the NRFU workload to carry out. On average, this would be about 226,000 housing units from which a self-response was not received. It is very troubling that not only is the Census Bureau falling behind in its plans for staffing NRFU, but also the hiring shortfalls for NRFU staff are not uniform. Approximately 15 percent of the NRFU workload is in areas where the Census Bureau is falling 50 percent short of hiring goals. While the Census Bureau stated in the Review of the Operational Plan Schedule that it was making efforts at "keeping staff levels up," it is falling well behind in reaching the staffing levels it had determined were necessary for NRFU. In addition the NRFU staffing levels cited by the OIG are lower than the Census Bureau projected requirements *prior* to the COVID-19 pandemic - 260,000 enumerators.[13] I will discuss the impact of these staffing shortfalls for hard-to-count communities in more detail below.

- The self-response rates are not uniformly distributed and are disproportionally lower in areas with higher proportions of Black and Latino (referred to as Hispanic by the Census Bureau) populations, as well as in some rural areas. For example, as of August 6, 2020, there were 50.7 million people living in census tracts in the lowest fifth of self-response.[14, 15] The overall self-response rate for these tracts is less than 51.3 percent, compared to a national

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[13] U.S. Census Bureau, *2020 Census Detailed Operational Plan for: 18. Nonresponse Followup Operation (NRFU),* Version 2.0 Final, July 15, 2019.

[14] A census tract is a small geographic are that is similar to a neighborhood. See https://www.census.gov/programs-surveys/geography/about/glossary.html#par_textimage_13.

[15] Romalewski, Steven, Mapping "Self-Response" for a Fair and Accurate Census, Center for Urban Research at the Graduate Center, City University of New York, https://www.gc.cuny.edu/CUNY_GC/media/CUNY-Graduate-Center/PDF/Centers/Center%20for%20Urban%20Research/Resources/Census2020-self-response-rates-thru-Aug-6-CUNY-Graduate-Center.pdf, August 7, 2020.

average of over 63 percent. Furthermore, while Latinos make up 18.3 percent of the U.S. population, they represent 25.8 percent of the population in these low response areas. For non-Hispanic Blacks, the corresponding rates are 12.3 and 22.2 percent, respectively. The Census Bureau also noted that, as of August 6, 2020, the self-response rate in update-leave (rural areas) was a little over 34 percent. The low update-leave self-response is also problematic for Latinos living areas such as the colonias in Texas, and for American Indian Reservations or Alaska Native Villages. As I will discuss below, the likely outcome for these areas and populations will be increased undercounts relative to previous censuses and decreased quality of the information collected.

- Given the current NRFU staffing levels, the Census Bureau will have to rely less on direct in-person contact attempts and more on the following in order to meet the new September 30, 2020 deadline with deleterious consequences for the count:

  a. Reduced in-person contact attempts with residents of the NRFU households, leading to increased undercounts of the traditionally hard-to-count populations. While the Census Bureau is planning for up to six attempts for most NRFU households, this will not be enough to obtain complete interviews in many hard-to-count communities. The Government Accountability Office (GAO) evaluated the early testing that the Census Bureau carried out to develop the current NRFU procedures. The GAO stated:

     "according to preliminary 2016 Census Test data, there were 19,721 NRFU cases coded as non-interviews in Harris County, Texas and 14,026 in L.A. County, California, or about 30 and 20 percent of the test workload respectively.

     According to the Census Bureau, non-interviews are cases where no data or insufficient data were collected, either because enumerators made six attempted

visits without success (the maximum number the Bureau allowed) or visits were not completed due to, for example, language barriers or dangerous situations."[16]

The Census Bureau subsequently refined the NRFU procedures to allow for more contact attempts, as is necessary to reach higher resolution rates comparable to previous censuses.[17] However, my opinion is that there is a significant risk that NFRU will not be successful in completely enumerating hard-to-count communities under the current time schedule.

Hard-to-count communities have significantly lower levels of self-response, and a corresponding larger proportion of households that fall into NRFU, making recruiting and hiring sufficient staff to achieve a complete enumeration particularly challenging. As I discussed above, the Census Bureau has identified hiring staff with relevant language skills and hiring people who live in local communities as key components of its design for achieving a complete enumeration of hard-to-count communities. Difficulties in recruiting NRFU staff with the necessary qualifications make it much harder to assign enumerators with the language skills necessary to enumerate non-English speaking local areas, and it will also require the Census Bureau to send enumerators into communities that they are not familiar with. The ultimate outcome for these hard-to-count areas will be a higher portion of incomplete responses. I am also very concerned about the proposal to use outbound telephone calling to conduct NRFU in hard-to-count communities. For example, the Pew Research Center has

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[16] United States Government Accountability Office, *2020 CENSUS Additional Actions Could Strengthen Field Data Collection Efforts*, GAO-17-191, a report to congressional requesters, January 2017

[17] US Census Bureau, *2020 Census Detailed Operational Plan for: 18. Nonresponse Followup Operation (NRFU),* Version 2.0 Final, July 15, 2019.

documented that telephone survey rates have fallen from 36 percent in 1997 to under six percent in 2018.[18] Achieving a complete and accurate count in the hard-to-count communities requires a lot of hard work by well-trained enumerators who are very familiar with these areas. Furthermore, the use of outbound telephone calling to conduct NRFU enumeration has not been tested, nor have methodologies to deploy in-language telephone enumerators. Based on my experience in planning and managing the 2000 and 2020 Censuses it is my opinion that limited staff, a shortened time frame, and the use of untested procedures will most likely result in serious increases in the undercounts for these communities relative to previous censuses.

b. Increased proxy enumerations, resulting in increased levels of erroneous enumerations. The limited NRFU workforce combined with the shortened schedule will result in a higher level of proxy enumerations than in previous censuses. Proxy enumerations are those obtained by asking people other than the actual residents of NRFU households for information about those residents. These proxies can include neighbors, apartment managers, or other knowledgeable persons. In the 2010 Census, proxy enumerations were obtained for about 21 percent of the NRFU returns. The erroneous enumeration rate for the proxy enumeration was 6.7 percent—over twice the overall erroneous enumeration rate of 3.3 percent.[19]

c. Increased reliance on administrative records to complete NRFU enumerations, leading to less complete enumerations for the hard-to-count populations. The Census Bureau

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[18] Kennedy, Courtney and Hartig, Hannah, *Response rates in telephone surveys have resumed their decline*, Pew Research Center report, February 27, 2019.

[19] P. Cantwell, DSSD 2010 Census Coverage Measurement Memorandum Series # 2010-G-01, (May 22, 2012), https://www.census.gov/coverage_measurement/pdfs/g01.pdf.

plans include the use of administrative records (e.g., records from the IRS, Medicare, and the Social Security Administration) to reduce the NRFU workload, where feasible, by using such records to enumerate occupied households that have failed to respond after several contact attempts.[20] The Census Bureau may be forced to rely more heavily on such enumerations if NRFU cannot be completed as planned. Based on the research that the Census Bureau conducted to develop the current NRFU strategy, it had planned to enumerate 12.9 percent of the occupied NRFU housing units after making one visit.[21] Expanding the uses of administrative records to enumerate a higher portion of the NRFU occupied housing units is not supported by the research the Census Bureau has used to date, and the Census Bureau has not released additional research to support such actions. Census Bureau research has shown that the quality and completeness of administrative records is not expansive enough to replace a decennial census.[22] In addition, noncitizens and Latinos are disproportionately underrepresented in administrative records. Therefore, the use of administrative records beyond the planned levels for NRFU would be less representative of the hard-to-count populations than a complete NRFU.

d. There will likely be an increased use of "whole person imputation" relative to previous censuses. Such imputations will not correct for any undercounts that have resulted from an incomplete NRFU. In conducting NRFU in previous censuses,

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[20] Albert E. Fontenot, *Intended Administrative Data Use in the 2020 Census,* 2020 Census Program Memorandum Series: 2020.06, May 7, 2020.

[21] U.S. Census Bureau, *2020 Census Detailed Operational Plan for: 18. Nonresponse Followup Operation (NRFU),* Version 2.0 Final, July 15, 2019.

[22] Rastogi, Sonya and Amy O'Hara, *2010 Census Match Study,* 2010 Census Planning Memorandum Series, No. 247, November 19, 2012

situations have arisen where, despite the best efforts of NRFU enumerators, either minimal or no information was obtained for some housing units by the conclusion of the NRFU. The Census Bureau uses statistical techniques, referred to as imputation, to correct for this missing data problem. The statistical processes are used to estimate—or impute—all of the characteristics of the persons in these housing units. The Census Bureau applies "Count Imputation" for situations where no information is available for a housing unit. This methodology will first estimate whether the unit is occupied, and if so, will estimate or impute a household size – meaning, the number of people in that household. The process will then use "whole person imputation" to estimate characteristics (including age, race, and ethnicity) for persons in a household of this size. The Census Bureau also uses whole person imputation in situations where only the count of people residing in a housing unit could be determined. In the 2010 Census, about 2.0 percent of the enumerations fell into the category of whole person imputation – 0.4 percent were the result of count imputation and 1.6 percent resulted when only the population count was known.[23] It should be noted that of the 16.3 million persons enumerated by proxy in the 2010 Census, 23.1 percent required whole person imputation.[24] I am very concerned that the levels of housing units requiring whole person imputation will be much larger than in 2010, due to the reduction in time and staff limitations for NRFU enumerators to get a complete response. Unfortunately, the statistical methods that the Census Bureau uses for imputation rely on using information from the resolved housing units to estimate or

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[23] P. Cantwell, DSSD 2010 Census Coverage Measurement Memorandum Series # 2010-G-01, (May 22, 2012), https://www.census.gov/coverage_measurement/pdfs/g01.pdf.

[24] Id.

impute for the unresolved housing units. Therefore, any undercounts that are in the resolved housing units will be carried forward in the imputation and not corrected. These undercounts would include persons omitted from housing units enumerated by both self-response and NRFU.

- The plan to offer bonuses or awards to increase the hours that NRFU enumerators work can have unintended consequences on accuracy. The Census Bureau plans to award NRFU enumerators up to $800 above their regular pay, if they work a minimum number of hours and complete 0.75 cases per hour. I am concerned that in order to meet production goals, particularly in areas that are difficult to enumerate, some NRFU enumerators may be tempted to falsify data for some households to meet production goals. The result would be that instead of obtaining an accurate enumeration for these households, the data would be made-up. The Census Bureau has not conducted any testing to understand the effects on quality of such awards.
- The schedule will not allow the Census Bureau the flexibility to complete NRFU in areas affected by natural disasters. We are currently in the midst of a very active hurricane season, and there are many areas in the West that are dealing with wildfires. The Census Bureau will be forced to delay NRFU in such areas until it is safe to return and resume enumeration activities. The current schedule simply does not allow enough time to carry out a thorough NRFU in areas that may be impacted by these unforeseen events.

C. The reduced schedule for NRFU will have serious accuracy and quality implications for the 2020 Census

22. Undercounts, particularly for traditionally hard-to-count populations, are likely to increase relative to previous censuses as a result of the Census Bureau's new, reduced schedule. As I discussed above, the NRFU workloads will be relatively higher in areas with lower self-

response rates. The Census Bureau uses low self-response as a key measure in determining whether an area is hard-to-enumerate,[25] so by definition the challenge for NRFU to obtain a complete count is in these areas. In addition, these areas also contain higher proportions of Black, Latino, and immigrant populations relative to the White non-Hispanic population. The end result for these communities is likely to be incomplete NRFU enumeration due to staffing and time limitations, as well as more use of proxy enumerations and whole person imputation. This will lead to increased undercounts relative to previous censuses. For example, in the 1990 Census the undercount of the Latino population was 5.0 percent and the undercount for the Black or African American population was 4.6 percent.[26] It is important to understand that in 1990, the Census Bureau had the flexibility to extend the NRFU beyond its planned end date until it had reached a completion rate of over 99 percent for NRFU enumeration.[27] However, even with this high completion rate for 1990, serious undercounts were measured.[28] The Census Bureau is now being forced to stop all data collection, including NRFU as of September 30, 2020. In my opinion, there is a high risk that the measures the Census Bureau will be forced to take to complete NRFU by this new deadline (as I discussed above relying more on proxy or count-only enumerations and administrative records), even potentially falling short of the 99 percent completion goal, will likely result in undercounts that will be materially larger than were observed in the 1990 Census.

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[25] Response Area Outreach Mapper, Census.gov, www.census.gov/roam, (July 2018).

[26] P. Cantwell, DSSD 2010 Census Coverage Measurement Memorandum Series # 2010-G-01, (May 22, 2012), https://www.census.gov/coverage_measurement/pdfs/g01.pdf.

[27] U.S. Census Bureau, *1990 Census of Population and Housing – History Field Enumeration 6-36*, Report Number CPH-R-2, https://www.census.gov/library/publications/1996/dec/cph-r-2.html, 1996.

[28] P. Cantwell, DSSD 2010 Census Coverage Measurement Memorandum Series # 2010-G-01, (May 22, 2012), https://www.census.gov/coverage_measurement/pdfs/g01.pdf.

D. The compressed schedule for post data collection processing significantly increases the risk of inaccuracies into the 2020 Census data

23. The initial Census Bureau schedule had NRFU ending at the end of July 2020 leaving about five months for the post data collection operations prior to the release of the Apportionment counts. In the revised schedule the Census Bureau issued in its request for an extension of the deadlines, there were six months allocated to complete the post data collection before the release of the Apportionment counts. Under the current schedule, there are only three months available for post data collection prior to release of the Apportionment counts. In the August 17, 2020 Review of the Operational Plan, the Census Bureau offered no insights into how it was going to address this shortfall. There are critical activities that must be accomplished as part of the post data collection processing, including:[29]

- Apply data codes to facilitate data tabulation – Many of the questions included on the 2020 Census questionnaire allow respondents to write-in a response (for example the questions on Race and Ethnicity). In order to properly tabulate these responses, they must be assigned a numeric code. Coding is conducted by both automated and computer-assisted manual processes.
- Identify potential fraudulent returns from self-responses and record final fraud investigation disposition – The 2020 Census allows multiple opportunities for response. Including "non-ID" response where a respondent can go online and respond with just their address. In previous censuses respondents had to use a multi-digit identification code that uniquely identified their housing unit in order to self-respond. The non-ID process was designed to make it easier to respond to

[29] U.S Census Bureau, *2020 Census Operational Plan, A New Design for the 21st Century,* version 4.0 issued December 2018.

the 2020 Census, but it does carry a risk that it could be misused by those who might want to introduce inaccuracies into the 2020 Census data files. To guard against such actions, the Census Bureau has developed computer algorithms to detect such fraud. It is critically important that these algorithms be run, and the results evaluated during the post data collection processing.

- Resolve potential duplicate responses – Duplicate responses can occur in the conduct of a census. For example, someone could self-respond in one location and also be enumerated during NRFU in another. Given that NRFU is now taking place at a point in time that is much further from Census Day, April 1, 2020 the potential for duplicate responses is much higher since more people will have moved than the Census Bureau initially anticipated. It will be critical for the Census Bureau to have the time to identify and remove any duplicates.
- Identify the return of record for housing units with multiple returns – When multiple opportunities for response are allowed, situations arise where more than one questionnaire is returned for a housing unit. In these situations, the Census Bureau uses a Primary Selection Algorithm is to establish the single enumeration record for the housing unit.
- Repair missing or conflicting data – There are situations where responses to some of the questions are missing. The count-imputation and whole person imputation scenarios that I discussed above are examples of these situations. This component of the post data collection processing is designed to carry out these statistical processes.

- Provide final census results – Finally, a census file must be created that combines the results of the steps I have outlined above so that it can provide the tabulations necessary for producing the Apportionment counts.

24. Each of the activities I described above must be carried out to ensure that the post data collection processing will generate high quality data. The Census Bureau has not stated what actions it will take to fit processes that were initially planned for five months into a three month window. Dropping or seriously curtailing any one of the above processes would have severe consequences by reducing the quality of the 2020 Census data.

25. The reduced time frame for post data collection processing will not allow the Census Bureau to run the computer programs that have been prepared to carry out the critical activities as had originally been planned. At a minimum the Census Bureau will have to modify or alter the sequence of these computer programs. Rushing to modify computer programs at the last minute introduces the risk of making systematic programming errors which would further erode the quality of the resulting 2020 Census data.

26. The initial 2020 Census schedule for post data collection is very reasonable and is consistent with the schedule for previous censuses. In both the 2000 and 2010 Censuses, NRFU was completed within the schedule originally planned for 2020 – June 26, 2000 and July 9, 2010, respectively. In both of these censuses the Apportionment counts were delivered to the President in late December of 2000 and 2010 respectively. The 2020 Census schedule, as originally revised and requested by the Census Bureau, was also following this well-established time schedule.

27. The overall quality of the 2020 Census data will most likely be lower than in previous censuses. As I noted above, it is very likely that the Census Bureau will have to rely

more on proxy enumeration and whole person imputation that in previous censuses. While this will be a particular problem for the hard-to-count communities, these less accurate enumeration methods will also most likely be used more across the board in the 2020 Census relative to previous censuses. In addition to the increased use of proxy enumeration, as I discussed above, employing a higher level of administrative records and statistical imputation will result in lower quality than would have been achieved through direct in-person contact. Finally, the extreme truncation of time to conduct the post-data collection activities, as discussed above, will most likely lead to additional inaccuracies that will disproportionately hurt hard-to-count populations.

28. The impacts of undercounts and poor quality data will not just be a problem for the immediate uses of the 2020 census (e.g., apportionment and redistricting), but will remain for the 10 years until they can be corrected in the 2030 Census (e.g. federal funding).

E. Increased transparency is essential to assure stakeholders of the legitimacy of 2020 Census data collection

29. At this point, there is little information available to assess the conduct of the 2020 NRFU. The Census Bureau has been very forthcoming about the self-response phase of the 2020 Census. Very detailed and granular data have been made available to allow for public assessment of self-response for many areas, including census tracts.

30. The current Census Bureau plan is to release only NRFU resolution rates at the State level. These rates are not helpful in assessing the actual progress of NRFU in achieving a complete enumeration of all population groups and areas. In order to demonstrate that NRFU is meeting the goal of a complete and accurate enumeration, it is essential that the Census Bureau provide additional data beyond just the resolution rate of housing units in NRFU. These data should include information such as the rate of proxy and count only enumerations at similar

levels of geographic aggregation as the self-response data. Further, in order to ensure that the reported apportionment tabulations will be complete and accurate, the Census Bureau should also provide additional information on how it plans to conduct needed post-data collection processes without the additional time it had originally requested.

31. The Census Bureau has recently announced three new political appointees including a new Deputy Director for Policy[30] and a new Deputy Director for Data,[31] raising concerns among stakeholders. Having political appointees with vague responsibilities at the Deputy Director level of the Census Bureau (which has always been a career position) is unprecedented and is raising serious concerns among stakeholders. Perceptions that the results of the 2020 Census have been manipulated for political purposes will erode public and stakeholder confidence, not only in the 2020 Census, but also in our democratic processes more generally. Therefore, it is critical that the Census Bureau release the data that I have described above to demonstrate that it is achieving a complete and fair enumeration through NRFU.

IV. Conclusion

32. It is my conclusion that the current deadlines for delivering the 2020 Census Apportionment and redistricting data place unreasonable time constraints on the Census Bureau. These constraints will not allow the Census Bureau to carry out data collection operations that will deliver high quality results. I am very concerned that these timing constraints will significantly increase the risk of much larger undercounts for the 2020 Census than measured in

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[30] Statement from Census Bureau Director Steven Dillingham, Release Number CB20-RTQ.20

[31] Statement from Census Bureau on Deputy Director for Data, Release Number CB20-RTQ.24, August 17, 2020

previous censuses. These undercounts will disproportionately affect the traditionally hard-to-count communities including immigrants, persons of color, and the underserved.

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

John Thompson

Executed on August 27, 2020 at Bend, Oregon.

APPENDIX 1

JOHN H. THOMPSON

BRIEF CAREER HISTORY

Extensive Senior Executive leadership in the non-profit and federal sectors, with experience in social science research and statistics, congressional advocacy, building coalitions, operational management, business development, stakeholder relations, innovation, and strategic vision.

Independent Consultant, August 2018 to present

Consulting service focusing on survey methodology, executive leadership, the Federal Statistical System, and decennial census. Activities have included:

- Expert witness for the plaintiffs in two court cases opposing the addition of a citizenship question to the 2020 Census
  - New York Immigration Coalition, et al v. United States Department of Commerce and Wilbur Ross, U.S. District Court for the Southern District of New York, and
  - Robyn Kravitz et al., v. United States department of Commerce, et al
- Training news media journalists on the 2020 Census with Georgetown University, the Poynter Center, and the Harvard Shorenstein Center.
- Providing consultation services to NORC at the University of Chicago

Executive Director, Council of Professional Associations on Federal Statistics – July 2017 to August 2018

The Council of Professional Associations on Federal Statistics (COPAFS) was founded in 1981 to coordinate activities of a number of Associations, Organizations, and Businesses that rely on federal statistics to support good governance and economic growth. COPAFS now represents a growing body of stakeholders that support the production and use of high quality statistics. The Executive Director represents these stakeholders in realizing their mission to *Advance Excellence in Federal Statistics*. Activities include:

- Advocated on behalf of federal agencies. For example, COPAFS is a co-chair of the Friends of the Bureau of Labor Statistics, and the Friends of the National Center for Health Statistics;
- Worked with stakeholder coalitions to support proper funding for the 2020 Census and the American Community Survey;
- Ensured members of Congress, COPAFS members, and other stakeholders were informed of critical issues facing agencies that produce federal statistics;
- Alerted members and stakeholders of breaking issues that needed immediate support and attention;
- Organized and supported ongoing educational efforts for members of Congress and their staff on the value and importance of federal statistics both nationally and in their own states and districts;
- Created and joined in powerful coalitions of organizations and businesses to advocate on behalf of federal agencies that produce statistics, building broad support across a wide spectrum of data users;

- Built partnerships with foundations that help fund critical research in the statistical agencies and academia to ensure the on-going modernization of how statistical data are created and made available to the public and researchers, and to fund educational efforts;
- Worked closely with the Chief Statistician of the United States and the statistical agencies to help inform and promote modernization efforts underway and assist agencies in keeping abreast of new stakeholder data needs; and
- Hosted events to demonstrate the importance of federal statistics such as the 2018 Federal Committee on Statistical Methodology Research and Policy Conference.

Director, United States Census Bureau – August 2013 to June 2017

Appointed by the President as Director of the largest federal statistical agency, with a staff of over 5,000 headquarters employees and approximately 10,000 to 15,000 staff spread across the United States in six regional offices and a major production facility in Indiana, with an annual budget exceeding $1 billion. Key accomplishments include:

- Worked successfully with the executive and legislative branches of the federal government, including the White House, the Office of Management and Budget, Cabinet officials, and members of Congress and congressional staff, to accomplish a major transformation of the Census Bureau into a forward-looking 21st century statistical agency. Testified at 6 congressional hearings on the Census Bureau;
- Provided a conceptual vision and lead a redesign of the 2020 decennial census that is estimated to save $5 billion through effective use of operations research-driven reengineering of field operations, innovative use of technology, and partnership with key stakeholders;
- Lead outreach to key stakeholders including representatives of state local and tribal governments; advocacy organizations; professional associations, business groups, various media; and academic researchers;
- Put in place a robust research program to support mission critical activities, such as linking administrative records, disclosure avoidance methods, economic studies, statistical research, survey methodology, big data, and data dissemination;
- Lead efforts to maintain congressional support and funding for the American Community Survey, a critical data asset of the federal government, including mobilizing a diverse group of key stakeholders to effectively advocate in support of the survey, personally visiting almost all of the House of Representatives and Senate members of the Census Bureau appropriations and oversight committees, and establishing a program of research directly related to the concerns that had been raised;
- Improved economic statistics through research on using alternatives to direct survey data collection to produce statistics that are timelier and have increased granularity, and carrying out three initiatives to advance the release of principal economic indicators on trade, retail sales and services, which allowed the Bureau of Economic Analysis to significantly reduce revisions to Gross Domestic Product (GDP) estimates;
- Recruited outstanding research staff including new senior leadership for Research and Methodology, the Director of a newly established big data center, and seven former Presidential Innovation Fellows; and
- Improved data dissemination to the public, including development of a platform to deliver data in ways that will meet the rapidly evolving demands of a growing body of users. In addition,

in order to meet immediate targeted demands two new tools were released: City SDK (Software Development Kit) to allow easy developer access; and Census Business Builder a tool that combines small area demographic and economic data in a way that is easily accessible for entrepreneurs and small business owners.

President and Executive Vice President, NORC at the University of Chicago – July 2002 to August 2013

NORC is a national non-profit organization that conducts high quality social science research in the public interest. As President, I had responsibility for all NORC corporate activities and for the quality of all NORC research efforts. I provided vision for NORC to establish the organization as a leader in the social science research industry. My accomplishments included:

- Strengthened the organization's high-quality, diverse staff;
- Broadened the scope of the collaborations between NORC and the University of Chicago;
- Realized nearly 50 percent growth in revenue and greatly expanding NORC's portfolio of business and research programs; and
- Provided leadership in the social science research community - selected to be a Fellow of the American Statistical Association (ASA), elected to serve a term as Chair of the Social Statistics Section of the ASA, and chaired the 2009 ASA Committee on Fellows. Also elected as a member of the Committee on National Statistics, serving on two National Academy of Sciences panels addressing 2010 and 2020 Census concerns.

As Executive Vice President of Survey Operations (2002 – 2008), I provided oversight and direction to the Economics, Labor Force, and Demography Research Department, the Statistics and Methodology Department, and Survey Operations for field and telephone data collection. My major accomplishments included:

- Provided leadership and guidance for a major corporate initiative, the National Immunization Survey, which is conducted on behalf of the Centers for Disease Control and Prevention, and is the largest telephone survey in the United States conducted via random digit dialing for scientific purposes.
- Significantly increased the productivity and cost effectiveness of NORC's overall data collection activities;
- Successfully utilized skills in directing large project start-ups, and in managing large complex operations, directing the project through the completion of the first contract phase, which included the first year of data collection and the delivery of the first data set; and
- All survey operations were completed on schedule, and within budget including the delivery of an extremely complex data set, and a public use file.

Principal Associate Director and Associate Director for Decennial Census Programs, United States Census Bureau – 1997 to July 2002

Served as the senior career executive responsible for all aspects of the 2000 Decennial Census. This was the largest peacetime mobilization undertaken by the U.S. government, with a budget of $6.5 billion, establishment of over 500 field offices, a temporary workforce that peaked at over 500,000, and establishment of telephone capacity to receive over 5 million calls over a period of one month. I was also chairman and director of the Executive Steering Committee for Accuracy & Coverage Evaluation Policy for the 2000 Census. This Committee was charged with making a recommendation as to whether or not to adjust the 2000 Census redistricting data for coverage errors, an issue fraught with political disagreement and controversy. This work was widely recognized as superb – with the Committee's recommendation supported by numerous reviews, including the National Academy of Sciences Panel on evaluating Census 2000.

EDUCATION

M.S.	Virginia Polytechnic Institute and State University, 1975 Mathematics Graduate course work in statistics - George Washington University 1977-1981
B.S.	Virginia Polytechnic Institute and State University, 1973 Mathematics

PROFESSIONAL SERVICE AND ASSOCIATIONS

American Statistical Association, 1975 to Present

Chair, Social Statistics Section – 2011

Chair, ASA Committee on Fellows - 2009

National Academy of Sciences,

Member of the Committee on National Statistics – 2011 - 2013

Member of the Panel on the Design of the 2010 Census Program of Evaluations and Experiments

Member of the Panel to Review the 2010 Census

HONORS AND AWARDS

Virginia Tech College of Science Hall of Distinction inaugural class, 2013

Presidential Rank Award of Meritorious Executive, 2001

Department of Commerce, Gold Medal, U.S. Bureau of the Census, 2000

Elected Fellow of the American Statistical Association, 2000

Department of Commerce, Silver Medal, U.S. Bureau of the Census, 1998

Department of Commerce, Bronze Medal, U.S. Bureau of the Census, 1988

PAPERS AND PUBLICATIONS

2018 Thompson, John H and Yablon, Robert. Issue Brief: "Preparing for the 2020 Census Considerations for State Attorneys General". American Constitution Society., October 10, 2018

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1996 Thompson, John H. and Karen Mills, "Census 2000 Content: Tradeoffs on Cost, Quality, and Quantity." Paper presented at the Annual Meeting of the Population Association of America, New Orleans, Louisiana, May 9-11, 1996.

1995 Thompson, John H., Mary H. Mulry, Susan M. Miskura, "Census 2000: Statistical Issues in Reengineering the Decennial Census." Paper presented at the Annual Meeting of the American Statistical Association, Orlando, Florida, August 13-17, 1995.

1992 Fay, Robert E. and John H. Thompson, "The 1990 Post-Enumeration Survey: Statistical Lessons in, Hindsight." Paper presented at the Annual Research Conference, March 22-25, 1992, Arlington, Virginia.

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1988 Navarro, Alfredo, John H. Thompson, and Linda Flores-Baez, "Results of Data Switching Simulation." Paper presented to the Census Advisory Committees at the Joint Advisory Committee Meetings, Oxon Hill, Maryland, April, 1988.

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APPENDIX 2

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From: Christopher J Stanley (CENSUS/OCIA FED) [christopher.j.stanley@census.gov]
Sent: 9/11/2020 2:55:34 PM
To: Steven Dillingham (CENSUS/DEPDIR FED) [steven.dillingham@census.gov]; Steven K Smith (CENSUS/DEPDIR FED) [steven.k.smith@census.gov]; Ali Mohammad Ahmad (CENSUS/ADCOM FED) [ali.m.ahmad@census.gov]; Nathaniel Cogley (CENSUS/DEPDIR FED) [nathaniel.cogley@census.gov]; Benjamin A Overholt (CENSUS/DEPDIR FED) [benjamin.a.overholt@census.gov]; Kevin Quinley (CENSUS/ADCOM FED) [kevin.quinley@census.gov]; Michael John Sprung (CENSUS/DEPDIR FED) [michael.j.sprung@census.gov]; Adam Michael Korzeniewski (CENSUS/DEPDIR FED) [adam.m.korzeniewski@census.gov]
Subject: yesterday's hearing transcript
Attachments: CQ Transcript House Hearing 09.10.2020.docx

Attached is a version of the hearing transcript that is not too big for email.

From: Christopher J Stanley (CENSUS/OCIA FED) <christopher.j.stanley@census.gov>
Sent: Thursday, September 10, 2020 6:59 PM
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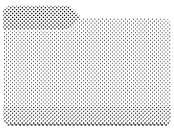

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MALONEY:

Welcome everybody to today's hybrid hearing. Pursuant to House rules some members will appear in person and others will appear remotely via WebEx. Sent some members are appearing in person let me first remind everyone that pursuant to the latest guidance from the House attending physician all individuals attending this hearing in person must wear a face mask unless they are talking.

Members who are not wearing a face mask will not be recognized. Let me also make a few reminders for those members appearing in person. You will only see members and witnesses appearing remotely on the monitor in front of you. When they are speaking in what is known as WebEx as an actor speaker view a timer is visible in the room directly in front of you. For members appearing remotely I know you are all familiar with WebEx by now but let me remind everyone of a few points.

Four members appearing remotely I know you are familiar and here are the points. First, you will be able to see each person speaking during the hearing whether they are in person or remote as long as you have your WebEx set to active speaker view. If you have any questions about this please contact committee staff immediately. Second, we have a timer that should be visible on your screen when you are in the active speaker with thumbnail view. Members who wish to attend the timer to their screens should contact committee staff for assistance. Third, the House rules require that we see you so please have your camera is turned on at all times.

Fourth, members appearing remotely who are not recognized should remain muted to minimize background noise and feedback. Fifth, I will recognize members verbally but members retain the right to seek recognition verbally. In regular order members will be recognized in seniority order for questions.

Lastly if you want to be recognized outside of regular order you may identify that in several ways. You may use the chat function to send a request. You may send an email to the majority staff or you may unmute your mic to seek recognition. Obviously, we do not want people talking over each other so my preference is that members use the chat function or email to facilitate formal verbal recognition. Committee staff will ensure that I am made aware of the request and I will recognize you. We will begin the hearing in just a moment when they tell me they are ready to begin on live stream.

Do I need someone to tell me? Pardon me? Are we ready?

The committee will come to order. Without objection the chair is authorized to declare a recess of the committee at any time. I now recognize myself for an opening statement. Good morning

and thank all of you for joining me today especially our witnesses. This past April the Trump administration asked Congress to pass urgent legislation to extend several key statutory deadlines for the 2020 census for about four months.

This request was based on unprecedented delays caused by the coronavirus crisis. The President personally advocated for these extensions. He said and I quote I think 120 days isn't nearly enough end quote. The House responded quickly by passing these extensions on May 15 as part of the HEROES Act. I also introduced stand-alone legislation on May 27 the Fair and Accurate Census Act and the Senate introduced a companion bill.

However on July 28 the Trump administration seemed to reverse course. The Commerce Department told the Census Bureau it needed to deliver data to the President by the end of the year and the Senate has failed to act to pass the time delay. As a result Census Bureau workers were forced to rewrite carefully considered plans over the course of a weekend. They had to cut field operations by a month and they had to slash their data processing operations from five months to three.

Last week I released an internal document, this document showing that Census Bureau officials warned the Commerce Department about how these cuts would significantly damage the 2020 census. They cautioned that quote and I'm quoting from this report eliminated activities will reduce accuracy end quote. They highlighted that the compressed schedule quote creates risk for serious errors not being discovered in the data and they warned that these errors quote may not be fixed because of the lack of time end quote.

There is strong bipartisan support for extending these deadlines in the wake of the coronavirus crisis so why has the Trump administration seemingly gone back on this request? Why did they ask--they asked for the extension and then why do they reverse themselves and drop it? And why can't we give the Census Bureau professionals the time that they need for an accurate and complete count of everyone?

We do not have the full story but the White House Chief of Staff Mark Meadows stated that the reason for this change and I quote his quote is the Democrats just want to control the apportionment and we are not going to let them do that end quote. His statement seems to forget that it was the Trump administration that asked for this change in the first place, that asked for these extensions not Democrats. It also seems to suggest that Donald Trump will not be president next year so the administration wants to control apportionment this year while he is still in office.

But there is a much bigger problem with this statement an undercount will directly harm states and therefor people across this country including states with large populations who vote Republican. An undercount will reduce the amount of funding the states are entitled to receive for healthcare, education, and transportation. Each year we distribute over $1.5 trillion federal trillion dollars payments to states based on census numbers and if the numbers are not correct then the payments to the communities are not correct or fair.

This is not a theoretical risk. Today I am releasing several staff reports showing the negative impact on states with particularly hard to count populations Alabama, Arizona, Florida, Georgia,

Kentucky, Montana, North Carolina, South Carolina, Texas, and Utah. These states and others could be directly harmed by the President's insistence on rushing an inaccurate count by December. That is why a number of Republican senators have come out in support of extending the deadlines.

Let me quote from a letter that Senator Steve Daines from Montana sent to Mitch McConnell and Chuck Schumer urging them to pass legislation to extend the deadlines. He wrote and I quote given the rural nature of Montana and the additional challenges brought about by the ongoing COVID-19 pandemic reverting the deadline back to September 30, 2020 will leave tens of thousands of Montanans uncounted and underrepresented at the federal level.

Nearly half of the households in the state have yet to be counted. It is critical that a full and accurate census is completed and every Montanan is counted end quote. This should not be a partisan issue. This is a Republican senator from Montana. He supports the extensions because people from his state will lose federal funding to which they are entitled.

MALONEY:

On Saturday--this past Saturday, a federal judge issued an order temporarily halting efforts to end the census early. This is good news, but we should not wait for the courts to determine the fate of the census.

Last month, four former census directors, one of whom is John Thompson who is here with us today, warned that we cannot have an accurate sense is using the current schedule. The coronavirus crisis has made that impossible. If you support full funding for state--for your state, if you support providing your constituents with health care, well-funded schools, hospitals, even road and bridge repair, then you should support these extensions. They will ensure your states are fully counted.

UNKNOWN:

The sound has dropped out it's now it's back. Sorry.

MALONEY:

Should I go back?

UNKNOWN:

You should go back.

MALONEY:

To where?

UNKNOWN:

To--to Montana.

MALONEY:

I regret that the sound was dropped, so I am now going back. We had a technical problem.

UNKNOWN:

Not a partisan issue. Not a partisan issue.

MALONEY:

Okay, this is a--Okay. Let me quote. This is not a partisan issue. Let me quote from a letter that senator Steve Daines from Montana sent to Mitch McConnell and Chuck Schumer urging them to pass legislation to extend the deadlines.

He wrote, and I quote "Given their rural nature of Montana and the additional challenges brought about by the ongoing COVID-19 pandemic, reverting the deadline back to September 30th, 2020 will leave tens of thousands of Montanans uncounted and underrepresented at the federal level. Nearly half of that households in the state have yet to be counted. It is critical that a full and accurate census is completed and every Montanan is counted."

This should not be a partisan issue. This is a Republican senator from Montana. He supports the extensions because people from his state will lose federal funding to which they are they are entitled.

Over $1.5 trillion is distributed every year based on census numbers and formulas to our cities and our States and to our people. On Saturday, a federal judge issued an order temporarily--temporarily halting efforts to end the census early. This is good news, but we should not wait for the courts to determine the fate of the census.

Last month in this room, four former census directors, one of whom, John Thompson is here with us today. They warned that we cannot have an accurate census using the current schedule. The coronavirus crisis has made that impossible. If you support full and fair funding for your state, if you support providing your constituents with health care, well-funded schools, hospitals,

even roads and bridges, then you should support these extensions. They will ensure that your state is fully counted.

The Senate should do with the Trump administration originally requested and what the career professionals at the Census Bureau need. Passed legislation to extend these deadlines and ensure a full, fair, and accurate census for our country. Thank you for your indulgence. I will give the ranking member extra time should he require it and want it. I now want to recognize Mr. Comer, the ranking member for his opening statement.

COMER:

Thank you, Chairwoman Maloney. I appreciate you calling this hearing today on the 2020 census, even though we got started 22 minutes late. Let me begin by saying unequivocally the 2020 census is counting every resident in the United States regardless of citizenship status. Any assertions to the contrary are scare tactics which had the consequence of reducing participation in the census.

The census is underway now. I wanted to encourage all people to complete their census form. Census enumerators are knocking on doors around the country to count nonresponding households. I encourage everyone to engage with enumerators if they come to your door. If you are concerned about an enumerator coming to your door, you can complete your 2020 census online now at my2020census.gov.

Unfortunately, the Democrats are not interested in bipartisanship on the 2020 census. Instead, Democrats have once again lodged a partisan investigation into the 2020 census. Surprise, surprise. Today's hearing is supposedly about the accuracy of the 2020 census. However, no witnesses from the Census Bureau have been invited to discuss current operations.

Why aren't we hearing directly from the Census Bureau about the census? Well, it's because the Democrats don't like what careers Census Bureau officials have to say. In transcribed briefings before the committee, three Census Bureau officials stated that as of now, the 2020 census can be accurately and fully completed by September 30th of this year. These facts contradict The Democrats narrative about the 2020 census so they're just going to ignore them.

The truth is that technological improvements have made it possible to gather information more efficiently than ever before. Here are the facts about the 2020 census, according to career Census Bureau officials. As of September 8th, 2020, nationwide 88.8 percent of all households have been counted in the 2020 census. Nationwide, 66 percent of the non-response follow up caseload has been completed. Twenty-five states have counted 90 percent or more of all households. All states have counted more than 75 percent of all households.

Enumerators in the field are working at a more productive pace than expected. 232,000 enumerators are working across the country with another 69,000 enumerators in training to begin work. These are the real facts about the census that all Americans should know. The Democrats know these facts, but are choosing to ignore them.

In July, President Trump took a very important step to ensure the sanctity of our nation's elections an equal representation under our constitution. The president directed the secretary of Commerce to report an apportionment count to the House of Representatives, which excludes non legal residence in the United States, including illegal immigrants. All Americans should care about who is being included in the apportionment count.

Including illegal immigrants in the count for representation in Congress, only dilutes the representation for all Americans who vote in elections and makes a mockery of our basic principle of one person, one vote. The president's action restores the concept of representation representational government envisioned by the constitutional.

In a country so closely divided as the United States, illegal immigrants and non-citizens have a material effect on representation. Representation should matter to everyone. It's a simple question of fairness. Predictably, the Democrat's left wing allies have already filed lawsuits against the president. I have no doubt that the information gathered in the Democrats partisan investigation will be leaked through their left wing friends suing the administration.

Forget the fact that testimony provided to the committee totally refutes the Democrat narrative like the sound and fury surrounding the citizenship question, illegal questions the legal questions about the president's actions are likely to wind up at the Supreme Court. The hearing today is a continuation of the coordinated pressure campaign against Chief Justice Roberts and the other Supreme Court justices.

The Democrat majority, their left wing allies and activist judges are all working together to undermine the 2020 census count. I urge us all to focus on the task at hand. The timely and accurate completion of the 2020 census count by September 30th, 2020. Thank you and I yield back.

MALONEY:

Thank you. I now recognize my good friend Mr. Raskin, who is the chairman of the subcommittee on civil rights and civil liberties for an opening statement.

RASKIN:

Thank you so much, Madam Chair, for holding this hearing and for being such a great champion for the census. I just want to take a second to remind my friend that the Trump administration lost its battle to paste a citizenship question last minute onto the census in the Supreme Court. So the Supreme Court has already rejected their efforts to post graffiti all over the census.

Look, it's difficult enough in a normal year to conduct a census of all of American people. It's infinitely harder in the middle of a pandemic. And the intricate plans and military like schedule that was--that were a decade in the making have been completely upended by this out-of-control

coronavirus crisis and the lethal incompetence and indifference of the Trump administration, thereby creating an unprecedented challenge for the bureau.

Despite the Herculean effort of an army of enumerators, there is still a shocking amount left to do to meet the constitutional mandate. As of yesterday, at least 15 percent of households in 10 different states had not been counted. Those states include Florida, North Carolina, New Mexico, South Carolina, Louisiana, Arizona, Mississippi, Montana, and Georgia. At the bottom of that list is Alabama, where the bureau still has not enumerated 20 percent of the households. That doesn't seem like a--much perhaps, but if 15 percent to 20 percent of people in all the states are counted, more than 12 million Americans will be missed.

The threat of an inaccurate count is no more of a blue state problem then COVID-19 is a blue state problem. Of those 10 states that are at the bottom of the barrel in enumeration, seven have Republicans representing them on this very committee. 65 percent of the House seats in those 10 states are held by Republicans, and more than half of those states have all Republican delegations in the Senate. This is a problem not for blue states or for red states, but for the people of the United States.

The census is important for two main things, money and power. You don't care about money or power? Well, don't worry about the census. But if you do, you better pay attention. I've got the honor of serving on the Select Subcommittee on the Coronavirus Crisis. Many people don't realize how crucial the census is to our COVID-19 response and the ability of governments to meet the needs of the people.

The CARES Act, which established the $150 billion Coronavirus Relief Fund, required of that the money be distributed to states based on since this population data.

Countless studies tracking the prevalence of the disease in the country have relied on census tract data, and our fine-grained understanding of the disproportionate impact on communities of color across America is also based on census data. The census is used to determine where to build hospitals. It will help businesses trying to revitalize our economy determine where to set up shop, and it'll help cities and counties determine where to run bus routes and build roads that will help carry workers and consumers to their businesses.

The census cannot become a hostage once again to a political fight perpetrated by this administration and their allies in Congress. It is foundational to the American constitutional system and to representative democracy. It will only grow in importance as we use the data to fight the pandemic and rebuild our devastated economy. This is not the time to rush things in the interest of some partisan advantage. It is time to get it right.

The pandemic has not only made the count itself harder, it has made post enumeration data integrity even more compelling and essential. In a normal year, the bureau count everyone as close to April 1 as possible, but this year the count has been stretched out over many months, six or seven months. That's six or seven months where people have scattered and moved around the country.

College students have abandoned their dorms to go home. Laid off workers have consolidated households or moved in with families, medical professionals shuffled around the nation to hotspots. Essential workers quarantined themselves away from vulnerable family members. Loved ones who would have been counted on April 1 sadly succumbed to the disease before their household was enumerated. And I need not remind my colleagues we have lost more than 190,000 Americans to this nightmare.

The chances seem higher than ever before that a lot of people are going to be missed, while others may be double counted. This calls for a more comprehensive, robust, and elongated post enumeration data review process. But instead, the bureau has cut its data processing schedule by 40 percent, from 150 days to around 90 days.

The bureau knows this is not enough time. We all know it's not enough time. The bureau has been asking for an extension since April when it first concluded that it couldn't meet the current statutory redistricting and apportionment deadlines while still delivering the highest quality count. The House is already agreed to this commonsense plan, but the HEROES Act, which granted the extension that the administration itself requested, still is not law because of the inaction of the Senate.

This has left the bureau scrambling and caused the agency to abandon its carefully crafted data processing schedule for a seat of the pants plan cobbled together in a couple of days. This is not how an efficient, modern government operates. This is what happens in failed states, not functioning democracies. Every census expert, including the bureau itself, agrees that rushed census is untenable and un--unsustainable and inconsistent with the Constitution.

I call upon my GOP colleagues to give the bureau the time it says it needs to do the census right in 2020. I don't believe anyone here once their constituents to go uncounted. Nobody wants their constituents to be missed. So, let's make sure that doesn't happen. Let's pass this indispensable and common sense extension and make sure that we have a comprehensive, full, and accurate census in 2020.

We'll have to live with the results of it for a decade. And if 2020 has taught us anything by now, it's that people's lives, our economy, and our democracy depend on getting things right the first time. So, let's not hide the truth. Let's not bury the truth. Let's recognize it and let's act accordingly. With that, yield back to you, Madam Chair, and thank you for the time.

MALONEY:

Thank you so much for all your hard work and statement today.

Now I would like to introduce our witnesses. We are grateful for their attendance today and for their expertise. Our first witness today is John H. Thompson, who served as the census director from 2013 to 2017. Then we will go to Christopher Mihm, who is the managing director of the Strategic Issues Team at the Government Accountability Office.

Then we will hear from Stephen Roe Lee--Lewis, who serves as the governor of Gila Indy--Indian Community--River Indian Community. Next we will go to Stacey Carless, who is the executive director of the North Carolina Counts Coalition. Finally we'll hear from Hans Von Spakovsky, who is the senior legal fellow at the Heritage Foundation.

The witnesses will be unmuted so we can swear them in. Please raise your right hands. Do you swear or affirm that the testimony you're about to give is the truth, the whole truth, and nothing but the truth, so help you God? Let the--

UNKNOWN:

--I do--

MALONEY:

--Record show that the witnesses--

UNKNOWN:

--I do--

MALONEY:

--answered in the affirmative.

Without objection, your written statements will be made part of the record. With that, Mr. Thompson, you are now recognized for your testimony. You want to turn on your mic? We can't hear you.

THOMPSON:

Sorry.

MALONEY:

Um-hmm.

THOMPSON:

Good morning, Chairwoman Maloney, Ranking Member Comer, and members of the committee. Thank you for this opportunity to testify before your committee regarding providing the Census Bureau with time to produce a complete and accurate census.

I am extremely concerned that the actions that have been taken to truncate 2020 census data collection activities by September 30th, 2020 will adversely affect the quality and accuracy of the 2020 census. I have submitted a detailed written testimony describing my concerns. In the following oral testimony, I will present an overview of these concerns.

The Census Bureau will not conduct an effective follow-up of those households that do not self-respond. Over 50 million households did not self-respond to the 2020 census. The operation to enumerate these households is what the Census Bureau refers to as nonresponse follow-up, or NRFU. Given the magnitude of the non-responding households, conducting a comprehensive NRFU is necessary to achieve a fair and accurate enumeration for all populations and areas.

The Census Bureau took actions with respect to the COVID-19 pandemic to revise the plans for data collection. In particular, NRFU was scheduled to start by August 11th, 2020 and to conclude by October 30th, 2020. On August 3rd, 2020, the Census Bureau announced that the deadlines would not be extended and that NRFU would be completed by September 30th, 2020.

The Census Bureau will have to take steps to complete NRFU more rapidly than it planned, given that has already lost over a third of the schedule that the career staff and developed under the original plan. These adjustments or steps may include, one, not making sufficient enumeration attempts in hard to count communities.

Hard to count communities have a significantly lower level of self-response and a correspondingly larger proportion of households that fall into NRFU than other communities. Not making appropriate enumeration attempts with staff with a proper understanding and language skills in these areas--

THOMPSON:

--will lead to a higher proportion of incomplete responses. Two, the Census Bureau will have to rely on proxy enumerations to a much larger extent than in previous censuses. Proxy enumerations had twice the level of error as other enumerations in the 2010 census. A larger proportion of proxy enumerations in the 2020 census will significantly increase the levels of error.

Three, the Census Bureau will be forced to complete (INAUDIBLE) by relying on the use of administrative records to a greater extent than had been initially planned. Administrative records are not representative of immigrant and minority communities so this will result in increased under counts of these populations.

For, limitations imposed by the truncated schedule will force the Census Bureau to accept a higher proportion of incomplete NRFU enumerations resulting in the use of count and hold person imputation to a much greater extent than in previous censuses. This will increase the under counts for the hard to count communities.

Five, finally, if the actions described in the document that the committee recently released are actually what is being implemented by the Census Bureau it is clear that quality is being sacrificed in order to meet the September 30, 2020 deadline.

The schedule for post data collection processing has been severely truncated raising concerns of undiscovered computer errors and a loss of data quality. The initial Census Bureau schedule allowed five months for the post data collection processing operations prior to the release of apportionment counts.

In the revised schedule the Census Bureau issued in its request for an extension of the deadlines there were six months allocated to the post data collection processing. Under the current schedule there are only three months of available for the post data collection processing. The Census Bureau has released little information regarding how it plans to address the new limited timeframe for post data collection processing.

For example, there is no discussion of how it plans to remove duplicate enumerations. They Census Bureau has stated that the time allotted for subject matter expert review and software error we mediation has been compressed by cutting 21 days from the schedule. This is alarming because the well-developed plans for this phase of post data collection processing were based on extensive planning.

The likelihood--paid likelihood of a serious computer error that goes undetected is very high. In conclusion thank you for this opportunity and I look forward to answering any questions that you may have.

MALONEY:

Thank you for your testimony and your service as a census director that--that help develop this plan that is now being compressed. I would now like to call upon Mr. Mihm. You are now recognized. Turn your mic on.

MIHM:

Thank you, Madam Chairwoman and Chairwoman Maloney, Ranking Member Comer, members of the committee. It's indeed a great honor to be here today to talk about the status of the 2020 census. I have the great privilege today of talking about the work that many of my colleagues at GAO have been doing over many months on behalf of the Congress and to present that work to you today.

Our bottom line today is that like the rest of the country including obviously the Congress the Census Bureau was forced to respond to the COVID-19 national emergency. In regards to the 2020 census, it undertook a series of changes that resulted in the COVID-19 resulted in delays, compressed time frames, implementation of untested procedures and continuing challenges which we believe could undermine the overall quality of the census count and escalate cost.

My statement today is based on our August 27 report to this committee entitled 2020 census recent decision to compress time frames poses additional risk to an accurate count. As you mentioned and as you know on August 3 the Bureau announced that it would end data collection by September 30 and deliver apportionment counts by the statutory deadline of December 31. This September 30 cutoff date is one month earlier than the Bureau had planned due to the COVID-19 emergency.

The Bureau said it would shorten first, planned field data collection and second, data processing operations in order to meet the statutory deadlines. My comments this morning will cover both of those issue--or issues in both of those areas. First, in regards to field data collection, the good news, as Mr. Comer noted in his opening statement, is that as of September 8 the Bureau is about 70 percent complete in following up on households where it did not have a census form. This is ahead of its goal to be at 62 percent at this point.

On the other hand and not surprisingly and Madam Chairwoman this was the point that you were making in your opening statement the census progress varies markedly among localities and in fact the census is inherently a local enterprise and some hard to count areas are lagging significantly from the national average.

High rates of COVID-19 in some areas, weather events such as hurricane Laura, wildfires all affect the Bureau's ability to visit households to get a response. As of September 1, 49 of the 248 local census offices had not met their follow-up goals. The Bureau had planned to hire up to 435,008 numerators to conduct follow-up however as of September 8, the Bureau had hired only about 355,000 census takers. Again the census is local and as of the end of August 7 area census offices were below 50 percent of their goal in the number of a numerators actively working exacerbating the workload issue that I just discussed.

To help address having shortfalls the Bureau is providing incentive awards to its staff based on productivity and hours worked. The Bureau also made operational adjustments to its follow-up efforts however as you mentioned Madame as of September 5, the temporary restraining order was issued that in joins the Census Bureau from accelerating its data collection and data processing or allowing in the actions as a result of the shortened timelines to be implemented. As a result of the Bureau's--the Bureau's ability to continue with its adjustments it is unclear at this time we will continue to monitor and follow up on these operations and we will be reporting to the Congress.

Second, in regards to the streamlined response processing the commitment to provide the apportionment counts by the end of December means as director Thompson was mentioning that the Bureau has less time to conduct its post data collection activities which improve the completeness and the accuracy of census data.

During census response processing the Bureau checks for duplicate and inconsistent and incomplete responses and where appropriate uses administrative records to supplement the response data. The Bureau expects to begin this response processing in mid-October--in mid-October instead of in January 2021 as previously planned after Congress requested the statutory change to the required deadline. This means activities that were planned for 150 days will now need to be completed in 92 days.

However here to the Bureau's plans may change due to the September 5 temporary restraining order and again we will continue to monitor this. Let me conclude on a point that Mr. Comer was making in his opening statement about the continued importance of public participation. There is still time to fill out the form. There is still time to cooperate with the census taker when they come to our addresses. The national--the national need is to have a full and accurate census. With this Madame this concludes my statement and I would be pleased to take any questions you or the committee may have.

MALONEY:

Thank you very, very much for your testimony. You have testified many times before this committee on the census and we appreciate it.

Next we will hear from Governor Lewis. Governor Lewis, you are now recognized and he will be by remote. Governor Lewis?

LEWIS:

Good morning, Chairwoman Maloney, Ranking Member Comer, Congressman Gosar and members of the committee. I want to thank you for holding this important and timely hearing on producing an accurate census.

My name Is Stephen Roe Lewis and I am the governor of the Gila River Indian Community. The community is located outside of Phoenix Arizona and our reservation covers approximately 372,000 acres in total the community has over 22,000 tribal members with approximately 14,000 residing on the reservation.

I want to state up front that the community supports this committee's efforts to legislatively extend census field operations to October 31, 2020 and the statutory deadlines for reporting the apportionment and redistricting data to April 30, 2021 and July 31, 2021, respectively.

An accurate census is critical to Indian country. It is not an exaggeration--it is not an exaggeration to say that an accurate census can be a matter of life or death in tribal communities because the program impacted by a census count affects delivery of healthcare, public safety, our youth and elder programs, housing, violence against women grants and other programs that sustain our tribal communities and we have a reason to be concerned that an accurate count will not occur if the Census Bureau ends field operations at the end of this month.

In March of this year during the initial stages of the coronavirus pandemic--

LEWIS:

--the Census Bureau temporarily suspended operations because of health and safety issues. In April, the Commerce secretary and the Census Bureau director announced a plan to extend field operations to October 30th, 2020 and seek an additional 120 calendar days for apportionment and redistricting reporting.

However, in August in an abrupt reversal, the Census Bureau condensed the deadline for field operations and self-responds to September 30th and is no longer seeking an extension for reporting. This is troubling to the Gila River Indian Community and the many other tribal leaders and tribal organizations that I've spoken to.

In the 2010 decennial census, Indian country was the most undercounted demographic at a rate more than double the next closest hard to count population, and that was during a regular census cycle. These current self-response rate on that Gila River Indian Community Reservation today is 10.1 percent. Let me say that again. 10.1 percent. That means that if the census were to end today, I can only be certain that 2200 of our over 22,000 tribal members would be counted.

That's compared to a response rate for the state of Arizona up 62.1 percent at a national rate of 65.5 percent. And we're not alone. If you look at the chart that accompanies my written testimony, you will see that of that 19 tribal responders in Arizona, 17 or below a 50 percent response rate and 14 are below a 33 percent response rate. These self-response--these self-response rates are staggering really staggeringly low, but not surprising.

In many tribal communities like that Gila River Community Indian community, in person contact is the only method to make sure our households are counted and that just wasn't possible this year.

At the risk of stating the obvious, we are in the midst of a global pandemic. Indian country has the unfortunate distinction of being the most impacted population of COVID-19 according to the CDC. And ironically, the reasons can be directly tied back to these programs that rely on census data for funding allocations like housing, infrastructure, and elder care, to name a few.

The circumstances that created the instruction of census field operations could not have been predicted or prevented, but what can be prevented is a rush--is a rushed count. Any attempt to deliberately cut off census operations during the pandemic with the full understanding that it will result in such a significant undercount for Indian country is not only responsible, Madam Chair and members of the committee, it is a breach of the trust and responsibility between the United States and tribal nations.

At the Gila River Indian Community, our resolution our reservation has been in shelter at home status for all but four weeks since March. My executive order to require a mask for anyone on

the reservation was one of the first in the state. I did that because as an elected leader, it's my responsibility to put the health and safety of my people and all those on the reservation first.

But that doesn't mean that Gila River Indian Community or any other tribal nation in the United States gave up our right to be counted in the census. The stakes are too high. We have the right to adequate federal representation in Congress and we have the right for our voices to be heard. The tribal members of the Gila River Indian Community count. The members of all Arizona tribal nations count. The members of all 574 tribal nations must be counted.

Anything other than the time and process required for a full and accurate census count is a deliberate undermining of our tribal communities. And that is not only unacceptable, it's unconscionable. Thank you for the opportunity to speak today. I'm happy to answer any questions from the committee.

MALONEY:

Thank you so much for your testimony, governor. Now Ms. Carless. You are now recognized, Ms. Carless.

CARLESS:

Chairwoman Maloney, Ranking Member Comer, and members of the committee, I am Stacy Carless, executive director both NC Counts Coalition. I want to thank you for the opportunity to appear before you today to testify about the upcoming 2020 census deadline.

NC Counts Coalition is a nonprofit organization established to facilitate cross sector collaboration to achieve a complete and accurate census count in North Carolina. We believe that accurate census data is essential to the economic and general well-being of every single North Carolinian. Our roles as North Carolina's help (SP) for 2020 census outreach keeps us on the ground and connected to North Carolina communities, which positions as well to adjust the current deadline of the 2020 census.

As COVID-19 continues to disrupt our lives, it is also disrupting the 2020 census operation. About 3.8 million individuals are missing from North Carolina's count, putting North Carolina at risk of missing out on$ 7 billion in federal funding every year and not gaining our expected 14th seat in the U.S. House of Representatives. As of September 7th, 61.4 percent of North Carolina households had self-responded to the census. This is below the national average of 65.5 percent and below our state's 2010 self-response average of 64.8 percent.

North Carolina has 100 counties. Only 18 of our 100 counties have surpassed the 2010 self-response rate. Currently, census tracks with low census self-response rates have greater proportions of residents that identify as American Indian, Black, or Latino. These populations have also been hit hard by COVID-19 and felt the impact of hurricanes in the last couple of years.

Other factors associated with low response in North Carolina include low Internet access, college and military communities, and census tracks with a high percentage of young children under five. North Carolina needs extended timeline for self-response and a robust non-response follow-up field outreach. We are extremely concerned that North Carolina is on the verge of a failed 2020 census. Due to COVID-19, Census Bureau staff has been limited in the field support they had provided as part of the self-response operations.

On July 14th, the Census Bureau announced that it would begin its Mobile Questionnaire Assistance Program. Census Bureau staff categorized NC counties as green or red according to the county's COVID-19 an infection rate. Red counties were considered high risk counties where MQAs could not be conducted. From July 30th through about August 12, Census Bureau staff were discouraged from working in red counties, which were more than half of North Carolina counties.

We are also concerned about the accuracy of the non-response follow up enumeration due to allegations of inadequate training, reports of terminated employees, and witness accounts of enumerators not knocking on doors. Last week, organization dropped off information in low responding since as it tracks. While they are, our staff observed and the numerator go door to door and place a census form at the doorstep without even knocking on doors.

Due to time, I can only share with you one example of an instance that has raised red flags. We hear on a regular basis from current and past since his staff about concerns that they have about census operations. We are concerned about the quality of data being collected through the non-response follow up operation. Under the current timeline, it will be nearly impossible for enumerators to knock on the doors of the estimated 1.5 million households that have yet to respond.

We are concerned about the state's current nonresponse follow-up rate of 20.7 percent. Is the Bureau focusing on addresses that are easy to enumerate such as vacation homes in the mountains and at the beach where homes are likely vacant, allowing for an easier enumeration versus deploying resources into low performing since his attracts wear Black and brown families actually reside?

I have provided you with data and testimony to illustrate our concerns. NC Counts Collision (INAUDIBLE) steadfast in our commitment and we understand the impact that this enumeration will have on our communities for the next 10 years.

Our children need a complete and accurate census to access and education. Our seniors need a complete and accurate census so they can retire and have access to health care. Our military community needs a complete and accurate census. As they fulfill their commitment to serve our country, it is our commitment to serve them.

Throughout the pandemic, part partner organizations have strapped on their boots, put on their masks, and it done their part to get out the count across North Carolina. We need more time. The constitution gives Congress responsibility for getting the census right. If there is any hope

establishing a complete and accurate 2020 census, the deadline must be extended to at least October 31st, 2020. Thank you.

MALONEY:

Thank you very much for your testimony. I now recognize our final speaker, Mr. Spakovsky. You are now recognized.

VON SPAKOVSKY:

Can you hear me, Madam Chairman?

MALONEY:

Yes, we can hear you. Thank you.

VON SPAKOVSKY:

Very good. Thank you. I appreciate the invitation to be here today. It is essential to the Census Bureau follow longstanding historical precedent and collect data on the number of citizens and noncitizens present in the U.S. using the extensive information on citizenship contained in executive branch agency records that the president has ordered supply for the Census Bureau. That data is important not only for apportionment and redistricting, but also for the effective enforcement of the Voting Rights Act.

It is within the constitutional and delegated statutory authority of the chief executive to direct the collection of citizenship data. Collection of citizenship data is also vital to establishing consensus on national immigration policy. Without citizenship data, it's not possible to have an informed debate and discussion over what U.S. policy should be and how to successfully implement it.

The Census Bureau has been collecting citizen population data since the 1820 census. It currently collects that data through the American Community Survey. However, because the ACS is only sent out annually to about 2.5 percent of American households, it does not collect complete data on the country. The executive order ensures that the Census Bureau has access to all available records.

The limited citizenship data from the ACS is routinely used by the Department of Justice in enforcing Section 2 of the Voting Rights Act. Section 2 is most often used for challenges to at-large districts and to the redistricting process, ensuring that minority voters have the opportunity to elect representatives of their choice.

The remedy to a Section 2 violation is to draw a district in which minority voters, citizens, constitute a majority of voters such that they can elect their candidate of choice. Citizen population data is essential to drawing an effective voting district for minority voters. The Justice Department's use of citizenship data can be seen in numerous complaints filed by the Justice Department to enforce Section 2 in both Republican and Democratic administrations, but it is hampered by the limited data available through the ACS.

Basing apportionment on total population that includes large numbers of illegal aliens is fundamentally unfair to American citizens and dilutes and diminishes the value of their votes. On July 21st, President Trump issued a memorandum directing that illegal aliens be excluded from the population used for apportionment. This is within his constitutional and statutory authority.

Since the first census, we have not counted every single individual physically present in each state, as is the normal procedure. For example, and this is a quote from the current census residency criteria, "Citizens of foreign countries reside--visiting the United States, such as on vacation or business trips, are not counted."

In Franklin v. Massachusetts, the U.S. Supreme Court pointed out that the key phrase in the Constitution concerning the number of persons "in each state can," and this is a quote from the Supreme Court case, "mean more than mere physical presence and has been used broadly enough to include some element of allegiance or enduring tie to a place."

Illegal aliens, like tourists, clearly have no element of political allegiance to a state or a federal government. They can't be called for jury duty. They can't be drafted for military service, if we had a mandatory draft, because they owe their political allegiance to their native country of which they are citizens.

Furthermore, illegal aliens have no enduring tie to any state since they are illegally present in the country. They could be picked up, detained at any time by federal authorities and removed from the U.S. Thus, excluding individuals who have no allegiance or enduring tie to his state is well within the precedent set by the court in Franklin.

As the Supreme Court said in Reynolds v. Sims, it's the seminal case on represent--representational government and the equal protection clause, "Achieving a fair and effective representation of all citizens is concededly the basic aim of legislative apportionment." Illegal aliens are not citizens and the fact that they may be temporarily or merely, as the Supreme Court said, living in a particular state does not make them inhabitants who must be counted for apportionment purposes.

Including noncitizens in apportionment and redistricting unfairly dilutes the votes of citizens and distorts the political representation of states. This violates fundamental principles of fairness and equity to which citizens are entitled as members of the body politic.

The senior career leadership currently in the Census Bureau has already testified before this committee that it has the ability, the time, and the resources to provide an accurate count of the population of the U.S. as it has in numerous prior census counts. That includes its duty and

obligation to provide a complete count of the number of citizens and noncitizens present in the country. Thank you, Madam Chairman.

MALONEY:

Thank you very much for your testimony. The gentleman yields back. And now I thank every--all of our participants today. I now recognize myself for five minutes for questions.

I want to address my questions to the two people hear from states that could lose tens of millions of dollars in federal funding as a result of a rushed undercount, Ms. Carless from North Carolina and Governor Lewis from Arizona, because this will not happen only in Democratic leaning states. It will happen in states with Republican voters and representatives too.

Now, both of your states are lagging behind on their census counts for a variety of reasons, including the coronavirus crisis. Right now, the national average of response is 88.8 percent, but North Carolina is only at 82.9 percent and Arizona is even worse at 80.8 percent. So, in other words, North Carolina is six percentage points behind the national average and Arizona is eight percentage points behind.

So, let's discuss what this means for federal funding for your states. Ms. Carless, in the staff report we should this morning, we estimated how much funding your state would lose with an undercount of just 1 percent. And based on that estimate, North Carolina could lose more than $99 million in federal funding. That includes funding for healthcare, jobs training, education, transit, and much more. And that is for just one year. Over 10 years, that would be nearly $1 billion.

Ms. Carless, this is federal funding that the people of your state, the people of North Carolina, are entitled to under the law, but they will not get it if they are not counted. Isn't that right? And what does that mean for your state, Ms. Carless?

CARLESS:

Chairwoman Maloney, thank you for your question. And yes, that is correct. North Carolina is the ninth most populous state and the fourth fastest-growing state in the country. Our state really needs every dollar we are entitled to to support infrastructure, resources, and programs for our growing population. Also, I think the current pandemic really magnifies the importance of government programs such as housing assistance and food and nutrition programs, which all relate back to the census.

So, right now in North Carolina, there are 1 million utility customers and renters at risk of utility disconnection and eviction, as well as applications for food assistance programs has increased by 15 percent and unemployment is high. North Carolina is going to need every dollar we are entitled to as our state recovers from the financial hardships of this pandemic.

MALONEY:

Thank you. Now, Governor Lewis, according to our estimate, an undercount of just 1 percent in Arizona could mean a reduction of federal funds of over $60 million. Again, that's just for one year. Over the next decade, which is what the census numbers stand for, a complete 10 years, that would be over $600 million. And there is another factor. As you testified, Arizona has large tribal and rural areas, and their counts are far below even the state average right now.

So, Governor Lewis, federal funding helps not only the tribal communities who desperately need it, but the entire state of Arizona. These are funds that the people of your state are due under these federal programs, but they won't get it if things continue like this and go on as is planned. Isn't that right, Governor Lewis? And can you elaborate what will not getting a full and accurate count of everyone in Arizona mean to your state?

LEWIS:

Thank you, Chairwoman Maloney, for bringing attention to the Arizona state (INAUDIBLE). What that report shows, that if the undercount is the same percentage as the 1027 American community survey, the populations most at risk for underfunding of critical programs are also the most vulnerable populations, African-Americans, Hispanics, young children, Asian Americans, and over 19,000 American Indians.

Each of those numbers represent an individual who will be counted for purposes of education, healthcare, eldercare, food security, housing and other programs that utilize census data. There is an individual, family, and a community behind each of those numbers, Madam Chair, that will be irreparably harmed by the undercount that would be anticipated. And again, the undercount anticipated for the 2020 census is much greater, given the pandemic interruption of census operations.

Now, in a real-world scenario, I don't have the specific dollar amount, but I can provide an example that came about as a result of the allocation of the tribal relief fund in the CARES Act. The Treasury Department used, in a large part, the population numbers from the Indian Accounting Block Grant Program to distribute those funds. The Gila River Indian Community had an undercount of approximately 8,000 tribal members.

This resulted in tens of millions of dollars not being allocated to our tribal government to provide for our citizens during this pandemic. But some tribal nations had a population count so skewed that they received little or no money to combat COVID-19 in their tribal communities from the population allocation and these are impacts that will be with us for decades, not just one year or one COVID-19 relief package Madam Chair, members of the committee.

MALONEY:

Thank--thank you very, very much and I--I would like to ask one last question to each of you and let you both respond. You both have Republican senators who represent your states Senator Mc Sally represents Arizona and Senator Tillis and Senator Burr represent North Carolina. I would like the two of you to please explain, take a moment and tell your senators whatever you want about the need to extend the census deadlines and what it will mean for the to ask and all we are asking is stand lines. Governor Lewis, let's start with you. If Senator McSally was listening right now what would you want to say to her about the need for an accurate and full census count?

LEWIS:

Madam Chair, I would tell my Republican delegation out of respect the same thing that I would tell all congressional members, the census should not be a political or partisan issue. The census is too important to all tribal nations, states, and local governments who rely on funding to provide for the basic needs of our citizens.

The low response rates that are currently being reported are just as detrimental to those states deemed red states or blue states. In fact recent rankings of state responses placed more red states in the bottom 20 than blue states. We have to make sure there is an accurate count. It's in everyone's interest that the census is accurate.

Our tribal citizens are relying on it and frankly every member of Congress should be relying on it because the census determines representation and equal representation that is vital Indian country as I represent my tribal community for its federal tribal trust relationship Madam Chair and this goes right to the underpinnings and the foundation of our Constitution.

MALONEY:

Thank you very much. Ms. Carless, what would you say to senators from North Carolina Senator Tillis and Senator Burr?

CARLESS:

Senator Tillis and Senator Burr, I urge you to support a later deadline for 2020 census operation, too much is at stake for North Carolina for us to risk a complete and accurate count $44 billion, a 14th Congressional seat and essential data to help guide allocation of resources and services for North Carolinians across our state. Senator Tillis, you advocated for North Carolina's soldiers and Marines to be counted in the decennial census as residents of the state regardless of whether or not they were deployed abroad.

Unfortunately, the counties that are home to military families are underperforming leaving military families at risk of losing resources that would help support military personnel and their families. Let's not--let's not let the work we put into getting North Carolina communities go in

vain. Let's do everything we can together to support a complete and accurate 2020 census count for our state.

MALONEY:

Thank you. I--I hope they are both listening. I now yield to the Ranking Member for five--well, he has said and designated that Congressman Gosar is next. I now yield to Congressman Gosar and recognize him for questions. Is there a technical problem? There seems to be some technical problem. I now yield to Congressman Hice. Mr.--Congressman Hice you are now recognized.

HICE:

Thank you, Madam Chair. Mr. Mihm, let me begin with you if I can. I am sure you are aware of the recent stats that the Bureau has come out regarding the non-response follow-up operation. Is that correct?

MIHM:

Yes, sir.

HICE:

Okay. So I--I feel like I am getting a little different type of information because in one regard we are like 70 percent ahead of the game but in other ways we are not so just bottom line would you consider the Bureau ahead of projections or behind?

MIHM:

Well, as I--as I mentioned sir is that there is good news and that is that they are ahead on their nonresponse follow-up of where they had, where they are gold would be at this point. The challenge that they have and we have seen this in every single census is getting that last few percentage points of the population and that is still something that they need to work on and that will be very difficult for them to do but they--they are ahead of their schedule according to their plan at this point.

HICE:

Okay. And I would imagine every census has problems, great difficulties getting these last handful to respond. I mean non-responders are non-respondents it doesn't matter which census we are talking about but bottom line we are ahead of projections. I think that is incredible news.

Now in light of that districts like mine just for example the 10th District of Georgia largely rural, we are reporting less than 60 percent so we are ahead of the Bureau estimated there would be 60 percent of self respondents and yet in our district we have at least certain areas of our district that we don't even have 60 percent counted yet. So we have technological advances.

We are using iPads, we are using laptops. We have got a lot of things going on and yet in some rural areas like mine we are still struggling to get the numbers so my question is what is the problem? Is it technology, is that the pandemic? What--what is the issue in some of these more rural districts?

MIHM:

In some cases, sir, it is just almost a perfect storm. I mean in this and certainly the pandemic has wreaked havoc on the Bureau's ability to--to first in terms of recruiting people they are having also problems with turn over. Their turnover estimates were about 10 percent would come into training and then not actually then begin work.

It is actually running over--over double that. They are also having trouble obviously with people being willing to open the doors and talk even though they practice PPE and are keeping a 6 foot distance away from that. The big challenge that the Census Bureau runs into is a, again, getting that last kind of couple 2 percent, 3 percent of the population.

For a 10 week operation nonresponse follow-up it is not uncommon for the last four weeks to be going after the 2 percent of the population. That is an important point you know both because we want everyone counted but it's also because that's where we make sure that those--those hardest to count, hardest to enumerate communities are actually included in the census.

HICE:

Okay. So the real--the real problem here you are going to get you feel comfortable we are going to get 97 percent. Now the real problem is going to be getting that last 3 percent or so, correct?

MIHM:

That is--that has typically been the challenge that the Bureau faces. I mean obviously it is even more compressed this time but if they end up with--with 3 percent without being you know fully enumerated that would be by all historical standards and certainly these standards of the professionals at the Census Bureau not as successful a count, not a complete and accurate count so that would be a major kind of defeat, institutional defeat for the Census Bureau.

HICE:

Okay. So we have got let's say 20 days or so remaining for the field operations right now. What are the biggest challenges on this final stretch for world districts? I mean obviously Internet connectivity is I would think somewhat of a problem but what are the biggest challenges that you are facing as we approach this deadline?

MIHM:

I think the biggest challenges sir, our first making sure that we have enough the numerators out there and that they are working enough hours and that is part of what the incentive pay program, the Census Bureau has put in place to address just to try and get the enumerators to work more hours. That--that is probably one of the biggest things.

The second thing is obviously having the public cooperate and participate with the Census Bureau. The Census Bureau has continued its--it's community outreach programs because they know in a lot of areas around the country having trusted local voices speak up for the census and talk about the importance of the census as a couple of the witnesses here have done is very important to convincing people to participate in the census and then hopefully touchwood that we don't have other coronavirus spikes, we don't have other weather related events that would certainly derail the Census Bureau if any of that happened.

HICE:

I feel like we're going to make it and I feel--and I'll close with this. You feel like we're going to make the deadline, is that correct?

MIHM:

Well it's--it depends on--you know, and I'm not trying to, you know, to--to parse words here, sir. It's that--you know, to be accurate it's that the Census Bureau will complete a census. It's a question and the risk is of what will be lost. Will we--will it be a less than historically acceptable count in terms of completeness and in terms of accuracy? And that's the big worry that I think everyone faces.

HICE:

I'm sure it is. Thank you.

MIHM:

Thank you, Sir.

HICE:

I yield.

MALONEY:

The gentleman yields back. Congresswoman Norton is now recognized. Congresswoman Norton, you are now recognized.

NORTON:

Thank you very much, Madam Chair, for this important hearing. It means dollars and cents to every district, including my own, the District of Columbia. I have--I want to get a sense of what we're talking about here, Mr. Thompson, when we hear that the time has been cut from five months to three months, exactly what the implications are. Mr. Thompson, could you explain how the Census Bureau develops timelines for data collection and processing so we will understand what this reduction in months means?

THOMPSON:

Certainly, Congresswoman. I'm delighted to respond. So the Census Bureau began their testing program in 2013 and it conducted a number of tests, did a lot of research, understanding the time that was available to conduct the 2020 census. And based on that extensive planning and preparation, they developed a schedule and that schedule allowed for five months of post data collection processing. That--that's basically how it came about.

NORTON:

So this is not--this is certainly not arbitrary timeline. Let me further ask you, Mr. Thompson, in order to process this data on a shortened timeline, it-- will the Bureau how to alter or eliminate some of the processes it has developed to ensure a complete an accurate census?

For example, in a court suit filed, the Census Bureau said it plans to cut 21 days of the schedule by compressing the time allotted. And here I am quoting. "Subject for--subject matter expert review and software remediation." I wonder if you could translate that for us. Does this change increase the risks of inaccurate or incomplete data count? If so, why?

THOMPSON:

Congresswoman, that's also a good point. So what that operation entails is for the Census Bureau subject matter experts to look at preliminary tabulations of census data and compare them with the--with well-known benchmarks and understand what--what's causing differences. And then they have to go back and if they find differences and understand is a computer problem or is this a problem with the census counts or what.

So--so it's very important that they carry out this operation because that's--that's one of the ways in which they find that there are errors in their computer programming and then they fix those errors. If they don't fix the errors, they could be with us for quite a while.

NORTON:

Here's a here's another change mentioned. And again, I'm asking for your translation. The--the change described in this court suit is that the Census Bureau will eliminate redundant quality control steps. Why does--does this change increase risks of inaccurate or incomplete data? And if so, why?

THOMPSON:

Certainly, Congresswoman. So the Census Bureau on a lot of their operations, including the non-response follow up interviewing and other interviewing, they have--they have quality checks that they build in to make sure that--that the enumerators are doing high-quality work. So if those quality checks are reduced, than that, of course, introduces the prospect that more enumerator fabrication might occur and not be detected and put more error into the system.

NORTON:

And the bottom line, sir, are you concerned that 92 days will not be enough time to ensure that the census is as accurate and as complete as possible?

THOMPSON:

Congresswoman, as I've testified, I'm very concerned about the effect of the truncated schedule on both data collection and post data collection processing on the accuracy and quality of the 2020 census.

NORTON:

thank you, Madam Chair. I yield back.

MALONEY:

The gentle lady yields back. Congressman Jordan, you are now recognized.

JORDAN:

Thank you, Madam Chair. Mr. Von Spakovsky, so two weeks ago on August 28th, Ron Jarmin, deputy director chief operating officer of the United States Census Bureau said, "We will be able to produce a complete and accurate census by the deadline." August 27th 2020, again, two weeks ago, Tim Olson, associate director for Field Operations said, "Yes, we are on track to get this done on time." Same day, August 27th, 2020, Al Fontenot, Associate director for Decennial Census Programs said, "All the indications are that we are on track."

So three professionals running the census and each said they are on track. And yet, chairwoman Maloney says we need an extension, Mr. Raskin says we need an extension, and their four witnesses today say we need an extension. So I just have a simple question, who should I trust, the--the partisan Democrats on this committee and the four witnesses they've asked to come in and testify for the people actually doing the job, the career professionals at the Census Bureau? Who do you think we should dress?

VON SPAKOVSKY:

Well, I think I would go with the professional career senior leadership at the--at the Census Bureau. They are the ones who live planned, implemented, supervised, and directed the entire Census Program and my experience my--experience both as a government employee and elsewhere is that their judgment is the one that ought to be trusted.

JORDAN:

Probably should trust the people doing the job and actually in the field working with the people in the field versus the partisans on--on the committee and the people they've asked to come in and testify. And oh, by the way, I should point out, those three statements made just two weeks ago were part of the Democrats investigation. So this wasn't Republicans going out and soliciting this information. This is Democrats bringing these individuals in under oath and all three of these individuals said we're on track to get the census done on time.

It seems to me that, you know, we've got this hearing, we've got four people coming in who aren't part of the census who have--through aren't doing it, aren't out their day-to-day working with the people who are hearing there saying we need an extension and yet, we have the folks doing the job that say no extension is necessary. In fact, we're going to be--we're going to be done on time.

And we are 86 percent--86 percent of the households have already been counted in the 2020 census now. Different subject, Mr. Von Spakovsky--Spakovsky. And you talked about this in your testimony, is as citizens vote diluted when illegal immigrants are counted in the apportionment number?

VON SPAKOVSKY:

They most certainly are. By including them in the apportionment count, you are devaluing the vote of those particular citizens individually, plus you are cheating particular states out of congressional representation in the House when other states get more representatives because of individuals who, like tourists, aren't supposed to be counted during the census for apportionment purposes.

JORDAN:

Yeah, it's common sense and it also happens to be the Reynolds case, which you cited I think in your opening statement. Is that right?

VON SPAKOVSKY:

That's right. And--and most importantly, the--the Franklin versus Massachusetts case, you know, gives the president some discretion in determining with these Commerce Department and secretary of Commerce, the Census Bureau who should be considered inhabitants of the state. And they made it clearer that having allegiance and other ties to a state is an important consideration.

JORDAN:

And that is exactly that logic, that common sense is--is exactly what's behind the president's July 21st, 2020 apportionment memorandum, where he says count everyone but provide the number of "citizens and legal residents" to the president and use that number for the apportionment of congressional seats. Is that right?

VON SPAKOVSKY:

That--that is absolutely correct.

JORDAN:

Yeah. And--and everyone understands that's how it should work, anyone with common sense. The court decisions understand that. The only people who are against that are Democrats. Isn't that amazing? Democrats want illegals to be part of the count to determine the number of members each state has in the United States House of Representatives.

Now, to me that's frightening, that's that their argument, that's their logic--your lack of logic, I should say. That goes against common sense, goes against the court ruling, goes against the memorandum, goes against what any person you'd go out and talk to on the street would say needs to happen when we're counting the people. Count everyone, but for the purposes of apportionment, we need to know the number of legal residents and citizens in this country. Does that make sense to you, Mr. Von Spakovsky?

VON SPAKOVSKY:

Yes, I agree with that 100 percent.

JORDAN:

Mr.--Madam Chair, I yield back.

MALONEY:

The gentleman yields back. Congressman Clay, you are now recognized.

CLAY:

Thank you so much, Madam Chair, for holding this important hearing. Let me say to Director Thompson, so good to see you again. And--and we had a--a great working relationship during the 2010 census. And you and I know that the census is a once in a decade government function enshrined in our Constitution and conducted since 1790. I would hope this would not be the census taken in our nation's long history that will be followed by an asterisk as incomplete or not a full count because of selfish political reason.

Director Thompson, and--and let's be very clear about one thing. The changes to the apportionment and redistricting deadlines was first requested by the Census Bureau and the Trump administration before the Trump administration's sudden reversal. How do we prevent a serious undercount or an incomplete census from occurring at this stage of this process?

THOMPSON:

Thank you, congressman. At--at this point, the Census Bureau simply needs more time to do its data collection and to do its post data collection process. So, for example, the Census Bureau had announced that, as of September 11th, which is tomorrow, they were going to go to what they call closeout in the entire country for the nonresponse follow operation.

And what closeout means is they send out people to get a last resort, last attempt, basic bare information on--on--on households, like maybe they'll just get a count of people in the household or a partial count, or maybe they'll only get that the household is--is occupied. That--that's tomorrow.

And you think there are some area census offices that the Census Bureau is publishing data for that right now are under 50 percent complete with nonresponse follow up, I would think that would be pretty scary to me. So, the Cens--the Census Bureau needs more time to do the data collection, and they certainly need more time to do the data processing.

CLAY:

And--and that is why it's so important that we extended these delivery dates, is that correct?

THOMPSON:

Exactly.

CLAY:

Let--let me go to Mr. Mihm. Mr. Mihm, why was it important for the bureau to delay census operations after the outbreak of the coronavirus?

MIHM:

Well, sir, like--like the rest of the country and certainly like the--the Congress, the--the Census Bureau just had to, in effect, shut down for--you know, nationally and not just in--in local areas. The spiking of the cases meant that it was very difficult to get people on board. This would be the census takers that would be, you know, actually doing the work.

It would be--they were quite certain that they would not be able to get participation from communities or people opening the doors. They had obviously stopped all of their in person partnership programs, and there's only so much you can do over WebEx and Zoom. You know, you--especially the--a partnership program.

So, the Census Bureau concluded that there was just no effective way at the--the peak of the COVID outbreaks, at least at--at that point in time, that they can carry on operations. They went-

-then went through a very disciplined process in June, you know, a very thoughtful one of--of using criteria of which offices would reopen when the based on local health conditions and--and the availability of the--of PPE for--for census takers. And so now, they're--they're open nationally.

CLAY:

Let--let me ask you, Mr. Mihm, on July 8th, 2020, Al Fontenot, the associate director for Decennial Census Programs, referring to the December 20--31st, 2020 deadline stated, and I quote, "We are past the window of being able to get those counts by those dates at this point." Mr. Mihm, do you agree with the bureau's public statement that the bureau is past the time where they can produce complete and accurate census data by their current deadlines?

MIHM:

Sir, I--I know Mr. Fontenot well. I talked to him often, as well as Ms.--Mr. Jarmon (SP) that--that Congressman Jordan referenced. And I have the utmost respect for them. I think it will be an enormous challenge for the Census Bureau to deliver accounts that meet the increasing historical demands or--for accuracy and completeness.

Each census has gotten better than the preceding one in a--in a general sense. And that's been a--a big achievement in an environment in which, you know, obviously society continues to change. Pub--public willingness to participate has--has gone down, yet we're still doing better with--with each census. I think the great worry that--now is whether or not this would be a census that take a step back if the--do the compressed time frames due to COVID-19 and the other challenges that they're running into.

CLAY:

I thank you for your responses. And Madam Chair, I yield back.

MALONEY:

Thank--thank you so much, Representative Clay, for your thoughtful questions. And in line with your questions, without objections, I would like to place into the record this internal document from census professionals that I released along with the other Democratic members last week.

And in it, the professional say they need more time. And in it, they say that this compressed schedule create risks for serious errors and being not--that would not be discovered from the--the data. So, I--I ask this. Without objection, it's in the record.

I now recognize Congressman Grothman.

GROTHMAN:

Thank you very much. Can you hear me?

MALONEY:

Yes, we can. Thank you.

GROTHMAN:

Very good. I--I got a couple of questions here for Mr. Von Spakovsky, kind of a follow up on what my colleague, Jim Jordan, had to say. It--it's apparent that one of the reasons people want to extend this, and is this what you get from the hearing, is they--they want to find more people. And particularly, it seems they want to find more illegal immigrants. Do you--you kind of get that sense here?

VON SPAKOVSKY:

Well, I don't know about that. I mean, I do--I do--look, just like everybody else, I do want an accurate count. But I think it's very important that aliens who are here illegally not be included in apportionment, that they not be included in redistricting, and that we know the number of noncitizens in order to be able to effectively enforce Section 2 of the Voting Rights Act, which is a very important statute.

GROTHMAN:

I--I think it's interesting in--in what we've seen so far here in this hearing, apparently people who want to extend it feel that there are people out there who haven't been counted. And I don't know how you can avoid being counted because it's so difficult. But do you think one of the problems we have as we let this thing drag on is you can have people double counted as they move about the country?

VON SPAKOVSKY:

Well, that's always been a problem with the census. And--and I would bring up history here. It--look, over the past few decades, every single census we have had, there have been huge cries and criticism saying, oh, it's not going to be accurate. People are going to be undercounted. And in every single one of those, that has proven not to be true.

GROTHMAN:

Okay. I--I'm thinking of over counting college students, people who moved, that sort of thing. Do you think that's in particular--particular where you'd find over counting?

VON SPAKOVSKY:

Yes, particularly because, as you know, so many students have been--have left their colleges and gone home. And many of them were still there on April 1st, and now may not be there and may get double counted.

GROTHMAN:

Is it possible that if you begin to look for people in October, September that you're also going to get people who are already counted in August, just people who in general have moved since that time?

VON SPAKOVSKY:

Most certainly, given the very high mobility of the American populous.

GROTHMAN:

Right. Do you think people who shouldn't be here at all are particularly mobile, or there's a particular danger that they could be over counted, at least I am under the impression a lot of times they do. Seasonal work, they may want to obey the law and leave the country or whatever. Do you think that's a particular problem with people who aren't here legally?

VON SPAKOVSKY:

Yes. I think that is a very big risk in particular because I think people tend to--aliens tend to move or leave when they see in the press and elsewhere that there are vigorous enforcement efforts going on by the Department of Homeland Security in their particular area.

GROTHMAN:

So in other words if we are worried about double counting and we begin to allow the census counting to go on say into October do you think disproportionately we will be over accounting illegal immigrants?

VON SPAKOVSKY:

You know I don't have enough--

GROTHMAN:

(INAUDIBLE) counting--

VON SPAKOVSKY:

--that question but I think--I think that is a substantial risk.

GROTHMAN:

Okay. And could you explain again the effect of counting illegal immigrants what effect this will have on individual states who may be even aggressively trying to recruit a legal immigrants, states that have a disproportionately high number California being an obvious one?

VON SPAKOVSKY:

Yeah, what it means is that states that incentivize illegal aliens to come to their states particularly by putting in sanctuary policies are using those populations to get more congressional seats and they are entitled to at the--at the cost of other states in the country that lose congressional seats which they ought to have because they don't have those large numbers of illegal aliens in their state so it distorts what should be the equitable political distribution of the U.S. House of Representatives.

GROTHMAN:

Okay and you--you feel I suppose that is true. Does it even create a perverse incentive for states to (INAUDIBLE) sanctuary policies to say we want to foil our immigration laws because we want more illegal people in our state. That is what it is encouraging?

VON SPAKOVSKY:

Yes, I think that is exactly what it does.

GROTHMAN:

Wow. That is really something. Well, thank you I'll--I'll yield the remainder of my time if I have any.

MALONEY:

Thank you. The gentleman yields back. Congressman Lynch, you are now recognized.

LYNCH:

Thank you, Madam Chair. I want to thank you for having this hearing and I appreciate the contribution of our witnesses. May I gently suggest (INAUDIBLE) hearing questioning you know we were into this hearing for an hour and 15 minutes before we got to questions.

I know we had some technical difficulty, things like that but if I could gently suggest that we might be able to streamline these a little bit. That might be helpful. I know how hard our staff works but that's a long time because now I'm going to be an hour late for my next hearing and I know there are a number of members on the committee in that position.

So just if we could kind of figure that out especially where we are starting to get into the normal flow of business again it will be problematic.

To save me a little bit of time and everybody else let me just associate myself with the articulate remarks of the gentleman from Maryland Mr. Raskin in his opening statement, his summation. I agree wholeheartedly with the concerns that he has raised and I appreciate the--the energy and the intellect that he has put into those remarks. I would like to just take a small piece of the problem and try to get at that in my question.

So I--I--with Congresswoman (INAUDIBLE) represent the Boston area. We both represent the City of Boston. We have got a huge number of universities and colleges here in the greater Boston area, Cambridge and all of that and my question is about and maybe--Ms. Carless you sound to be--you--you sound like you are the person that might be best able to answer this question.

But we have not been able to identify up to now students who--who are normally counted so these are not students on campus but the students who live which is the great majority live off-campus. We have not been able to get them in the count and part of that is we are not getting the full cooperation because of the pandemic that we normally get from the universities and also the curtailment of going out and getting these nonresponsive follow-ups, these NRFUs--in the tally.

So are there any thoughts that you have regarding how we might be better and I am sure look, there are a lot of college towns all across this country that are having the same problem and for that particular difficulty is there--do you have any recommendations about you know how we might best count that demographic?

Mr. Mihm from GAO you know we have also heard from the inspector general of the GAO concerns that off-campus college students are being undercounted. That is what we are finding in our area so I would just ask the witnesses if they might be able to help us out on that. What is a better way to get those people in the tally?

CARLESS:

Thank you for that question. I do think that one thing that could be done is a more concentrated effort on actually reaching out to colleges and universities and their administration to not only make sure that they are consistently sharing the message of the importance of the census for off-campus students and make sure that they are being counted but also providing them with quick and easy tools because they have a lot of things going on and if you give them the message to disseminate so that they can tweet it out to their students or you know email, whatever way they communicate I think that would make a world of difference but that has not been done to date as far as I know.

LYNCH:

Great. Mr. Mihm, have you got anything you want to add?

MIHM:

Yes, sir very--just very briefly there is actually two issues here as you are alluding to. One is the enumeration of students that are living on campus housing. There is about 40,000 of those nationally. The Bureau was able to reach out to universities and get what they feel is at least an okay count on that of about 82, 81.5 percent or so response for those.

The bigger challenge as you were mentioning is those that are living off campus yet still attending the University the Census Bureau doesn't have access necessarily to all of that information though what they did do is they--the Census Bureau director in the middle of June sent out a letter to about 1350 different universities saying hey, can you help us with some of the count here and they--they got some good response but they also said it had some uneven response.

They had quite a number of the universities wrote back and said we are not going to participate or cooperate as it were with helping you get a count of students that are living off campus and so to the extent we could kind of urge those universities to participate that would be very helpful.

Also the issue of course you know as has been discussed throughout the hearing is that it's--it's one thing if census date takes place when students are residing on their campus it is at least an easier kind of intellectual point to say this is their usual residence. If they are home and have been home for several weeks and are still home this is where you know where they would live outside the university.

It gets tougher to--you--you can see where there would be that--they would be missed in their university towns where if that is where they would normally attend and is their usual residence and where they should indeed be counted.

LYNCH:

Okay. My time is exhausted. I do want to say that it is wonderful to see Mr. DeSaulnier on--on the call and you look great there, Mark. And I yield back. Thank you.

MALONEY:

The gentleman yields back. Thank you for your remarks and we now recognize Representative Gosar. You are now recognized. Congressman Gosar, you are now recognized. He doesn't understand. I believe he is trying to unmute. Mr. Gosar, would you like help on muting? Okay.

GOSAR:

Sorry about that. I am traveling. Did that hit? Can you hear me now?

MALONEY:

Yes, we can hear you now.

GOSAR:

Thank you very much, Chairwoman. Census data reported that as of yesterday 80.8 percent of Arizona is enumerated. This is well below the majority of states. In just a few days prior to this report the Census Bureau stated that Arizona was just 76.2 percent enumerated.

This appears to be a very productive spike in a short number of days. Mr. Mihm do you think the Census Bureau's decision to move enumerators from high response areas to the southwest and southeast which is where a large portion of the nonresponsive follow-up is not completed contributed to this increase in my state?

MIHM:

I--I--sir, I am not able to speak specifically to the--the--that particular case. What I can say is more as a general rule the Bureau with each census has moved census takers to areas where they have been particularly, you know, then having problems either recruiting or had a particularly high nonresponse workload. It's not something that they like to do because it's obviously--it can

be costly and--and it's also there can be some data quality concerns. But it is something that's been tried and true as an enumeration technique and has shown itself to be successful. So it very well could be a situation in your case as well.

GOSAR:

Now, with that said, what role has technology played in the self-response rate, which is 5 percent higher than the bureau's goal and the 88.2 percent total enumerated rate?

MIHM:

Yeah, it's--it's been a great advantage to the Census Bureau. And obviously, credit to them for pulling it off. First, in terms of the initial response, the Internet option that many of us availed ourselves of worked and pretty much without a hitch and it was convenient and easy and it--it was very, very helpful to the Bureau, it reduces paper and all the rest. And so that was a big and important improvement.

Likewise, at this time being able to use technology in the enumeration as part of non-response follow-up is proving itself to be quite valuable. There's always, you know a set of kind of technical glitches that take place. But overall, that's proving to be very valuable as well.

So I think one of the stories notwithstanding some--some continuing concerns with the use of technology, but when this is over in terms of the fundamental bedrock enumeration is the--the use of technology is going to be a generally positive story.

GOSAR:

So it really would support broadband throughout the country?

MIHM:

It's--I'll take your point, Sir. It's not my brief, sorry.

GOSAR:

Sounds good. Mr. Mihm, in August, your strategic issues team released a report outlining concerns with the count. Given the large enumerated rates, operational changes made by the Bureau, help in staff layoffs and statements of confidence and accuracy meeting the September 30th deadline made by Mr. Fontenot, Olson (SP), and Jarmin, all senior level non-political census officials, do you still stand by your teams report?

MIHM:

Yes, sir. And as I mentioned is that I--I know Mr. Fontenot, I know Mr. Jarmin well and I--I have deep respect with them and it's an important data point. Their sense of confidence and their ability to produce the counts. Our concern is that the risks that are entailed in that. And does that mean that they--they will not present a count at the end? Of course not. I think they will.

What the challenge will be is--is the--is it going to be a better account than we have gotten in the past because each census has generally gotten better on that and will it need meet kind of the standards and the needs of the country for--for an accurate and complete count? That's the risk that's entailed in that. The risk also means that they could very easily do it. But there--it's going to be an enormous challenge for the Bureau.

GOSAR:

So one follow-up in regards to counting Native American tribe--tribal members, which are very large in my state. Like--like Navajo Nation, which was locked down, it wasn't easier to get a hold of people when they were in lockdown or was it harder?

MIHM:

It's--on the whole, it's--it's--you know, the--the issue with--with enumeration in--in tribal communities has been historical challenge for the Census Bureau. Some of it is--is dealing just with recruitment problems and the initial response rates are have tended to be quite low. And in fact, one of the areas that I know the Census Bureau is most concerned about is Window Rock in Navajo Nation. That has both low response that is a high workload for the follow-up as well as experiencing recruiting problems.

And so there's--there's traditionally been problems there. We--we heard the governor talk earlier about just the enormous challenges of--of how COVID has just been devastating in many of the tribal communities. That certainly makes things even more difficult both for those communities, obviously, and for the Census Bureau.

GOSAR:

Thank you very much and I yield back.

RASKIN:

We're going to recognize the gentleman from Virginia, Mr. Connolly for his five minutes.

CONNOLLY:

Thank you very much, Mr. Chairman, and I thank you and Carolyn Maloney for your diligence on this subject. And let me also welcome Mark DeSaulnier back. We're so glad to have you back. You've been in our prayers and we're glad to see you. Looking great.

Let me begin, Mr. Chairman, by saying that I find Mr. Jordan and--and Mr. Von Spakovsky's references to human beings as illegal aliens as offensive. I don't believe that kind of language ought to be part of our discourse in this committee.

It demeans human beings and makes them things rather than the human persons they in fact are whose status may be up in the air. There may be lots of reasons why somebody is undocumented in the United States, and that's always been the history case historically. Mr.--Mr. Mihm and Mr. Thompson, what does the constitution say with respect to who gets counted in the census? Mr. Thompson--Director Thompson.

THOMPSON:

Well, thank you, congressman. So first, let me state that I am not a constitutional lawyer. However, the advice that I got when I was at the Census Bureau as a career person and as director from some very good attorneys was that the purpose of the census was to count everyone residing in the United States, regardless of immigration status.

CONNOLLY:

Well, you don't need to be a constitutional lawyer to read the words. The words are all persons. Is that not correct?

THOMPSON:

Yes.

CONNOLLY:

Yes. So it doesn't say except for those who lack proper papers, is that correct?

THOMPSON:

Yes.

CONNOLLY:

And has it been the practice of the Census Bureau to in fact comply with the words of the constitution and count all persons to the best of their ability?

THOMPSON:

Throughout my long experience with the Census Bureau, they always counted--did their best to count everyone in the United States.

CONNOLLY:

And--and you know, it's also interesting to hear Mr. Von Spakovsky talk about diluting the votes of those who are legally in the United States. And I'm here to glad to hear that commitment from him and Mr. Jordan because I look forward to their joining us in opposing voter suppression that dilutes votes and purging voting rolls and making it harder to vote and eliminating early voting or curtailing it or changing precincts arbitrarily to make it hard for especially people in minority communities to vote. Those kinds of voter suppression issues are to be condemned and I'm certainly looking forward to their support in that condemnation.

Mr.--Mr. Mihm and Mr. Thompson, it has been the practice of the Census Bureau to try to get data early to states that undertake redistricting early. And two that come to mind are my home State of Virginia and the State of New Jersey because we have off-off year elections next year.

So we actually have legislative elections in 2021 and it's been the practice historically of the Census Bureau to try to get our data early so that we can undertake our redistricting appropriately in anticipation of those elections next year.

How it might the actions being proposed now in terms of curtailing the census or wrapping it up early, how might that affect the ability of the Census Bureau to get accurate data to those two states?

MIHM:

Mr. Connolly, thank you. The--as a resident of Virginia, obviously, this is an issue, you know, a very important issue for me personally. We have asked the Census Bureau that and we understand that they are due to come out with a plan within the next couple of days as to how they are going to be able to--to deliver the apportionment--or rather the redistricting data is that one of the--the tradeoffs that they're making in order to get the--due to the cutting of the amount of time that's available for processing, to get the apportionment data is they're focusing only on apportionment or almost exclusively on important data at this point.

There are other data, obviously, that's important for redistricting and, you know, obviously needed in a much lower geographic level. That's something in which they said that they're going to be providing a plan within the next few days and I understand on that that's something that we're going to be looking for. And obviously we would keep you and your office and the committee informed on any observation that we have on that plan.

CONNOLLY:

I do think it's important, in my final three seconds, to underscore that there are some states that are more effective affected immediately than others in Virginia and New Jersey (INAUDIBLE). So thank you so much for that observation and I yield back, Mr. Chairman.

RASKIN:

Thank you very much, Mr. Connolly. We will now recognize Mr. Palmer for his five minutes of questioning. Mr. Palmer.

PALMER:

Thank you. And I too welcome Mr. DeSaulnier back to the committee. I have been greatly concerned for him. One of the things I wanted to point out is we've started talking about the unauthorized population.

The unauthorized immigrant population, according to Pew, has stabilized over the last decade or so and--and--but there is--I think they also found a consistent amount of transiency, that is people coming in and--and--and out of--of the country, staying for a short amount of time and then returning to their countries of origin. Pew reports that to be about 20 percent or less--are here less than five years, and almost 40 percent are here less than 10 years. And--and that doesn't include noncitizens who are here legally short-term, such as college students and--and guest workers.

So, I have some questions here that I--I'd like to ask to Governor Lewis. Should--actually, I'll start with Ms. Carless. Should we allow noncitizens to run for office?

CARLESS:

The Constitution would not allow noncitizens to run for office.

PALMER:

I--I know what the law is. I asked you--and these are yes or no questions. Should we allow noncitizens to run for office?

CARLESS:

No, we should uphold the Constitution.

PALMER:

Okay. Should we allow noncitizens to make campaign contributions to political candidates?

CARLESS:

No.

PALMER:

Should we allow noncitizens to vote in our elections?

CARLESS:

No.

PALMER:

Okay. Governor Lewis, the same questions. Should we allow noncitizens to run for office? Is he still with us?

LEWIS:

I--I am. Thank you, congressman. And--and as--as a Native American leader, we know. We have a history of not being considered citizens, even though we were the first--

PALMER:

--Well, sir--

LEWIS:

--Americans--

PALMER:

--I--I'm just asking you a--a straightforward yes or no question. Should noncitizens be allowed to vote?

LEWIS:

I would defer--

PALMER:

--Should they be allowed to run for office or should they be allowed--

LEWIS:

--Thank you--

PALMER:

--To make campaign contributions?

LEWIS:

I would defer to the Constitution--and--

PALMER:

--Then your answer would be no--

LEWIS:

--And what the Constitution says.

PALMER:

And--and thank you for that.

LEWIS:

Respectively.

PALMER:

I also have Native American heritage as well, so I--I really appreciate you being here.

I'd also ask that to Mr. Thomas. Should we allow--I think everybody's going to say no. Is that--is that fair to say, Mr. Thompson, Mr. Mihm?

THOMPSON:

I think that's a good assumption, congressman. I--I would uphold the Constitution.

PALMER:

Okay. Then let me ask this. If we don't allow them to run for office, if we don't allow them to make campaign contributions, and if we don't allow them to vote, why would we count them for apportionment purposes, particularly considering the transient nature of--of so many of them?

I mean, 20 percent who are here less than five years, that's over 2 million people, and that's not counting the people who are here legally on a short-term basis, like it says, college students and--and guest workers.

So, does it--does it make sense that we would count them for apportionment when it is so many of them won't even be here and--and be so dis--and that would be so disruptive of our system of apportionment that we literally would deny representation to--to citizens who are here legally. Mr. Von Spakovsky, could you respond to that?

VON SPAKOVSKY:

Well, I agree with you. And they should not be included in apportionment. If they can't vote, which I don't believe they should, if they can make campaign contributions, and if they can't run for office, then there's no reason to include them in apportionment.

And I might point out that in fact in 2015 the Congressional Research Service actually did a study saying if apportionment after the 2010 census had been based on citizen population, if they had not included noncitizens, Louisiana, Missouri, Montana, North Carolina, Ohio, Oklahoma, and Virginia would all today have an additional seat in the U.S. House of Representatives. They've been cheated.

PALMER:

Chairman Raskin, I want to--Chairman Raskin, I want to suspend my time to ask how much time I have left because the clock disappeared.

RASKIN:

We're counting 24 seconds, but we'll be liberal with that, as with all things, Mr. Palmer. The floor is yours.

PALMER:

You are always very kind to me, and I am grateful for that. Thanks, sir.

All right. The reason that we don't allow noncitizens to--to participate in our elections is because it could have a deleterious impact on our ability to govern ourselves as a representative republic. That's the reason why we shouldn't count noncitizens for apportionment, because it will have a--a--a very negative impact on our ability to continue this great experiment in representative government.

And I--again, I thank the chairman for extending my time. Your kindness is noted and appreciated. I yield back.

RASKIN:

Thank you very much, Mr. Palmer, for--for those very interesting questions. And I will now recognize myself for my five minutes of questions.

And Director Thompson, I want to start with you. Some people seem to be a little cavalier, at least to my ears, about losing 3 percent of the population in a census count. How many people is 3 percent of the American population?

THOMPSON:

Well, congressman, right now there's about 340 million, 350 million people in the United States, so 3 percent of that would be millions of people.

RASKIN:

It would be around 10 million, or perhaps over 10 million people, right?

THOMPSON:

Exactly.

RASKIN:

And if you look at our committee, I think 10 million people is more than 16 of the states that are represented on our committee. I just went through--I saw Alabama would be less than that, Arizona, Kentucky, Louisiana, North Dakota, South Dakota, South Carolina, Tennessee, Texas, West Virginia, Wisconsin, my home State of Maryland, the District of Columbia, and on and on.

Well, what do--so, 3 percent may not seem like a big deal, although of course we know lots of elections are settled by 3 percent of the vote. Well, what do you think about the proposition that a group of Americans the size of these states, and in some cases combinations of them--10 million is more than the combined populations of Tennessee, West Virginia, and North Dakota. Well, what do you make of the proposition that that's no big deal and we should just go ahead and blow the whistle and stop counting and run the risk that millions of people might not be counted?

THOMPSON:

So, I--I--I think that would be really, really bad to--to miss that many people, especially the national level. And I would say that it wouldn't be the same in every state. It would vary considerably. I would think the issues right now that would be at greatest risk of those issues where--

RASKIN:

--It could hit every state, right--

THOMPSON:

--the--

RASKIN:

--it could hit all of our states.

THOMPSON:

I--it--it would affect every state, some more than others. In fact, in those states right now that have very low completion rates for nonresponse follow-up, I think they're at--they're at--they're at great risk right now.

RASKIN:

All right. Well, let me follow up with this, because I feel like we've been kind of speaking past(PH) each other today, the way we sometimes do. But the--the--most of the experts that we've heard from, as well as document that the--the chair referred to that was released by the Census Bureau from August 3rd, say that the Census Bureau needs more time to do an accurate account, and yet our colleagues on the other side of the aisle come back and say that we shouldn't be counting undocumented aliens.

Isn't that basically changing the subject? Regardless of where you stand as a matter of constitutional law or statutory law on their argument that, in future censuses, undocumented aliens shouldn't be counted for the first time in American history, regardless of where you stand on that, isn't that an irrelevant distraction from what we're really here to talk about today, which is whether the Census Bureau needs more time to count millions of Americans who may be lost if we don't give them an extension?

THOMPSON:

I--I think that's the interpretation you are making, congressman.

RASKIN:

Well, it's definitely the interpretation making. But I guess what I'm saying is, is there anything logically connected between the two? I mean, you know, I could go to some of the other witnesses who--who might feel free to opine on that. I don't know. Well, let--let--let me continue.

Let's see. The--the Census Bureau document that was referenced by the--Chairwoman Maloney was dated August 3rd. And census officials warned Commerce Secretary Wilbur Ross that a push to deliver census data before December 31st would cause data products to be "negatively

impacted." They said that the loss of activities eliminated under the new schedule would reduce accuracy. It would create risk for serious errors not being discovered in the data and so on.

Mr. Mihm, let me come to you. Just GAO's independent analysis also show that the compressed procedures under the new schedule in the midst of this pandemic would reduce accuracy and create a risk of serious errors not being discovered?

MIHM:

Yes, sir is that we--we are concerned both from the pressure that is put to get out of the field you know the reduction by one month from the end of October to the end of September and the reduction of about from 150 days to about 90 days in order to do the processing. Both of those, either one of them would be a very difficult lift, the two of them together could be an extraordinary one for the Census Bureau.

One other point just very quickly serve is that you were mentioning about the 10 million is that obviously the salient point there is that is not evenly distributed or would not be evenly distributed across the country.

If it were we could probably--we could probably live with it and census geeks like Mr. Thompson and myself would worry about it but the problem of course is that it is not evenly distributed. It is disproportionate in certain communities and certain localities, geographic and demographic areas and so that is the big challenge in terms of the distribution of federal funds, in terms of the appropriate distribution of political power and representation.

RASKIN:

I got you. We are not going to lose an entire state but we could have a state lose an entire congressional district and it could affect state legislative redistricting and of course the distribution of money. Let me just ask you director Mihm before I turn it over to Mr. Comer do you agree that--that the contested question about whether people should be counted even if they can't vote like undocumented people or children or prisoners and so on that that question doesn't need to be re-dissolved in order to deal with the analytically distinct question of whether the census bureau needs more time to count all Americans?

MIHM:

The short answer to that is yes sir in the sense that you know our-- obviously as a support agency to the Congress we don't have a position on the policy question about you know who should be included or included--

RASKIN:

It is a separate issue.

MIHM:

That is a separate issue for us. Our concern is the operational implications.

RASKIN:

I appreciate that. I am going to--

MALONEY:

The gentlemen's time has expired. The gentleman's time has expired.

RASKIN:

I am going to recognize Mr. Comer for his five minutes of questioning.

MALONEY:

Okay. Congress--Congressman Rouda is now recognized. Mr.--Mr. Comer wanted to defer to Mr. Rouda, to another Democratic witness so, Mr. Rouda, you are now recognized.

ROUDA:

Thank you, Madam Chairwoman. Can you confirm you can hear me?

MALONEY:

We can hear you.

ROUDA:

Great. Thank you very much. As we know the impacts of the census are wide reaching, census data affects congressional representation in the allocation of trillions of dollars in federal funding.

Earlier this year we learned the damage that can be done to our communities by just a 1 percent undercount. In fact in orange county in my district we learned that there is a 1 percent undercount of low income students schools could lose over a quarter million dollars in federal funding, the equivalent of all of the textbooks that nearly 1000 students would need in an entire school year.

And a 1 percent undercount of low income workers in my district mains a loss of approximately $160,000 in federal funding for job-training programs, apprenticeship programs and career counseling. Clearly rushing to complete the census and eliminating crucial data and quality control measures could have real consequences for students and workers across the country.

It's not just the distribution of federal funds that could be impacted by an incorrect or incomplete 2020 census. The area that has the most devastating affects is on the American businesses and the U.S. business community has come out strongly in favor of extending the statutory deadline for completing this census.

In an August letter 87 business groups and companies wrote that population and demographic data from the census is quote vital to businesses across America to promote economic development, identify potential customers and create jobs. They went on to say that rushing the census would quote drastically undermined the quality of the data that we rely gone so dearly and harm every state, every business and every industry in the country relying upon resulting data. Madam Chairwoman I asked unanimous consent to have this letter into the record, to enter it into the record.

MALONEY:

Without objection.

ROUDA:

Thank you. Mr. Thompson, this letter from members of the business community specifically mentions the American community survey and the economic census as to Census Bureau programs on which it quote directly depends. Is it accurate that the data from the decennial census is used for both of these programs?

THOMPSON:

Well, the data from the decennial census is used somewhat for the economic census but it is critical for the American community survey to be fully representative. The census data are carried forward each year in the form of population estimates and those data are used to make sure that the American community survey is very representative.

So if these census data were to have a 10 percent undercount in it for example that would be carried forward and that 10 percent underrepresentation would be reflected in the American community survey for 10 years.

ROUDA:

So what you are basically saying is if we don't get this correct businesses across the United States, big businesses, medium-size businesses, small businesses who relied on the quality of this data being correct would be making business decisions that could be wrong because the data is wrong which could cost cities and states millions and millions of dollars in tax revenue. In addition it could put these companies that risk of making poor decisions. Is that correct?

THOMPSON:

That--that is correct, congressman.

ROUDA:

And that is why Chambers of commerce from across the country including the California Chamber of Commerce, the Texas Chamber of Commerce, the West Virginia Chamber of Commerce, they Minnesota Chamber of Commerce and commerce is all in between across our great country join this letter to express their concerns about a rushed and inaccurate census. Governor Lewis and Ms. Carless would it be fair to say that a rushed census stands to have a negative impact on businesses in your communities? Governor Lewis, would you like to go first?

LEWIS:

This is Governor Lewis. Yes, definitely. For tribes and for the Gila River Indian Community we rely on our businesses for 75 percent of our revenue and that was especially critical as we were moving through the pandemic. This would have a devastating effect on--on the nation building of economy that we--that we are trying to maintain through this pandemic and of course the numbers are going to be for a decade and this would definitely have--it would have a devastating effect not only to the Gila River Indian Community but to tribes across Indian country.

ROUDA:

Thank you. And Ms. Carless?

CARLESS:

Thank you. I would cosign with the other witness. It would have a devastating effect on North Carolina as well. Our business community definitely relies on accurate census data in regards to where to place factories or as how to plan for growth and jobs in our community so it would have a devastating impact.

ROUDA:

Well, thank you very much. This is just another are manufactured to make by this administration and I yield back.

MALONEY:

The gentleman yields back. Also, with Representative Comer's request, I'm going to another Democratic representative. Debbie Wasserman Schultz you are now recognized. Please unmute yourself. Okay, she is working on it.

WASSERMAN SCHULTZ:

Thank you, Madam Chair, and I'm sorry that wasn't the problem. I (INAUDIBLE) so (INAUDIBLE)--okay. Thank you so much. In Florida we--we have faced an uphill battle to counteract the trumpet administration's effort to (INAUDIBLE) minority and immigrant communities.

The most recent figures available Florida ranks 43rd of among states in the percent of the population that has been enumerated. The self response rates in South Florida communities that I represent are behind where they were in 2010.

We are at serious risk of an undercount of (INAUDIBLE) for rural, Black, and immigrant communities the very Floridians that are most in need of political representation and federal dollars especially in the aftermath of the COVID-19 pandemic.

Mr. Mihm in its August report the GAO raised concerns about the risk created and late design changes to the 2020 census. In particular, the report states and I quote we have previously reported that late design changes can introduce new risk, delays the resulting compressed time frames, the implementation of untested procedures and continuing challenges such as COVID-19 that escalate census cost and undermine the overall quality of the count.

Mr. Mihm in your view was the decision in early August to cut a month out of field operations and two months out of data processing a quote late design change?

MIHM:

Yes, ma'am.

WASSERMAN SCHULTZ:

Okay. And what are some of the risk that arise out of the Census Bureau making these schedule cuts in August?

MIHM:

I think there are actually two of them. One is that certainly the schedule compression, the reduction in fieldwork by one month and the reduction over 60 days in terms of the processing at the backend to make sure that there are no errors or problems with the data that could be corrected before the apportionment counts go out. So those were the two major areas that we expressed concern.

WASSERMAN SCHULTZ:

Okay. By contrast, Mr. Mihm, I want to ask about why Congressional action (INAUDIBLE) extend the statutory deadline as a different (INAUDIBLE) consider giving the Census Bureau an extension to finish field operations and data processing the type of "late design change" that the GAO has warned about?

MIHM:

I'm sorry, ma'am. I regret I didn't hear the first part of your question.

WASSERMAN SCHULTZ:

Okay. What I said was by contrast, I want to ask why congressional action to extend the statutory deadlines is a different type of change. Do you (INAUDIBLE) giving extension (INAUDIBLE) design change that the GAO has warned about?

MIHM:

Well certainly, the--the--you know, the Census Bureau has a--has told us that, you know, that to the extent that they would get additional time or that--that was certainly the plan that they had been operating on up until the end of July, the very first part of August that--that they would have an additional four months.

That would allow them to be into the field through the end of October as they would plan. It would allow them to begin or have the processing running to January yes, again, as they had planned on that.

WASSERMAN SCHULTZ:

Just to clarify what I mean, it sounds like your more detailed answer indicates no. It is not (INAUDIBLE) by a late (INAUDIBLE) is that right?

MIHM:

Well, the late design change is the ones that cause concern are those that, you know, end up compressing the time or that introduce new and untested procedures. Obviously, to the extent that they have some more time and that would give them an opportunity to--to go through the data, to have additional time in the field, and that had been the plan that the Census Bureau had been operating under for--for a number of months.

WASSERMAN SCHULTZ:

Thank you. Mr. Thompson, you (INAUDIBLE) 2020 census. Can you (INAUDIBLE)

THOMPSON:

I'm sorry, congressman. I didn't catch what you--congresswoman, I didn't catch what you said.

WASSERMAN SCHULTZ:

Okay (INAUDIBLE)

MALONEY:

We're having--we're having technical difficulties. Debbie, we can't even hear you. You're going in and out. So I think the gentlewoman's time has expired. Congresswoman Miller, you are now recognized. Congresswoman Miller.

MILLER:

Muted now?

MALONEY:

We can hear you.

MILLER:

Can you hear me?

MALONEY:

Yes, we can.

MILLER:

Good because there been technical issues as well.

MALONEY:

Yeah, a lot.

MILLER:

Thank you, Chairwoman Maloney and Ranking Member Comer and all of you witnesses for being here today to discuss the census. As the census is only a few months from being legally required to be completed, my district could have been a representation of how difficult it can be to get an accurate account.

Four of my 18 counties in the district had 100 percent of the population living in hard to count neighborhoods. I've spent the last two years visiting each of these counties and I can tell you from first-hand experience how truly rural they are. West Virginia is one of the states that is a success story for the Census Bureau and their non-response follow up operation.

After having one of the lowest at self-responses rates in the country, West Virginia has had over 97 percent of all households enumerated ranking second among all the states with 21 days left to finish the enumerate--enumeration, the census workers in my states are doing a fantastic job and I applaud the Census Bureau for diligently completing this important duty in a particularly difficult area to count.

However, instead of giving the Census Bureau the time needed to implement (INAUDIBLE) strategies, this committee seems to have spent our hearings attacking our duly elected president

and his constitutional and lawful actions to protect the census, our elections, and accurately apportioning congressional seats. And--and it would directly affect me. American citizens deserve fair and accurate representation in Congress and it is the duty of the federal government to ensure apportionment is completed correctly.

Counting people living in the United States illegally in apportionment is an attack on our democratic institution and seeks to take away the voice of the American citizens. I strongly support what President Trump has done in trying to protect the sanctity of our congressionally mandated apportionment process and I urge my colleagues to stop hindering the census any further. Mr. Von Spakovsky, why should Americans be concerned about vote dilution?

VON SPAKOVSKY:

Look, vote--vote dilution is something that all Americans should be concerned about. Almost all of the cases filed under the Voting Rights Act under section two of the Voting Rights Act over the last three decades, particularly when it comes to redistricting have been vote dilution cases. We don't want the votes of individual Americans, no matter what their race or ethnic background from being diluted and devalued and--and to have--to be less of a value than that of other voters.

But that's exactly what happens when you include non-citizens, when you include aliens not only in the apportionment process, but also in the redistricting process. And this is particularly true also you could--you could see the importance of this in the lawsuits that have been filed, as I've said before, by both Republican and Democratic Justice Department to enforce section two of the Voting Rights Act.

When they are coming up with a remedy, which often is a majority-minority district, one in which minority voters are actually majority of the voters, they--they try to use citizen voting age population because otherwise, they're not going to be able to put in an effective revenue remedy and that's why it is extremely important that the population count, yes, be accurate, but that we also have account of the citizens and non-citizens in the country.

MILLER:

Well, how does the president's memorandum on apportionment mitigate the damage of vote dilution?

VON SPAKOVSKY:

Well you know, he's issued two memorandums. One directing the entire executive branch to forward all records that they have on citizenship status to the Census Bureau. And second, do not include--it's not that we're not going to count aliens who are in this country illegally, but they should not be included in the apportionment process.

And as I said, that is within statutory authority, it's within the precedent set by the Supreme Court. And if I may just say very quickly in response to an earlier comment, the term illegal alien is the correct legal term. That is a term used in federal immigration law and it is a term used in U.S. Supreme Court decisions.

MILLER:

What issues do you see arising because this administration was blocked from asking the constitutional citizens citizenship question on this year's census?

VON SPAKOVSKY:

Well look, the big issue is will the records produced by the executive branch produce enough information to give us an accurate count of the non-citizens in that country? From everything I've seen, I think the answer to that is yes. It's amazing how much data and information the federal government has on the American population already in individual citizens and non-citizens and I think the initial estimate was they would have information on citizenship status on at least 90 percent of the population and they've apparently been working to get that as close to 100 percent as possible.

MILLER:

Okay, thank you. I yield back my time.

MALONEY:

The gentle lady yields back. Congressman Sarbanes, you are now recognized.

SARBANES:

Thank you very much, Madam Chair. Can you hear me?

MALONEY:

Yes, we can.

SARBANES:

Appreciate the hearing. Obviously, a number of us, as you can tell, or alarmed at this prospect of shortening the time for the non-response follow up from the end of October to the end of September and also the transmission--the collection and transmission of the apportionment data where--where we and the Trump administration in its original posture felt that extending those deadlines to the end of April and the end of July respectively made a lot more sense.

So here's the question. Help me understand this, Mr. Thompson, and I may go to Mr. Mihm as well. But what is the downside of keeping the collection or the response effort underway through the end of October and what is the downside or risk associated with the extension in terms of the apportionment data being collected and analyzed in and transmitted at those later dates in 2021? Because I--I haven't heard anybody point to a significant risk or downside or negative to--to allowing for the non-response follow-up to continue through the end of October or to allow the apportionment data to be transmitted at those later dates. So, Mr. Thompson, do you see any significant negatives associated with that?

THOMPSON:

Thank you, congressman. No, I--I don't see any negatives. That, in fact, is the--the initial plan that the Census Bureau career staff had developed in the face of dealing with the COVID-19 pandemic, so it would be implementing their plan.

SARBANES:

And Mr. Mihm, do you see any significant negatives with extending that--those dates?

MIHM:

I agree, congressman. I agree with Mr. Thompson that that had been the Bureau's plan, to expand the--to extend the dates, you know, those four months and--and had been behind the--and the request for legislative relief on that. The only, as it were, downside, or at least something that we've urged the bureau to make sure that they consider and do evaluations on is the notion of recall bias.

Obviously, the farther you get away from Census Day, the problems of memory and recollection about where people were may have been residing and who else was in the household become an issue for them. We just believe that that ought to be looked into. But nevertheless, as--as Mr. Thompson said, the--the bureau's plan was to have that additional time in order to--to--and that was, on balance, the appropriate way to go that they had concluded.

SARBANES:

Well, in the original timeline in terms of collecting the data having the questionnaires responded to was the end of October. So, it was certainly within the window of what was considered needed from inaccuracy standpoint.

THOMPSON:

Yes, sir.

SARBANES:

The move has been (INAUDIBLE) the end of October to the end of September, correct?

THOMPSON:

Yes, sir. Yes, sir.

SARBANES:

Right. So, if you look at the ledger here, on the--on the side of the ledger that says downsides and risks associated with carrying the follow-up effort through to the end of October and making sure that the apportionment data goes according to that more extended deadline, under that column in terms of risks and downsides to that approach, there's nothing in that column.

In the other column in terms of risks and negatives and challenges posed by trying to move these deadlines up in a significant way, you have a whole litany of things that, Mr. Thompson, you have detailed. And Mr. Mihm, you have detailed some of those as well. So, it--it's not even a close call here in terms of how we should be handling it. And it's clearly a call that the--the administration recognized itself when it initially asked for that extension in terms of the apportionment data.

The other thing I want to point out is sometimes censuses are conducted on the cusp of a presidential election and sometimes they are not. And this (INAUDIBLE) at the moment of a presidential election. And whatever you have that, the day after the election, regardless of whether in this case the incumbent stays in or there's a new president coming in, there's always a lot of change over a personnel because people who have been there for four years decide to move on, etc.

It strikes me that this is the worst time to be taking time and flexibility away from the Census Bureau in view of that particular dynamic that you could possibly choose.

And so, for all those reasons, we need to keep that deadline for the--the response follow-up. We get--we need to have that extended through the end of October and we need the collection of the

apportionment data and its transmission to be extended into 2021, which is what we're trying to do to make sure that the census is conducted in a fair and accurate way. And with that, I yield back my time.

MALONEY:

Thank you for your question. Congressman Comer, you are now recognized.

COMER:

Thank you, Madam Chair. And my questions will be all referred to Mr. Spakovsky. First, I want to thank you for testifying today. You're an expert on constitutional and voting rights law. And I also want to emphasize the point I made in my opening statement.

Career Census Bureau staff have told the committee in transcribed briefings that, as of now, the 2020 census can be accurately completed by September 30th. These career staff are moving heaven and earth to ensure an accurate census. I wish the hearing today supported the effort of the hard-working women and men at the Census Bureau, but that's not the purpose of this hearing.

The hearing today is a coordinated assault on the 2020 census from the Democrats and their left-wing allies who are suing the administration. Sir, this weekend a liberal judge in Northern California issued a temporary injunction preventing the administration from executing a complete census count by September 30th. Are you familiar with this injunction?

VON SPAKOVSKY:

I am.

COMER:

Do you believe, given the current circumstances, a nationwide injunction is merited?

VON SPAKOVSKY:

I--I do not. In fact, I think the judge was--was going outside of her very limited jurisdiction in her particular district in California.

COMER:

The current statute has strict deadlines for delivering an apportionment count to the president and redistricting files to the states. To my knowledge, Congress has not enacted and the president has not signed any legislation changing the deadlines. What legal basis is there to challenge the current statute when Congress has not acted to change the statutory deadline?

VON SPAKOVSKY:

Well, I don't think there is one. In fact, that's why I think this judge is acting in a way that's not justified by the facts or the law that she has in--in front of her.

COMER:

If this judge issues a longer-term injunction, it will mean the Census Bureau and the judge himself will be violating the law. Is that correct?

VON SPAKOVSKY:

That's right.

COMER:

We've seen a lot of legal interest in the 2020 census, obviously, including a lawsuit against adding a citizenship question to the 2020 census. This case was ultimately decided last year by the Supreme Court. What did the Supreme Court recently rule with regard to the constitutionality of a citizenship question being asked on the questionnaire?

VON SPAKOVSKY:

Look, that--that decision was in--misinterpreted and I think misreported by a lot of the media. It's very important to understand the Supreme Court said that it is both constitutional to have a citizenship question on the census and that the executive branch has the statutory authority to ask a citizenship question.

The only thing that they decided at the end was that they had not gone through the correct procedures under the Administrative Procedure Act to explain why they were adding a citizenship question. I--I think that was an error. But the point is constitutionally and statutorily you can have a citizenship question on the census. In fact, we've had one on there starting in 1820.

COMER:

Well, I think that's a very important point, and that's counter to what several of my colleagues on the other side of the aisle have been saying throughout these census hearings. So, I appreciate you--

VON SPAKOVSKY:

--Right--

COMER:

--Bringing that--bringing that out. Do you believe the Supreme Court ruling on administrative process grounds is plot--problematic?

VON SPAKOVSKY:

Yeah, I--I--I think it's very problematic. In fact, I agree with the dissent written by Clarence Thomas, in which he said that once the majority determined it was both constitutional and statutorily legal, that should have been the end of the analysis. I think he's exactly right about that.

COMER:

One last question. Is it fair to say this decision opens new avenues for legal challenges based on procedural grounds?

VON SPAKOVSKY:

Yeah, I think it does, and I think it's a misinterpretation of--of the APA. And I might just quickly point out, look, the American Community Survey, which the--the--the Census Bureau sent out every year, it currently has a citizenship question on it.

COMER:

Exactly. And--and I--I said my last question. I'm--I'm just going to throw in one more because there have been so many different statements between the Republicans and Democrats on this congressional reapportionment issue, which the--the president supports and I personally support. But sir, is it a fair statement to say that, if persons here illegally are counted towards congressional apportionment, then states that have promoted sanctuary cities would be rewarded with more congressional representation?

VON SPAKOVSKY:

Yes, that--that is clearly the case.

COMER:

Well, that's a big difference--

VON SPAKOVSKY:

--Yes--

COMER:

--In ideology between the Republicans on this committee and the Democrats on this committee. But regardless, I appreciate your testimony here today and thank you again for being here. With that, Madam Chair, I yield back the remainder my time.

MALONEY:

(OFF-MIC) you. The gentleman yields back. Congresswoman Speier, you are now recognized, Jackie Speier.

SPEIER:

Jackie Speier, but thank you, Madam Chair. You know, I think that old adage about not changing the spots on a leopard really applies here. What we have seen by President Trump, from his January 26th recognition that the COVID-19 pandemic was serious and troublesome but refused to make that--

SPEIER:

--apparent to the American people to his efforts to undermine the FDA, the CDC, and the intelligence community and to bend their decision-making to his interest has taken many persons who in professional positions within our various departments and either they become whistleblowers sore they bend to the presidents wishes.

So the fact that on August 3 a memo to Secretary Ross is provided that says the accuracy and completion of the senses will be jeopardized if we speed up this process should give all of us pause but my colleagues on the Republican side feel compelled not to focus on what the issue of the day is but on apportionment and reapportionment. The data processing has taken anywhere from 140, 185 days.

This administration now is going to reduce it to 92 days. So Mr. Mihm in your analysis by the GAO is cutting 60 days out of data processing schedule going to increase the risk of the inaccuracy and incompleteness of the census?

MIHM:

The short answer ma'am is yes. I mean one of the things to keep in mind and we had a bit of a discussion or Mr. Thompson talked about this earlier was the--the importance of the subject matter review process within the Census Bureau and this is where experts that know the data within individual states after there's been data run have an opportunity to step back and see if there's any anomaly.

Do the sex ratios look bad? Is there a population change that can't be explained by other ways? To just give an indication of this there were 46 reruns that they had to do of state data out of 52 states and territories in 2010 and so this is not something that just as an aside that has to take place at that.

They also use this opportunity to clean up the data. One of the things that they do is they look for where there are multiple responses from the same household. That's--that's an important part of their data strategy or making sure that they get complete and accurate data. In 2010 they had 14 million housing units, about 10 percent of the housing units that had to be de-duplicated and so these aren't just numbers along the margin that are taking place. These are very important steps that the Bureau goes through.

One final thing is that much of the data processing and the cleanup there at the end has to be sequential in nature. It's not something that - make some of it can be done at the same time but a lot of it has to be done sequential that they can't move to a second step until they've done the first and so all of this puts time compression this does increase the risk.

SPEIER:

So that being the case what is the motivation in your estimation?

MIHM:

Ma'am, I really can't speak to you know the motivation. I mean we look at the operational decisions or implications of decisions that are being made and motivations for how and why things get done is a little bit beyond my remit.

SPEIER:

I--I understand that but I am still trying to understand why we want the census data that is relied on for the next 10 years to be incomplete or inaccurate and how does that help us, any of us Republicans or Democrats alike, is there a basis on which losses will then be brought when it becomes apparent that it is incomplete and inaccurate?

MIHM:

Well, what I can certainly speak to is that you know one of the risk in this data processing at the end is that as I have been discussing there's issues that they are kind of the known unknowns in which they find something and they say this is an anomaly, we need to make sure that we can explain it and they spend the time trying to do the root cause so one set of risk is will they have that time to do that.

The second is are there--could there be things that would show up that they will not know in real time, that they will not have an opportunity to adjust on or rather make a determination and try and find out what the story is. We won't find out until we do what is called the post enumerations survey which is kind of the big check on the accuracy of the data but that doesn't come out until 2022. And so there are two kind of buckets of concerns that we have there with the constricted processing time.

SPEIER:

So lawsuits being filed subsequently could very well be in the offing. Is that correct?

MIHM:

That is not something that--that I can speak to. I mean I know in the past there have been challenges both politically and through the courts the accuracy and completeness of census data.

SPEIER:

Are it. Madam Chair, I can't tell how much time I have left. Has my time expired?

MALONEY:

Yes, it has. Yes, it has. But you had a very important line of questioning. The gentle lady yields back, her time is expired. Congressman Keller. Congressman Keller, you are now recognized. We can hear you.

KELLER:

Keller?

MALONEY:

Keller.

SPEIER:

Oh, Keller. Oh, sorry.

KELLER:

Thank you, Madam Chair. According to Census Bureau, as of September 8, nearly 90 percent of housing units have been enumerated nationwide including 91 percent in my home State of Pennsylvania. This leaves the rest of the month to collect the remaining data. So I--I have a question for Mr. Spakovsky. Can you explain what is meant by housing unit? What do the figures I just mentioned indicate of about how much of the country has been counted?

VON SPAKOVSKY:

By housing unit, I am assuming they are referring to households whether they are living in the single-family residence or whether they are living in an apartment or a condominium or--or something like that.

KELLER:

Okay. So a housing unit one housing unit be a building that might have 100 apartments in it?

VON SPAKOVSKY:

Well, I assume so but all of the figures I have seen on--on where the Census Bureau was saying how much they have completed they talked about how souls though in one housing unit if it's an apartment there might be 100 households.

KELLER:

So--so as far as housing units do we know how much of the country has been counted as far as individuals? What percentage 90 percent, 90 percent housing units but what does that refer to as far as the population that we think is (INAUDIBLE)?

VON SPAKOVSKY:

All of the figures I have seen refer to house--the number of households that have been--that have been counted.

KELLER:

Okay. Are there any communities that we may have missed?

VON SPAKOVSKY:

Well, look, that's a problem that the census faces in every single census is getting to people who are in more remote areas of the country particularly out West and that is something that they elaborately planned for so it's not as if that is a new problem or a new phenomenon. It is something that the Census Bureau takes into effect the professionals there, the professionals and this for a long time. That is something they take into account when they are planning how they are going to carry out the census.

KELLER:

Okay. We have heard a lot about (INAUDIBLE) apportionment today's hearing and in past hearings. Has this changed with the people will be counted in a (INAUDIBLE) census?

VON SPAKOVSKY:

Know, there seems to be some confusion about that. It's not that the (INAUDIBLE)--

KELLER:

Does it change which people are going to be (INAUDIBLE)

VON SPAKOVSKY:

It's not. It's just that the population that is used for apportionment is not necessarily the same total population counted by the U.S. Census Bureau.

KELLER:

Okay. The Census Bureau is on track to complete its field operations on time and produce (INAUDIBLE) I would like to sort of switch gears and I want to talk to Mr. Mihm. The area I represent in the Commonwealth of Pennsylvania would buy census standards be hard to count. I understand that technology has played a big part in the 2020 census even in rural communities like mine. Can you speak to how enumerators are using technologies in those places and if there have been any takeaways that might inform our data collection going forward was 20--operations?

MIHM:

Yes, sir. As I think that there is a good use of technology in two levels. One is it is part of the original or initial enumeration. That is allowing the Internet option this time around. That has certainly been overall a very positive story that tens of millions of Americans certainly myself included use that option in order to respond to the census than that is both certainly much cheaper for the Census Bureau in terms of paper and processing and it also helps ensure more accurate data.

At the back end that you're talking about--I shouldn't say the back end, that is more in the follow up and where they don't have a response from a household, the census takers, the enumerators aren't using technology so they don't have the old paper registers that they had in the past.

This allows both of them to--to collect the data and kind of get it into the system immediately. It also allows tracking or is your tracking of census taker productivity making sure that they're actually going to where they should be going, and that is something that the Census Bureau looks at--looked at.

There's an old term for classification called curb stoning. This is something that's--it's how technology is making sure that that is minimized and, you know, and in fact pretty close to illuminated.

MALONEY:

The gentleman's time has expired. Thank you. Congresswoman Kelly, you are now recognized. Congresswoman Robin Kelly.

KELLY:

Thank you, Madam Chair. The wide reaching impact of census data cannot be overstated. But among the most important goals of the census is to accurately determine the apportionment of seats in the House of Representatives. And it is very important, to be clear about something here, this is not about political gains or games. It's not about one party trying to come out on top. Apportionment is a critical process enshrined in the constitution to ensure that every citizen at the United States receives a fair representation in Congress.

Last year, the Urban Institute release projections that about 4 million people could be undercounted in the 2020 census and that it could lead to the worst undercount of black and Latino populations in the United States since 1990.

Mr. Thompson, at the time the projections are released, you were quoted in a 2019 NPR article saying that these horrific estimates "May be a little bit on the conservative side." Given all that is happened since those projections were released in 2019, do you think that currently the Census Bureau faces an even higher risk of undercount in black and Latino communities?

THOMPSON:

Thank you, congressman. I am of the opinion that there is a great risk, that people in all communities, including black and Latino will see under accounts that were larger than in previous census is.

KELLY:

Why do you think communities of color are often undercounted in census data?

THOMPSON:

Well, for example, if you look at the current situation, you notice that in the low responding, self-responding areas of the United States Census tracks, they are the black and Latino populations are more represented in those tracks great that is that they are they are overrepresented in those low responding census tracks. And so that means that the work to get a complete count for those communities is going to be harder than in other communities because there is a much larger nonresponse follow-up workload to carry out.

KELLY:

And what are the consequences of being undercounted in terms of congressional representation?

THOMPSON:

Well, I could go on forever about the importance of the census--

KELLY:

(INAUDIBLE)

THOMPSON:

--But it's just used for so many important components of our democracy, including representation, allocation of funds, planning for businesses, making surveys fully represented. So undercounts, it means that you're underrepresented and you're not receiving your full share of all those benefits.

KELLY:

Right. And I know in my area, it's $1400 or person who's undercounted every year for 10 years. In addition to the congressional representation, census data is also used to determine local boundaries for things like city councils and school boards, isn't that correct?

THOMPSON:

Yes, congresswoman. That is correct.

KELLY:

So for populations that are undercounted, may not only stand to lose congressional seat, but also at the local level as well, isn't that correct?

THOMPSON:

That is correct, congresswoman.

KELLY:

So Black and brown communities have a lot to lose if all of us are not counted. I just want to thank you, Mr. Thompson. The stakes could not be higher. Our founders knew how important it was for congressional representation to be fairly divided based on an accurate census. We should not risk to depriving citizen under representation guaranteed to them by the constitution. We

should give the Census Bureau the time it needs to conduct a complete and accurate census. And with that, I yield back.

GOMEZ:

Thank you, Ms. Kelly. I'm filling in for Chair Maloney. I greatly appreciate everybody here. I recognize myself for five minutes for questions.

One of the things that we--we know is that this account is extremely crucial. Yet, 4 in 10 households had yet to be counted. A move like this will likely lead to an undercount among historically hard to count populations and communities of color, immigrants, and those in the urban areas. That means communities like the ones I represent are going to be undercounted. My Congressional District so far is only at 50 percent self-response rate and enumeration rate combined. Despite--so I'm extremely concerned that people in my district are also completely concerned.

Despite four former Census Bureau director's warning us that earlier deadline was "result in a serious and complete enumeration of many areas across the country but," the Trump administration has dramatically accelerated the census for political gains.

On August 27th and 28th, this committee interviewed three top officials from the Census Bureau. The first official stated, I quote, "more time is always a good thing." The second official stated, I quote, "any time you have more time, it reduces risk, and that will have reduced our risk." The third official said, I quote, "absolutely," when he was asked whether he agreed with the first two officials. So my question is, Mr. Thompson, do you agree with these officials?

THOMPSON:

Well, I know those officials pretty well and I agree with those statements.

GOMEZ:

Why--why is that?

THOMPSON:

Well, right now, there simply isn't enough time in my opinion to complete a really good and accurate data collection and there's not enough time to--to process the data after the data collection ends and do it in an accurate way. So I think that those--those raise very serious concerns and I detailed a lot of those in my testimony.

GOMEZ:

In a sworn declaration filed with a federal court on September 4th, Mr. Fontenot, associate director of the 2020 census stated that if a federal court were to stop the Census Bureau from proceeding with its news new rushed schedule, I quote, "we would evaluate all the changes we've made for their re-planned schedule and determine which to reverse or modify.

We would go through each and every aspect of the remaining operations and determine how best to use the remaining time to maximize the accuracy and completeness of this census results.

In other words, the Census Bureau stands ready to un-crash it's scheduled. If Congress gives it the time it needs, it can decide how to do that. Mr. Thompson, do you have confidence that the Census Bureau has the ability to make use of the statutory extension from Congress if passed?

THOMPSON:

I certainly think the Census Bureau could make great use of it.

GOMEZ:

And in the past three census, none of which took place during a pandemic, the Bureau has needed five months to accurately--accurately and completely delivered apportionment and redistricting data theory is that correct?

THOMPSON:

At least five months.

GOMEZ:

At least--at least five months. What is the preferred amount of time?

THOMPSON:

Well, for this census, I think the preferred amount of time is the time that the Census Bureau developed when it was on the basis of its extensive planning and research, which--which in this case would be five months.

GOMEZ:

Mr. Thompson, so why is it important for the Bureau to have adequate amount of time to process the data?

THOMPSON:

Well, you don't--if you don't have adequate amount of time, the problem is you can make a computer errors that are not detected and they--they immediately--and they would probably carry it through into the apportionment and the redistricting. So there's just a high risk of computer errors.

GOMEZ:

I greatly appreciate your answers. One of the things that we heard from my colleagues on the other side of the aisle is that they're--they're almost convoluting two different arguments, one, that undocumented immigrants should not be counted; two, that we shouldn't extend the deadline to make sure that everybody is accurately counted.

If we're extend--if we extend the deadline to count everybody and then the Republicans and this president are trying to back out undocumented immigrants, I don't understand why they wouldn't extend the deadline unless they don't want U.S. citizens or minority communities or urban areas not to be counted as well.

So, I have suspicions. The motivations of this administration, when they tried to add the citizenship question, it was rejected by the Supreme Court. It was--Judge Roberts just rejected it flatly as something that was contrived. So, with that, I urge my colleagues to--on the other side of the aisle to support the extension as--of the--of the deadlines for the Census Bureau.

Thank you and I yield--I yield my own time. And now I would like to recognize Ms. Tlaib for five minutes. Let me see here. I'd like to recognize Ms. Porter for five minutes. I--Ms. Porter?

PORTER:

Yes, hello. How are you? I apologize.

GOMEZ:

Don't worry about it; technical difficulties on all sides. Ms. Porter, you're recognized for five minutes for your questioning.

PORTER:

Thank you. Mr. Mihm, you said in your August report that it would be especially difficult for the Census Bureau to get accurate counts of college students if census operations were not extended to make up for time lost. I was a professor at the University of California Irvine before being elected to Congress, and my district is home to a university with more than 35,000 students, as well as a number of smaller colleges. Mr. Mihm, when are college students normally counted?

MIHM:

Ma'am, college students are normally counted at their university, either in their dorm or if they're living off campus, that is under census rules their usual residence.

PORTER:

I'm sorry. What time of year? What time of year?

MIHM:

I'm sorry, ma'am? Oh, time of year?

PORTER:

What time of year do we usually count--

MIHM:

--It would--it would be--

PORTER:

--count them?

MIHM:

It would be sent--you know, at or around Census Day. So, it would be--

PORTER:

--Okay--

MIHM:

--And this time it would have been in the spring.

PORTER:

So, around April?

MIHM:

Yes.

PORTER:

Exactly. So around April because in a normal year, seniors are graduating in the spring. And in your report, you noted that when campuses shut down, many students went home and could not be contacted.

So, my question is we're missing a bunch of graduating seniors. That's as many--could be as much of a quarter of students in a school, like 5,000, 6,000, 7,000 students in many places. Is that correct if we fail to count college seniors?

MIHM:

Yes, ma'am. And it--the--the risk is actually on two sides, and we won't actually know until later.

UNKNOWN:

Well, when (INAUDIBLE) forgot to call me?

MIHM:

I'm--I'm sorry, ma'am.

Yeah, the risk is on two sides. We put a--we could end up missing them or we could end up having to be double counted, both at the university and if they're back home. And the point is is that we will not know that until much later.

PORTER:

You said in your report that the Census Bureau has requested administrative data from around 1,400 colleges in larger towns and cities. When you publish that report on August 27th, only 51 percent of colleges have agreed to share that information. Where is that number now?

MIHM:

I don't have an update on that, ma'am. But I will check and get that to your office as soon as I can get the--the better number.

PORTER:

Right. But the--well, as of a month--a couple weeks ago, we were at half of all colleges being counted, which is not a good place to be.

I want to turn to Mr. Johnson now and ask, if there is not an extension of the census, does--what does that mean for what the census calls hard to count areas?

THOMPSON:

Thank you, congressman. So, that--those are going to be the areas that--that--that would be affected the most by--by not allowing the Census Bureau the proper time that they requested initially to complete their work. Though--those communities have lower response rates and therefore they have greater amount of work to do in a nonresponse follow-up. That's where the biggest challenges are to getting a complete and accurate count. So--so, those communities would be affected the most.

PORTER:

And I--I think some people might be really surprised to learn about what our hard to count areas. We often think of them as rural areas, places without broadband access, places where there might be language barriers. I want to show people an example of--this is a picture of Big Sur, California. Mr. Johnson, is Big Sur hard to count?

THOMPSON:

Excuse me, Con--is Big Sur hard to count?

PORTER:

Yes.

THOMPSON:

Well, there are--there are certain rural areas in Big Sur that are very hard to--to get to. I happen to have actually been there for a while. So, yes, there are parts--portions of it that would be hard to count.

PORTER:

So, the self response rate in this beautiful area was 35 percent less census. It's down by more than 10 points so far in this cycle. This part of California is almost 100 percent Spanish-speaking, and broadband is really limited. And that's two big factors to enumeration. And one consequence of less funding, of course, is--of the lack of a count is less federal funding for this amazing bridge that goes over Highway 1.

I also wanted to ask you about other hard to--does this look like a hard to count area to you? This is San Clemente, California in the southern part of Orange County. Is this hard to count?

THOMPSON:

Congresswoman, I--I would really have to--to--to look. There--there are areas in Southern California that are certainly on--show up on the bureau's hard to count indicator. I'd--I would have to study that a little bit more--

PORTER:

--And in (INAUDIBLE)--

THOMPSON:

--to answer that.

PORTER:

--San Clemente just north of there is 65 percent renters, 20 percent immigrants, and that helps explain why the response rate is below 60 percent. If they don't get counted, the local school district loses education.

I want to show one more hard to count area. This is the University of California Irvine. Is this a hard to count area?

THOMPSON:

I would think that any area right now with a large college student population is going to face some challenges in getting an accurate enumeration simply because of--of all the displacement of college students, as--as one--I shouldn't say simply. I should say that's one component of whites going to be difficult.

PORTER:

Would extra time help count these--would extra time help in these hard to count areas with giving us an accurate count?

THOMPSON:

It certainly would.

PORTER:

Thank you very much. With that, I yield back.

GOMEZ:

Thank you, Member Porter. Now I recognize Representative Plaskett for five minutes.

PLASKETT:

Thank you very much, Mr. Chairman. I hope that I can be heard at this time. Am I available? Yeah, thank you.

So, I have heard a lot of discussion that's been going on about the bureau's plan and operations related to rural areas and to Native American tries--tribes. James Tucker, vice chair of the U.S. Census National Advisory Committee, has said "We're probably looking at historic undercount.

It's not going to be enough time." Senior Census Bureau officials admitted that they're struggling to enumerate these areas.

For example, Tim Olson, the associate director for Field Operations stated, "In Indian country, particularly Montana, Arizona, New Mexico, those are the three primary states where we have challenges, where specific tribal governments on their lands, on their reservations have shut down to the public to come into their sovereign nation to prevent, you know, a horrible outcome of coronavirus."

My first question is to you, Governor Lewis. You have given some excellent testimony to us. Tribal nations are considered hard to count even during a census that does not--is not taking place during a pandemic. Can you explain why that is?

LEWIS:

Excuse me. Yes. First of all, we (INAUDIBLE) still have an Internet--I would say broadband provider. There was discussion about technology and the Internet option, and that just isn't the case.

At least from the Gila River Indian Community where we are still trying to you know to distribute broadband infrastructure and this was even brought to an even more critical point during this pandemic as well and I know other tribes--

PLASKETT:

Do you know start--excuse me. Governor, do you know how many families are without? What is the percentage of families without broadband or even sloppy broadband in your area?

LEWIS:

Well, we have about 2200 households on the community and we have identified hundreds of--of households that just don't have access to broadband because of their location. You know we--we are just south of Phoenix but we are in a very remote area in the Sonoran Desert, beautiful Sonoran Desert but none the less you know so we have identified not only no connectivity but also just the infrastructure available for broadband and so that has really hampered our areas as well and also because this goes to the reality right now on Indian reservations has to do with street addresses versus PO boxes.

We have a number that are post office boxes that--that our community members have versus street addresses and that also goes against and it has really been a barrier for those enumerators going because you have to have that geographic locator number. And if you don't have a street address it is hard and that has also contributed in the past to the vast under counting of--of Native Americans.

Even early on in this--this latest 2020 census some of my community members, some of the enumerators have come and they have just put their--the--the information on their--on their fences you know and if they have blown away put them you know just on--on some of their near their house you know and so those are the realities you know and we lose a vast number of those two these logistical barriers which is a reality.

PLASKETT:

I know. Listen, I understand. In the Virgin Islands we are just now still even giving street names to areas where people live so people have post office boxes, there are streets that are not named and unfortunate for those of us in the smaller territories we are not even able to do these census online.

There is no online drop box for any for the Virgin Islands or Guam or American Samoa an area that already has very few or has been you know the inequities that we have in federal funding people are aware of is going to be even greater. My time is about to run out and I wanted to ask Mr. Thompson why world hard to count--why are areas that are rural hard to count during a normal census and what are the increase risk to undercount the rural communities under a truncated schedule and if you answer that question I will yield back Mr. Chairman.

THOMPSON:

Thank you, congresswoman. So rural areas have unique challenges. You really have to have a deep understanding of the rural area to properly count it. You need to understand what is a road, what is a driveway, what is just a logging trail for example but you have to be accepted by the world community you have to understand how to approach people in the right way. There--there are a whole lot of unique features that rural areas have that make many of them hard to count.

PLASKETT:

Thank you.

THOMPSON:

And--and--and to finish the answer and it takes time. It just doesn't happen overnight. It takes a lot of hard work to get the work done because you have to travel over greater distances and the like.

GOMEZ:

Thank you, Ms. Plaskett. Now I recognize Ms. Tlaib for five minutes.

TLAIB:

Thank you, Chairman, and thank you all so much for this. I know so many of my colleagues are politicizing this and making this about apportionments and representation in Congress but as someone that represents the third poorest congressional district in the country it really is about the $1.5 trillion of federal money that gets distributed and the fact that even during the pandemic if anything had expose the fact that my district, my state saw 40 percent of the African-American population impacted directly by COVID-19 with death so the number of people that have died from COVID-19 that are my black neighbors made up 40 percent even though they make up the total population of the state is 15 percent.

You know Medicaid state children's CHIP program, a number of programs like WIC are so critically important again to my district and so I--I really want to be honest with this. You know I always prep for these and then I listened to many of my colleagues and I am so taken aback by you know we are getting ask about a lot of about our undocumented immigrant neighbors, we are getting ask about apportionment and how congressional districts are--are made up but we never actually talk about the people that rely on this data and misinformation for their services.

When you think about mobile testing during COVID they looked at the census. Public health research they look at the census. Class sizes they look at the census. So Mr. Thompson, Director Thompson I--I really want to be honest here. When they decide to shorten this doesn't it impact majority communities of color?

THOMPSON:

Those--it--it--those are some of the communities congresswoman that are certainly affected as the previous congresswoman noted rural areas can also be particularly challenging in that would be for--for both people of color and people that are of color. So--so yes hard to count communities which contain people of color are certainly affected by a shortened time frame.

TLAIB:

Well, you know what I hear from my colleague I just don't think they want people that look like me counted and so governor you as someone that you know some of the most vulnerable populations that you represent, right?

Many of the people you fight for those are the people that are going to be left out. I mean what I am hearing from my colleagues is shortening the time is okay because brown and black folks are not going to get counted big deal, indigenous communities not going to get counted (INAUDIBLE) do you feel that way? I mean I am hearing again (INAUDIBLE) coming out of the other side of the aisle.

LEWIS:

Congresswoman, definitely. I--I think it was discussed earlier what will be lost. What will be lost our numbers from our underserved communities and you know and just to go into some of the time frame I mean I am aware that the Census Bureau will generally return to areas with current anomalies in the count however given the condensed timeframe between the end of September and the end of December when recording is due the Bureau will only have three months to qualify, control to--to qualify control for quality control rather instead of the normal six-month period.

Common sense was--was talked about earlier, common sense indicates that there is an adequate time for a return to verify counts in under--undercounted areas to perform quality control and to provide apportionment and redistricting--redistricting reports in three months. So--

TLAIB:

(INAUDIBLE) you are not even thinking about--but you are not even thinking about congressional districts. You are thinking about resources. You are thinking about how do I make sure that my folks are not left out.

LEWIS:

Definitely.

TLAIB:

(INAUDIBLE) most of my neighbors, most of my residence in my district governor they are not asking me about that. You know what they are saying is Rashida we've got to make sure we get counted because we know these are thousands of dollars that come to our city that gets you know again when I get access to it when we don't get counted.

LEWIS:

I'm thinking about, congresswoman, within my elders worried about their--their services you know their nutrition services. I am thinking about my children our--our children in our community going to these schools both on the reservation and off the reservation that will be affected as well from this undercount. And for 10 years, for you know for--that we will be living with this--with this drastic undercounting.

TLAIB:

Yeah. Ms. Stacey just with you if you are still on I you know I think we are being asked a lot of these questions about constitutional law you know the first thing I kept thinking about is--I'm sorry? Ms. Stacey--Ms. Carless is it?

CARLESS:

Carless, yes.

TLAIB:

Yes, Ms. Carless. I'm so sorry. I wanted to ask you know much of the questions that were ask of you earlier in the hearing you know it was very alarming but I--I want to ask you one very directly. Do you think people that look like you and I are going to--I mean that it's intentional on the part of reducing the timeline that it's intentional to make sure that people that look like you and I are not counted?

CARLESS:

I do think it is somewhat intentional. You know research has shown that NRFU has been impactful in making sure that Black and brown people are counted as well as you know the great pivot that we have had to make in that doesn't allow trust in messengers to build appropriate relationships with our community members to teach them about the census to make sure that black and brown people are accounted. So any effort to reduce our time or ability to connect with community members I think is intentional.

TLAIB:

Thank you so much. I yield.

GOMEZ:

Thank you, Ms. Tlaib. I want to first take a moment to thank our witnesses for testifying today. Without objection, all members will have five legislative days within which to submit additional written questions for the witnesses to the chair, which will be forwarded to the witnesses for their response. I ask our witnesses to please respond as promptly as you are able to. This hearing is now adjourned.

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REP. KELLY ARMSTRONG (R-N.D.)

REP. GREG STEUBE (R-FLA.)

REP. FRED KELLER (R-PA.)

WITNESSES:

HERITAGE FOUNDATION SENIOR LEGAL FELLOW HANS A. VON SPAKOVSKY

NC COUNTS COALITION EXECUTIVE DIRECTOR STACEY CARLESS

GILA RIVER INDIAN COMMUNITY GOVERNOR STEPHEN ROE LEWIS

CENSUS BUREAU FORMER DIRECTOR JOHN H. THOMPSON

GOVERNMENT ACCOUNTABILITY OFFICE STRATEGIC ISSUES TEAM MANAGING DIRECTOR J. CHRISTOPHER MIHM

From: James.L.Dinwiddie@census.gov [James.L.Dinwiddie@census.gov]
Sent: 9/11/2020 3:12:18 PM
To: Kathleen M Styles (CENSUS/ADDC FED) [kathleen.m.styles@census.gov]; Deborah Stempowski (CENSUS/ADDC FED) [Deborah.M.Stempowski@census.gov]; Michael T Thieme (CENSUS/ADDC FED) [Michael.T.Thieme@census.gov]; Albert E Fontenot (CENSUS/ADDC FED) [Albert.E.Fontenot@census.gov]; Erika H Becker Medina (CENSUS/ADDC FED) [Erika.H.Becker.Medina@census.gov]; Jennifer W Reichert (CENSUS/DCMD FED) [Jennifer.W.Reichert@census.gov]
Subject: Fwd: CQ Transcript of House Oversight Hearing 09.10.2020
Attachments: CQ Transcript House Hearing 09.10.2020.docx; ATT00001.htm

In case you didn't get to watch. Also may be helpful if we get QFRs.

Begin forwarded message:

From: "Alissa A Bonner (CENSUS/OCIA FED)" <Alissa.A.Bonner@census.gov>
Date: September 11, 2020 at 10:53:59 AM EDT
To: "Colleen Holzbach (CENSUS/PCO FED)" <Colleen.Holzbach@census.gov>, "Corey J Kane (CENSUS/PCO FED)" <corey.j.kane@census.gov>, "Kemi Ariana Williams (CENSUS/PCO FED)" <kemi.ariana.williams@census.gov>, "James L Dinwiddie (CENSUS/ADDC FED)" <James.L.Dinwiddie@census.gov>, "Sara A Rosario Nieves (CENSUS/ADDC FED)" <Sara.A.Rosario.Nieves@census.gov>
Subject: CQ Transcript of House Oversight Hearing 09.10.2020

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Office 301.763.8923
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From: Pittman, Robert (IHS/HQ) [Robert.Pittman@ihs.gov]
Sent: 9/11/2020 7:41:17 PM
To: Michael A Berning (CENSUS/ERD FED) [Michael.A.Berning@census.gov]
Subject: Response Requested - Request for Follow-on use of IHS Data
Attachments: gov.uscourts.nysd.540927.164.0.pdf

(b) (5)
[redacted]

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From: Michael A Berning (CENSUS/ERD FED) <Michael.A.Berning@census.gov>
Sent: Thursday, September 3, 2020 1:51 PM
To: Pittman, Robert (IHS/HQ) <Robert.Pittman@ihs.gov>
Subject: Re: Response Requested - Request for Follow-on use of IHS Data

Thank you for following up regarding our request. In response to your questions, the additional July 2020 Presidential Memo (PM) work is for statistical purposes only, just like the work approved for the 2019 Executive Order (EO) project. All that is happening is that Census is further refining the statistical output from the E.O. project for the PM project. Therefore, the same rationale that resulted in the determination that the work under the E.O. project was "research" would also apply to the PM project. The IHS data facilitates record linkage and research activities that will allow the Census Bureau to produce statistics.

The EO project will result in tabulations of estimates of citizens and non-citizens. The 2020 Presidential Memo work will build on that project by taking those non-citizen tabulations and introduce additional sources of data from the Department of Homeland Security and Department of Interior to develop state level tabulations of documented/undocumented status. Essentially part of the output of the EO project work will serve as one input to the PM project.

I hope this helps and if you have further questions please let me know.

Thank you again for your assistance with this project.

Mike Berning, Assistant Division Chief for Data Acquisition and Curation
Economic Reimbursable Surveys Division
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To: Michael A Berning (CENSUS/ERD FED) <Michael.A.Berning@census.gov>
Subject: Response Requested - Request for Follow-on use of IHS Data

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Subject: Request for Follow-on use of IHS Data

Good morning Robert and Kirk,

We sincerely appreciate your support in providing data for our efforts under the July 2019, Executive Order 13880 to tabulate the citizenship status of the 2020 Census respondents. Based on a July 2020, Presidential Memorandum on Excluding Illegal Aliens from the Apportionment Base following the 2020 Census, we are asking for your priority review and approval to use the IHS data that you have provided for the 2019 EO project to also be used to support the Census Bureaus response to the 2020 Presidential Memorandum. We ask for the signed, attached request to be returned to me and Nicole Adolph (cc'd) as soon as possible but prior to August 27, 2020

Thank you again for all of your assistance with this project.

Mike Berning, Assistant Division Chief for Data Acquisition and Curation
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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

LA UNIÓN DEL PUEBLO ENTERO, *et al.*, Plaintiffs, v. DONALD J. TRUMP, in his official capacity as President of the United States, *et al.*, Defendants.	No. 8:19-cv-02710-PX-PAH-ELH

MEMORANDUM OF LAW IN OPPOSITION TO PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER OR PRELIMINARY INJUNCTION

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INTRODUCTION

Plaintiffs' preliminary-injunction motion presents a simple question: is this Court empowered to disregard a statutory deadline enacted under Congress's "virtually unlimited discretion" to regulate the decennial census? *Wisconsin v. City of New York*, 517 U.S. 1, 19 (1996). The answer is equally simple: no. While Congress has largely delegated its plenary authority over the census to the Secretary of Commerce, it has nonetheless required that the Secretary finish the census before year's end. 13 U.S.C. § 141(a)–(b). In light of the disruptions caused by the COVID-19 pandemic, the Commerce Department and Census Bureau requested a congressional extension of the December 31, 2020 deadline. But Congress has not yet acted, forcing the Secretary and the Bureau to adjust their planned operations in order to meet the statutory requirement. Nevertheless, the Bureau is confident that, following this plan, it can deliver a complete census within the allotted time.

Plaintiffs clearly harbor concerns about both the Census Bureau's operational plan and the statutory timeline. But they should take those concerns to the branch of Government that can address them: Congress. Contrary to what Plaintiffs may think, neither the Secretary nor the Census Bureau are free to casually disregard a statutory deadline to pursue some ethereal notion of a better census. And this Court should not countermand the Census Bureau's entire operational plan—a decade-long, 15.6-billion-dollar endeavor culminating in one of the largest peacetime mobilizations in American history—simply because Plaintiffs are frustrated with Congress's inaction.

That frustration is evident from Plaintiffs' motion, which is long on facts but short on law. They rebuke the Census Bureau's extraordinary efforts to meet an unmoving statutory deadline in the face of an unprecedented pandemic, and then proclaim that the statutory deadline must yield to their notions of a better count. Pls.' Mot. at 33, ECF No. 112-1. That would surely be news to Congress, which has plenary authority over the census and has exercised its exclusive power to set and reset deadlines, as needed, from

the earliest days of our Republic. It would also be news to 230 years of litigants, who, in Plaintiffs' view, could have simply run to court and demanded extra time whenever they desired a last-minute change in census procedures. Perhaps unsurprisingly, that theory has garnered no support from the Supreme Court. In the only two instances where district courts brazenly ordered the Census Bureau to disregard § 141(b)'s statutory deadline, the Supreme Court swiftly stayed those decisions before they were later reversed on appeal.

Put simply, Plaintiffs cannot succeed on the merits of their Enumeration Clause claim. Absent an extension of § 141(b)'s deadline—a statutory timeline they do not challenge—the Census Bureau has no choice but to meet that congressional requirement. So Plaintiffs' claim is barred by the political question doctrine and they fail meet any of the Article III standing requirements. But even if this case were theoretically justiciable, it wouldn't matter. The Supreme Court has never found a violation of the Enumeration Clause, and the Census Bureau's accelerated person-by-person headcount easily clears whatever standard applies under that deferential review.

Merits aside, Plaintiffs also fail to establish irreparable injury or harms that weigh in their favor. To the contrary, the public interest weighs squarely against ordering the Census Bureau to again replan a massive operation that is designed and run by scientists and statisticians to achieve the best possible results within Congress's established parameters. Plaintiffs' preliminary-injunction motion should be denied.

BACKGROUND

I. CONSTITUTIONAL AND STATUTORY AUTHORITY FOR THE CENSUS

The Constitution's Enumeration Clause requires an "actual Enumeration" of the population every ten years and vests Congress with the authority to conduct that census "in such Manner as they shall by Law direct." U.S. Const. art. I, § 2, cl. 3. Through the Census Act, Congress has delegated to the Secretary of Commerce the responsibility to conduct the decennial census "in such form and content as he may determine." 13 U.S.C.

§ 141(a). The Census Bureau assists the Secretary in the performance of this responsibility. *See id.* §§ 2, 4.

Notably, however, Congress has required the Secretary to report to the President the "tabulation of total population by States . . . within 9 months after the census date," defined as April 1 of the census year. 13 U.S.C. § 141(b). That is, the Secretary must provide the final census report to the President by December 31, 2020. After receiving the Secretary's report, the President calculates "the number of Representatives to which each State would be entitled," and transmits the resulting information to Congress. 2 U.S.C. § 2a(a).

II. 2020 CENSUS PROCEDURES

The goal of the decennial census is to count each resident of the United States once, only once, and in the right place. Fontenot Decl. ¶ 19. As detailed in the declaration of Albert E. Fontenot, Jr., Associate Director for Decennial Census Programs at the Census Bureau, the 2020 Census is a massive undertaking. It is the culmination of an estimated $15.6 billion, over a decade of research and testing, and meticulous planning by thousands of Census Bureau employees to count about 330 million people across 3.8 million square miles. *See id.* ¶¶ 12, 16. To enumerate all persons, great efforts and the most resources are expended on populations that are most difficult to count. *Id.* After extensive testing and various iterations, the latest published version of the Census Bureau's operational plan is Version 4.0, which was issued in December 2018. *See Id.* ¶¶ 12, 76–77.

As the gravity of the COVID-19 pandemic emerged in March 2020, the Census Bureau adjusted its operational plans for the census, contingent on a four-month extension of § 141(b)'s deadline. Fontenot Decl. ¶¶ 83–85. In April 2020, the Secretary and Bureau Director requested such statutory relief from Congress and announced a new plan to meet that extended schedule (the "COVID-19 Plan"). *Id.* ¶ 86. At various times throughout the pandemic, legislation has been introduced to modify § 141(b)'s deadline

consistent with the Secretary's plan. *See* H.R. 6800, 116th Cong. § 70201(a) (2020) (extending deadline for 2020 Census under § 141(b) from December 31, 2020 to April 30, 2021); H.R. 7974, 116th Cong., § 2 (2020) (same); H.R. 7034, 116th Cong., § 2 (2020) (same); S. 4048, 116th Cong., § 2 (2020) (same). But none of those proposals were enacted into law.

Once it became apparent in late July that Congress may not alter the December 31, 2020 statutory deadline, the Secretary directed the Bureau to present a plan for how it could accelerate operations to meet that deadline. Fontenot Decl. ¶ 87. Senior managers in the Census Bureau considered various operational adjustments, "evaluat[ing] the risks and quality implications of each suggested time saving measure and select[ing] those that [the Census Bureau] believed presented the best combination of changes to allow [it] to meet the statutory deadline without compromising quality to an undue degree." *Id.* ¶ 88. The Census Bureau formalized its plan (called the "Replan") and presented it to the Secretary on August 3, 2020. *Id.* ¶ 87. Later that day, the Secretary approved, and Director Dillingham announced, the Replan. Since that time the Bureau has been working tirelessly to conduct the census under the Replan, mindful of its need to meet the statutory deadline. *Id.* ¶¶ 87–98. The Bureau "is confident that it can achieve a complete and accurate census and report apportionment counts by the statutory deadline following the Replan Schedule." *Id.* ¶ 97.

LEGAL STANDARDS

"A preliminary injunction is an extraordinary remedy never awarded as of right." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (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."[1] *Id.* at 20. Where, as here, a plaintiff seeks a "preliminary injunction [that] is mandatory rather than prohibitory in nature," *Pashby v. Delia*, 709 F.3d 307, 319 (4th Cir. 2013), relief is especially disfavored and "warranted only in the most extraordinary circumstances." *Taylor v. Freeman*, 34 F.3d 266, 270 n.2 (4th Cir. 1994).

ARGUMENT

I. PLAINTIFFS' CLAIM IS BARRED BY THE POLITICAL QUESTION DOCTRINE

Plaintiffs' entire preliminary-injunction motion is built on the faulty premise that the Census Bureau's extraordinary efforts to meet § 141(b)'s statutory deadline will lead to an inaccurate census. *See, e.g.*, Pls.' Mot. at 21–34. But the Court cannot entertain that speculation because Congress, not the judiciary, is constitutionally tasked with deciding whether any particular timeline will ensure an acceptable (though unknowable) level of census accuracy.

"The political question doctrine excludes from judicial review those controversies which revolve around policy choices and value determinations constitutionally committed for resolution to the halls of Congress or the confines of the Executive Branch." *Japan Whaling Ass'n v. Am. Cetacean Soc'y*, 478 U.S. 221, 230 (1986). The doctrine is "primarily a function of the separation of powers," *Baker v. Carr*, 369 U.S. 186, 210 (1962), and "is designed to restrain the Judiciary from inappropriate interference in the business of the other branches of Government," *United States v. Munoz-Flores*, 495 U.S. 385, 394 (1990). The Supreme Court has identified several hallmarks of nonjusticiable political questions. *Id.* Foremost among these are "a textually demonstrable constitutional commitment of the issue to a coordinate political department," or "a lack of judicially discoverable and manageable standards for resolving" the dispute. *Vieth v. Jubelirer*, 541

[1] "The standard for granting either a TRO or a preliminary injunction is the same." *Young v. Ditech Fin., LLC*, 2017 WL 3066198, at *8 (D. Md. July 19, 2017) (Xinis, J.).

U.S. 267, 277–78 (2004) (internal citation omitted); *see Zivotofsky ex rel. Zivotofsky v. Clinton*, 566 U.S. 189, 195 (2012); *Rucho v. Common Cause*, 139 S. Ct. 2484 (2019) (finding partisan gerrymandering nonjusticiable for lack of administrable standards). Although either hallmark alone renders a case nonjusticiable, *see Schneider v. Kissinger*, 412 F.3d 190, 194 (D.C. Cir. 2005), Plaintiffs' motion runs headlong into both.

A. The census deadline is textually committed to Congress.

The Enumeration Clause grants Congress the authority to conduct the "actual Enumeration" in "such Manner as they shall by Law direct." U.S. Const. art. I, § 2, cl. 3. Courts routinely recognize the nonjusticiability of cases grounded in far less explicit constitutional language. Most notably, courts acknowledge that a variety of actions implicating foreign relations can present nonjusticiable political questions, even when the actual text of the Constitution is far from clear. *See, e.g., Made in the USA Found. v. United States*, 242 F.3d 1300, 1313–14 (11th Cir. 2001) (explaining that the Constitutional commitment of "foreign relations . . . to the executive and legislative" rests on various textual provisions and established case law); *El–Shifa Pharm. Indus. Co. v. United States*, 378 F.3d 1346, 1367 (Fed. Cir. 2004) (holding that the Constitution, "in its text and by its structure, commits to the President the power to make extraterritorial enemy property designations"); *Corrie v. Caterpillar, Inc.*, 503 F.3d 974, 983 (9th Cir. 2007) ("Whether to grant military or other aid to a foreign nation is a political decision inherently entangled with the conduct of foreign relations."); *Alperin v. Vatican Bank*, 410 F.3d 532, 545 (9th Cir. 2005) (surveying cases applying the political question doctrine in the foreign-relations context). But where, as here, the Constitution explicitly commits an issue to Congress or the Executive, the political-question determination is straightforward. *See, e.g., Gilligan v. Morgan*, 413 U.S. 1, 5–11 (1973) (noting Congress's explicit power to "organiz[e]. . . the Militia" in holding that a suit to restrain the Governor's use of National Guard troops presented a nonjusticiable political question).

As the Supreme Court has recognized, the text of the Enumeration Clause "vests Congress with virtually unlimited discretion in conducting the decennial 'actual Enumeration.'" *Wisconsin*, 517 U.S. at 19; *Dep't of Commerce v. New York*, 139 S. Ct. 2551, 2567 (2019) (Congress has "broad authority over the census, as informed by long and consistent historical practice"); *see also NAACP v. Bureau of the Census*, 399 F. Supp. 3d 406, 418 (D. Md. 2019) ("[T]he Founders clearly intended Congress to have paramount authority in both the design and execution of the census"), *aff'd in part, rev'd on other grounds*, 945 F.3d 183 (4th Cir. 2019).

That "virtually unlimited discretion" necessarily includes the authority to weigh policy considerations—like the need for timely census results to calculate apportionment, the need for a thorough census, and the funding for lengthy census operations—to determine the deadline for each decennial enumeration. That's why Congress, and Congress alone, has set the deadline for every one of the 24 censuses in American history. *See, e.g.*, Census Act of 1790, 1 Stat. 101 (1790) (directing that the census would commence on August 2, 1790 and end on May 2, 1791). And "[i]t should go without saying that the National Legislature well knows how to amend a statute when it so desires." *Nat. Res. Def. Council, Inc. v. Hodel*, 865 F.2d 288, 317 (D.C. Cir. 1988). In fact, Congress has extended census deadlines from the earliest days of our Republic. For example, in the 1790 Census, Congress directed that the census would commence on August 2, 1790 and end on May 2, 1791. Census Act of 1790, 1 Stat. 101 (1790). But Congress later amended the first census act to extend the reporting deadline for Rhode Island and Vermont until late 1791, and for South Carolina until March 1, 1792. *Id.* Such amendments became a running theme, with census deadlines codified, then subsequently extended in every census from 1810 to 1850. *See* An Act to Extend the Time for Completing the Third Census, 2 Stat. 658 (1811); An Act to Amend the Act Entitled "An Act to Provide for Taking the Fourth Census," 3 Stat. 643 (1821), An Act to Amend the Act for Taking the Fifth Census, 4 Stat. 439 (1831), An Act to Amend the Act Entitled "An Act to Provide for Taking the Sixth Census," 5

Stat. 452 (1841), An Act Supplementary to the Act Entitled "An Act Providing for the Taking of the Seventh and Subsequent Censuses," 9 Stat. 445 (1850).[2]

Congress's sole responsibility to set or change census deadlines is not lost on the current Congress. Bills have been introduced, letters exchanged, and hearings held, all concerning whether Congress should extend the § 141(b) deadline in light of the COVID-19 pandemic. *See* H.R. 6800, § 70201(a) (extending deadline for 2020 Census under § 141(b) from December 31, 2020 to April 30, 2021); H.R. 7974, § 2 (same); H.R. 7034, § 2 (same); S. 4048, § 2 (same). As one Congresswoman stated in a letter earlier this month, "it is more urgent than ever that the Senate act." *See* Letter from Carolyn B. Maloney to Mitch McConnell et al. (Sept. 2, 2020) (emphasis added).[3] That letter conspicuously did not chide the Secretary or Census Bureau, but urged *Congress* to take action because "Congress has a solemn responsibility under the Constitution to help ensure an accurate and complete count, and there is bipartisan support in the Senate for extending these deadlines." *Id.* So while the Census Act now delegates many aspects of Congress's "broad authority over the census to the Secretary," *Wisconsin*, 517 U.S. at 5, 19, Congress maintains ultimate control over the census by, among other things, setting deadlines for completion and appropriating funds for the Census Bureau to meet those deadlines. *See, e.g.*, 13 U.S.C. § 141(b)–(c); 2 U.S.C. § 2a; *see also* Consolidated Appropriations Act, 2019,

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[2] Extensions became less necessary in 1880 when professional enumerators were used in lieu of U.S. Marshals. *See* An Act to Provide for Taking the Tenth and Subsequent Censuses, 20 Stat. 473 (1879). Congress has also altered the start date of the decennial census. From 1790 to 1820, censuses began on the first Monday in August. *See* An Act to Provide for Taking the Fourth Census, 3 Stat. 548 (1820). In 1828, President John Quincy Adams suggested the census be conducted earlier, so from 1830 to 1900, decennial censuses began on June 1. After sfluctuation in the early Twentieth Century, Congress eventually codified April 1 as Census Day, 13 U.S.C. § 141(a), where it remains today.

[3] Available at this link.

Pub. L. No. 116-6, 133 Stat. 13 (appropriating $3.5 billion to the Census Bureau for use through 2021).

As the plain constitutional text and history make clear, it is Congress that has responsible for updating census deadlines to accommodate changing circumstances. Not the Secretary. Not the Census Bureau. Not this Court. And certainly not Plaintiffs.

B. There are no judicially manageable standards for determining the appropriate census period.

This case is also nonjusticiable because there is "a lack of judicially discoverable and manageable standards for resolving" the dispute. *Zivotofsky*, 566 U.S. at 195. How is a Court to evaluate whether Congress's decisions about census timing are appropriate? It can't.

In prior census-related cases, courts entertained challenges to discrete statistical methodologies or data-collection decisions made by the Secretary. *See, e.g.*, *New York*, 139 S. Ct. 2551 (evaluating reinstatement of citizenship question on census questionnaire); *Utah v. Evans*, 536 U.S. 452, 452 (2002) (holding that "hot-deck imputation"—a process which imputes characteristics of households based upon the characteristics of neighbors—does not violate the Enumeration Clause); *Dep't of Commerce v. U.S. House of Representatives*, 525 U.S. 316 (1999) (holding that statistical sampling violates the Census Act and declining to reach the Enumeration Clause claim); *Wisconsin*, 517 U.S. at 1 (holding that Secretary did not violate Enumeration Clause by declining to correct a census undercount with data from a post-enumeration survey); *Franklin v. Massachusetts*, 505 U.S. 788 (1992) (holding that allocating federal employees serving overseas to their home States did not violate Enumeration Clause). Each of those cases involved a discrete policy choice that could be juxtaposed with an alternative—*e.g.*, to omit a citizenship question, to forego imputation, to decline the use of a statistical adjustment. And nearly all of those disputes could be resolved by examining whether the calculation methodology at issue was a permissible person-by-person count (an "actual

Enumeration") or an unlawful statistical estimate.[4] *See, e.g.*, *Utah*, 536 U.S. at 457–58 ("Utah's constitutional claim rests upon the words 'actual Enumeration' as those words appear in the Constitution's Census Clause."); *House of Representatives*, 525 U.S. at 346–49 (Scalia, J., concurring in part) ("For reasons of text and tradition . . . a strong case can be made that an apportionment census conducted with the use of 'sampling techniques' is not the 'actual Enumeration' that the Constitution requires."); *id.* at 363 (Stevens, J., dissenting) (concluding that an "actual Enumeration" does not preclude "the use of sampling procedures to supplement data obtained through more traditional census methods"); *Wisconsin*, 517 U.S. at 24 (examining the Secretary's decision that an "'actual Enumeration' would best be achieved without the [ ] statistical adjustment of the census"). Not so here.

A reporting deadline necessarily limits the possible range of the Bureau's operations and requires the Bureau to perform a careful and complex balancing of numerous considerations such as cost, testing, training, effectiveness, timing, informational need, and accuracy. These tradeoffs are quintessentially "policy choices and value determinations constitutionally committed for resolution to the halls of Congress [and] the confines of the Executive Branch." *Japan Whaling*, 478 U.S. at 230. A litigant could *always* posit, as Plaintiffs do here, that some alleged deficiency can be cured with more time, staff, money, or a different design. But such hypotheticals do not provide

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[4] Similarly, the Supreme Court has routinely decided cases involving congressional districting by States on the theory that the Constitution requires "equal representation for equal numbers of people." *See Wesberry v. Sanders*, 376 U.S. 1, 18 (1964). And, based on those precedents, the Court has similarly decided that challenges to the way in which Congress allocates congressional seats are justiciable. *U.S. Dep't of Commerce v. Montana*, 503 U.S. 442, 459 (1992). But the nature of those controversies provided an easily administrable standard for courts to apply: the number of people in each congressional district. No such standard is available here.

any vehicle by which a court (as opposed to Congress) can evaluate the many policy choices that Congress has made to establish a deadline and that the Bureau has made to meet that deadline. Where, as here, Plaintiffs challenge the operations of an ongoing census, "[n]o districts have been drawn, no benefits cut, no actual harm yet suffered by the plaintiffs." *Tucker v. U.S. Dep't of Commerce*, 135 F.R.D. 175, 180 (N.D. Ill. 1991). So "[t]he question is which of the coordinate branches of government is best equipped to deal with plaintiffs' concern." *Id.* And the answer is Congress because Congress alone can balance the need for timely census results with the need for a thorough census with the appropriations needed to conduct the census. As a result, there is no rule or standard that a Court could apply to determine when census operations are too limited or too curtailed in response to Congress's statutory deadline. Indeed, "you might as well turn [this case] over to a panel of statisticians and political scientists and let them make the decision, for all that a court could do to add to its rationality or fairness." *Tucker v. U.S. Dep't of Commerce*, 958 F.2d 1411, 1417–18 (7th Cir. 1992).

Plaintiffs seem to suggest that the Court may decide this case because the Enumeration Clause demands accuracy at all costs. *See* Pls.' Mot. at 21–34. But the Supreme Court has recently rejected the idea that the Enumeration Clause commands accuracy. *New York*, 139 S. Ct. at 2565–66.[5] That makes sense because no census is ever perfect and every census can, presumably, be made better with more time or resources. *See Wisconsin*, 517 U.S. at 6 (recognizing that "no census is recognized as having been wholly successful in achieving" perfect accuracy); *Carey v. Klutznick*, 653 F.2d 732, 735 (2d

[5] The *Wisconsin* reasonable-relationship test, on which Plaintiffs rely, speaks only to the requirement that there be a person-by-person headcount rather than a statistical estimation. *See* Argument Section III., *infra*. Whether any method used by the Censu Bureau constitutes a headcount is a justiciable question with a readily administrable standard. Here, though, no one disputes that the Bureau is conducting just such a headcount. *See* Pls.' Mot. at 18.

Cir. 1981) ("Although the mechanics of the counting process have been improved in [every] census[], there has never been a perfect count."). So *any* census deadline would be inimical to Plaintiffs' purported standard, and thus improper. *See, e.g.*, *Wisconsin*, 517 U.S. at 6; *see also Karcher v. Daggett*, 462 U.S. 725, 732 (1983). Yet Congress—and Congress alone—has always set and reset deadlines using its plenary control over the census. *See supra*. That history merely highlights the obvious: census deadlines are nonjusticiable. *See NLRB v. Noel Canning*, 573 U.S. 513, 525 (2014) (accepting James Madison's view that "a regular course of practice" may "liquidate & settle the meaning" of constitutional provisions); *id.* at 572 (Scalia, J., concurring the judgement) ("[W]here a governmental practice has been open, widespread, and unchallenged since the early days of the Republic, the practice should guide our interpretation of an ambiguous constitutional provision."); *McCulloch v. Maryland*, 17 U.S. 316, 401 (1819) (Marshall, C.J.) (when questions arise about "the respective powers of those who are equally the representatives of the people," the "practice of the government" should "receive a considerable impression from that practice" if not settle it completely).

With the lack of any discernible standards, this Court should not wade into the realm of cost/benefit analyses and policy disagreements necessary to adjudicate the Replan or § 141(b)'s census deadline. Even during the COVID-19 pandemic, which presents unique challenges, those determinations are constitutionally entrusted to representatives of the people and executive officials confirmed by the same. And they are up to the task: the Census Bureau has adjusted its operations to meet the current statutory deadline and Congress is presently considering whether to extend that deadline. *See* H.R. 6800, § 70201(a); H.R. 7974, § 2 (same); H.R. 7034, § 2 (same); S. 4048, § 2. Plaintiffs may well believe that completing the census before December 31, 2020 will prove difficult. They may also believe that § 141(b), which has governed the last four censuses, should be changed. But Plaintiffs should take those concerns to Congress, not

an Article III court ill-equipped to resolve these policy judgments. Plaintiffs' constitutional claim is barred by the political question doctrine.

II. PLAINTIFFS LACK STANDING

Plaintiffs are also unlikely to succeed on the merits of their Enumeration Clause claim because they lack standing. Article III of the Constitution limits the judicial power of federal courts to "Cases" and "Controversies." U.S. Const. art. III, § 2. "[R]ooted in the traditional understanding of a case or controversy," standing doctrine developed to implement this Article III command. *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547 (2016). It "limits the category of litigants empowered to maintain a lawsuit in federal court to seek redress for a legal wrong," thus preventing "the judicial process from being used to usurp the powers of the political branches" and "confin[ing] the federal courts to a properly judicial role." *Id.*

Standing "requires an injury in fact that is caused by the challenged conduct and is likely to be redressed by a favorable decision." *6th Cong. Dist. Republican Comm. v. Alcorn*, 913 F.3d 393, 405 (4th Cir. 2019). As the parties invoking this Court's jurisdiction, Plaintiffs bear the burden of establishing these requirements. *Spokeo*, 136 S. Ct. at 1547. Here, that burden is heavy because the standing inquiry is "especially rigorous when reaching the merits of the dispute would force [the court] to decide whether an action taken by one of the other two branches of the Federal Government was unconstitutional." *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 408 (2013) (quoting *Raines v. Byrd*, 521 U.S. 811, 819-20 (1997)). Plaintiffs are far from satisfying this "especially rigorous" review.

A. Plaintiffs' alleged injuries are not redressable by a court order.

Plaintiffs must establish redressability by demonstrating "that some personal benefit will result from a remedy *that the court is prepared to give*." 13A Charles Alan Wright et al., *Federal Practice & Procedure* § 3531.6 (3d ed. Apr. 2018 update) (emphasis added). That is, a plaintiff must show that "the court has the power to right or to prevent

the claimed injury." *Gonzalez v. Gorsuch*, 688 F.2d 1263, 1267 (9th Cir. 1982) (Kennedy, J.). If the court does not "have the power to 'redress' the 'injury' that the defendant allegedly 'caused' the plaintiff," Article III standing is lacking. *Utah v. Evans*, 536 U.S. 452, 459 (2002) (citing *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561 (1992)); *see McConnell v. FEC*, 540 U.S. 93, 229 (2003) (no redressability because court "has no power to adjudicate a challenge to the [allegedly unconstitutional] FECA limits in this litigation"), *overruled on other grounds by Citizens United v. FEC*, 558 U.S. 310 (2010). Here, the Court has neither the power to abrogate an unchallenged statutory deadline, nor the power to order wholesale improvement of the census.

1. The Court has no power to ignore § 141(b)'s statutory deadline.

Plaintiffs have not mounted § 141(b)'s statutory deadline for the census. *See generally* Pls.' Mot. at 1–34. Rightly so. Congress's "virtually unlimited discretion" over the "actual Enumeration" necessarily includes the power to set a deadline for census completion. *See Wisconsin*, 517 U.S. at 19. This has been true since the beginning of our Republic. *See* Argument Section I., *supra*. And "[w]hen Congress by [ ] statute sets a specific deadline for agency action, neither the agency nor any court has discretion. The agency must act by the deadline." *South Carolina v. United States*, 907 F.3d 742, 758 (4th Cir. 2018) (quoting *Forest Guardians v. Babbitt*, 174 F.3d 1178, 1190 (10th Cir. 1999)). So ordering relief that compels the Census Bureau to miss the statutory deadline "would be an affront to our tradition of legislative supremacy and constitutionally separated powers." *Id.*

It is therefore no surprise that district courts ordering the Census Bureau to flout § 141(b)'s statutory deadline were swiftly reversed by the Supreme Court. Plaintiffs rely most heavily on *Carey v. Klutznick*, where the Second Circuit affirmed a district court order (later made permanent) that required the Census Bureau "to compensate for [a] disproportionate undercount" and explained that relief was available because there was "nothing sacred in the due date" established by § 141(b). 637 F.2d 834, 837–38 (2d Cir.

1980); *Carey v. Klutznick*, 508 F. Supp. 420, 433 (S.D.N.Y. 1980). Evidently, the Supreme Court disagreed. Within days, the Court reinstated the statutory deadline by staying the district court's order, which had precluded the Census Bureau "from certifying to the President the population totals for New York and the state-by-state census tabulations, on December 31, 1980, as mandated by 13 U.S.C. § 141(b)." *Klutznick v. Carey*, 449 U.S. 1068 (1980). And following the stay order, the district court's judgment was reversed on appeal. *Carey v. Klutznick*, 653 F.2d 732, 736 (2d Cir. 1981). A near-identical sequence of events unfolded in *Young v. Klutznick*, where the district court erroneously found that § 141(b)'s deadline was merely "directory," not "mandatory." 497 F. Supp. 1318, 1338 (E.D. Mich. 1980). Again, the Supreme Court stayed the district court's order. *Klutznick v. Young*, No. A-533 (Dec. 24, 1980). And again, the district court's judgment was reversed on appeal after the stay. *Young v. Klutznick*, 652 F.2d 617, 626 (6th Cir. 1981). Contrary to Plaintiffs' position, these cases straightforwardly demonstrate that § 141(b)'s December 31 mandate is absolute and cannot be overridden by judicial fiat.

Plaintiffs' reliance on *Wisconsin* is equally unavailing. Pls.' Mot. at 30–31. That case concerned a possible statistical adjustment to *already-collected* census data *after* the count was complete and *after* the Census Bureau had met its statutory deadline. *Wisconsin*, 517 U.S. at 20. It said nothing about whether courts have the power to alter operations of the census itself so that compliance with § 141(b)'s deadline is impossible.[6]

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[6] Plaintiffs also include a passing citation to *City of New York v. Dep't of Commerce*, 713 F. Supp. 48 (E.D.N.Y. 1989). In wrongly concluding that "[i]t is not Congress' intent to sacrifice [census] accuracy for the sake of timeliness," the district court in *City of New York* cited only *Carey v. Klutznick* and *Young v. Klutiznick*, both of which are fatally undermined by the Supreme Court's stays in those cases. But rather than appealing the *City of New York* order, the government entered a stipulation that later became the basis for the Supreme Court's decision in *Wisconsin*. 517 U.S. at 10 (noting the "interim stipulation"). The *City of New York* case is also distinguishable because the plaintiffs there submitted evidence that the statistical adjustment at issue *was* feasible before the

In fact, the Supreme Court would later impliedly recognize the importance of § 141(b)'s deadline in deciding whether the Secretary may reinstate a citizenship question on the census questionnaire. There, the Court granted certiorari directly from a district court judgment, specifically because "the census questionnaire needed to be finalized for printing by the end of June 2019" in order to meet § 141(b)'s statutory deadline. *New York*, 139 S. Ct. at 2565. If the Court thought that deadline unimportant, it could have simply allowed the Second Circuit to opine on the case, granted certiorari at its leisure, and allowed the census questionnaires to be printed sometime in 2020.[7] That procedural history is especially illuminating here because any order by this Court "granting or denying . . . an interlocutory or permanent injunction" is directly appealable to the Supreme Court. 28 U.S.C. § 1253.

There is no authority, let alone binding authority, for the proposition that courts may instruct the Census Bureau to disregard § 141(b)'s statutory deadline. And because courts cannot do so, Plaintiffs lack standing. *Utah*, 536 U.S. at 459.

2. The Court has no power to order wholesale changes to the census.

Redressability (and standing) are also lacking because Plaintiffs "cannot seek wholesale improvement of [a federal] program by court decree, rather than in the offices

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statutory deadline. *City of New York*, 713 F. Supp. at 51. Plaintiffs submit no analogous evidence here.

[7] This makes Plaintiffs' reliance on a district court decision in the citizenship-question litigation doubly flawed. Pls.' Mot. at 31 (citing *La Unión del Pueblo Entero v. Ross*, 353 F. Supp. 3d 381, 393 (D. Md. 2018)). First, nothing in that case remotely suggested that the Census Bureau could simply ignore § 141(b)'s deadline and, as explained above, the Supreme Court tacitly recognized the opposite. Second, Plaintiffs cite that district court case for the idea that "[w]hen the Census Bureau unreasonably compromises the distributive accuracy of the census, it may violate the Constitution." *Id.* (*La Unión del Pueblo Entero*, 353 F. Supp. 3d at 393). But the Supreme Court specifically rejected that standard, reasoning that it "would seem to render every census since 1790 unconstitutional." *New York*, 139 S. Ct. at 2567.

of the [agency] or the halls of Congress, where programmatic improvements are normally made." *Lujan v. Nat'l Wildlife Fed'n*, 497 U.S. 871, 891 (1990). "[I]t is not the role of courts, but that of the political branches, to shape the institutions of government in such fashion as to comply with the laws and the Constitution." *Lewis v. Casey*, 518 U.S. 343, 349 (1996). So given the unchallenged statutory deadline, Plaintiffs' broad programmatic challenge to ongoing census operations is not redressable.

For all their criticism of the Census Bureau's current plan, Plaintiffs have no alternative proposal—none—for how the Bureau is to complete a better census by the statutory deadline. In fact, they seem to categorically reject the idea. *See, e.g.*, Pls.' Mot. at 39. That alone should be dispositive. *Nat'l Law Ctr. on Homelessness & Poverty v. Kantor*, 91 F.3d 178, 183 (D.C. Cir. 1996) (alleged enumeration injury not redressable where plaintiffs "do not even ask that [] alternative methodologies . . . be employed in a recount" and the court has no basis to find "that a commission of as-yet unnamed persons, using as-yet unidentified methodologies, will devise a better [] count that will redound to appellants' benefit"). Without any alternative, and facing § 141(b)'s unmoving deadline, the Court would be in the untenable position of exercising "supervisory control over the execution of the 2020 Census." *NAACP*, 399 F. Supp. 3d at 416. But "[t]hat is not a remedy that a court has the authority, expertise, or time to provide. Rather, Congress determined that it was the Bureau that was best equipped to complete this task." *Id.* (citing 13 U.S.C. § 141(a)).

B. <u>Plaintiffs' alleged injuries are not traceable to Defendants.</u>

For similar reasons, Plaintiffs fail to establish the requisite "causal connection between" their alleged injury and the Replan they challenge. *Defs. of Wildlife*, 504 U.S. at 560. To establish such a connection, Plaintiffs must show more than that their populations may be undercounted under the plan the Bureau has developed. They must establish that their populations will be "improperly undercounted by [a particular]

methodology as compared to a feasible, alternative methodology," and that the difference between the two methodologies is sufficiently large to produce some kind of harm. *Kantor*, 91 F.3d at 183, 185–86; *see also Franklin*, 505 U.S. at 802 (plurality) (challengers to the allocation of overseas employees among states had "neither alleged nor shown . . . that [they] would have had an additional Representative if the allocation had been done using some other source of 'more accurate' data" and did not have standing "to challenge the accuracy of the data used in making that allocation"). Plaintiffs have not done so.

As noted above, Plaintiffs complain that the current census plan will result in an undercount of people in their communities, but they have identified no other feasible method by which the Bureau could meet the end-of-year deadline, let alone one that can produce a supposedly more-accurate result. Absent such an alternative, Plaintiffs cannot meaningfully contend that any alleged undercount of their communities is, in fact, caused by the Bureau's plan, rather than by an independent factor like the COVID-19 pandemic, the statutory deadline, natural disasters, or all of the above. *See* Pls.' Mot. at 33 ("These natural disasters are legitimate threats to an accurate census count.").

Indeed, Plaintiffs' praise of the COVID-19 Plan—a plan that bypasses the existing statutory deadline—only highlights that their alleged injuries derive from Congress's current refusal to alter the census deadline, not the Bureau's extraordinary attempt to meet that deadline. This is fatal to their standing. *See Simon v. E. Ky. Welfare Rights Org.*, 426 U.S. 26, 41–42 (1976) (federal courts have jurisdiction only if the plaintiff's injury "fairly can be traced to the challenged [conduct] of the defendant, and [does] not . . . result[] from the independent action of some third party not before the court."). Plaintiffs cannot seek redress against the Bureau for choosing to follow the law, and they should petition Congress, not this Court, if they are concerned about congressional inaction.

C. Plaintiffs' alleged injuries are entirely speculative.

Besides redressability and causation, Article III also requires that Plaintiffs establish "injury in fact" by showing that they "ha[ve] sustained or [are] immediately in danger of sustaining a direct injury" as a result of the challenged action. *Spokeo*, 136 S. Ct. at 1552. The injury must be "concrete and particularized," *Defs. of Wildlife*, 504 U.S. at 560, and not "merely 'conjectural' or 'hypothetical' or otherwise speculative." *Summers v. Earth Island Inst.*, 555 U.S. 488, 505 (2009). An alleged future injury must be "*certainly impending*"; '"[a]llegations of *possible* future injury' are not sufficient." *Clapper*, 568 U.S. at 409, 410 (quoting *Whitmore v. Arkansas*, 495 U.S. 149, 158 (1990)). Plaintiffs' alleged injuries rest on exactly that kind of prohibited speculation.

As detailed in Mr. Fontenot's declaration, the Replan was designed to provide "the best combination of" procedures to allow the Bureau "to meet the statutory deadline without compromising quality to an undue degree." Fontenot Decl. ¶¶ 88–93. Among other things, the plan "intends to improve the speed of the [Nonresponse Followup] operations without sacrificing completeness." *Id.* ¶ 92. The Bureau "is confident that it can achieve a complete and accurate census and report apportionment counts by the statutory deadline following the Replan Schedule."[8] *Id.* ¶ 97. Plaintiffs and their declarants appear to disagree. *See* Pls.' Mot. at 31 ("Nothing suggests Defendants can

[8] Plaintiffs mischaracterize the Secretary and the Director's joint statement of April 13, 2020 as stating that "more time than [the Replan] is necessary to ensure 'the completeness and accuracy of the 2020 Census.'" Pls.' Mot. at 31. Rather, the statement simply acknowledged that congressional relief was necessary to effectuate the COVID-19 Plan, and that the COVID-19 Plan would "ensure the completeness and accuracy of the 2020 Census." U.S. Census Bureau, Statement on 2020 Census Operational Adjustments Due to COVID-19 (Apr. 13, 2020), available at this link. The statement never said that an extension was "necessary" to complete the 2020 Census, as Plaintiffs erroneously contend. In any event, any ambiguity is put to rest by Mr. Fontenot's statement that the Bureau "is confident that it can achieve a complete and accurate census and report apportionment counts by the statutory deadline." Fontenot Decl. ¶ 97.

complete an accurate count by the end of 2020."). But their opinion cannot be credited over Mr. Fontenot's; as Associate Director for Decennial Census Programs, he was (and is) directly involved with the design and implementation of the Replan. The Census Bureau is in best position to opine on the likely effects of its operational choices, and generalized assertions to the contrary must be discounted accordingly.

In any event, purportedly "dire consequences" do not flow directly from even a "significant undercount." Pls.' Mot. at 30. The number of congressional seats for each State is affected not only by that State's *own* total population, but also by the population of *every other* State in the country. *See* 2 U.S.C. § 2a(a); *U.S. Dep't of Commerce v. Montana*, 503 U.S. 442, 461 (1992). Likewise, the allocation of federal funds is not directly proportional to population, but is a function of multiple factors, usually including the populations of *other* geographical areas. *See, e.g.*, 42 U.S.C. § 1396d(b) (Medicaid formula measuring a State's per capita income against the national average per capita income); 49 U.S.C. § 5305(d)(1) (apportioning public transit funds to States based on the population of urbanized areas in each State compared to the total population of urbanized areas in all States); Reamer Decl. ¶ 44, ECF No. 112-7 ("Census-guided financial assistance programs use census-derived datasets to differentiate among geographic areas in terms of eligibility and/or allocation and then distribute funds based on those differentiations."). So an undercount may be immaterial if it is replicated elsewhere or does not exceed some as-yet-unknown threshold. *See, e.g.*, *Kantor*, 91 F.3d at 183.

That is why a purported "undercount" is not talismanic: Plaintiffs must actually demonstrate that any alleged undercount will be so severe and disproportionate that it will cause them to lose representation or funding. *Id.* at 185 (no standing because court could not determine "what effect any methodology for counting the homeless would have on the federal funding of any particular appellant," since "if a more accurate count would have enlarged some communities' shares, it likely would have reduced the shares of other communities"); *Ridge v. Verity*, 715 F. Supp. 1308, 1318 (W.D. Pa. 1989) (no

standing because "none of the plaintiffs in this case can show which states would gain and which would lose representation in Congress"); *Fed'n for Am. Immigration Reform v. Klutznick*, 486 F. Supp. 564, 570 (D.D.C. 1980) (three-judge court) (no standing because "none of the plaintiffs are able to allege that the weight of his or her vote in the next decade will be affected" since plaintiffs "can do no more than speculate as to which states might gain and which might lose representation," which depends on "the interplay of all the other population factors which affect apportionment"); *see also Sharrow v. Brown*, 447 F.2d 94, 97 (2d Cir. 1971) (no standing to challenge apportionment method because plaintiff "would have to show, at least approximately, the apportionment his interpretation . . . would yield, not only for New York but for every other State as well").

Plaintiffs have not come close to that showing. For starters, they do not even attempt to calculate the supposedly "statistically certain" undercount for their own States and localities.[9] Pls.' Mot. at 30; *see, e.g.*, Thompson Decl. ¶¶ 22, 32, ECF No. 112-2 ("I am very concerned that these timing constraints will significantly increase the risk of much larger undercounts for the 2020 Census than measured in previous censuses."); Hogan

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[9] Plaintiffs also seem to rely on cursory, but fundamental, assertions based only on "information" and/or "belief." *See, e.g.*, Park Decl. ¶ 6, ECF No. 112-8 (stating his "belief" that "the truncation of field operations will result in Asian Americans and immigrants not being counted in the 2020 Census"); Valdez Decl. ¶ 3, ECF No. 112-9 (stating her "belief" that "the truncation of field operations on September 30, 2020 will result in many Latinx individuals and immigrants not being counted in the 2020 Census"); Chen Decl. ¶ 5, ECF No. 112-10 (stating her "belief" that "the truncation of census field operations will . . . result in an undercount of Asian Americans in Texas"). Such statements are "insufficient for a preliminary injunction." *Williamson v. Maciol*, 2020 WL 4449527, at *7 (N.D.N.Y. Aug. 3, 2020); *Allstate Ins. Co. v. McKinney*, 2018 WL 4186421, at *3 (W.D.N.C. Aug. 31, 2018) (explaining that "averments based 'upon information and belief' are no substitute for evidence"); 11A Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 2949 (3d ed. 2002) ("[W]hen the primary evidence introduced is an affidavit made on information and belief rather than on personal knowledge, it generally is considered insufficient to support a motion for a preliminary injunction.").

Decl. ¶ 69, ECF No. 112-3 ("I have described the risks of a greatly increased differential undercount and an inaccurate census."); O'Hare Decl. ¶ 127, ECF No. 112-4 ("[C]hanging the end of the 2020 Census data collection period . . . will result in greater omissions and undercounts . . . ."); O'Hara Decl. ¶ 24, ECF No. 112-5 ("[T]he result of adhering to the truncated schedule will be a failure to conduct an actual enumeration of the population."); Brace Decl. ¶ 33, ECF No. 112-6 ("The Bureau's changes to the timeline for the counting and post-count process will likely result in a greater undercount than experienced in prior censuses."). Without those calculations, and the concomitant calculations for every other relevant area in the country, Plaintiffs have no way of demonstrating that they will be impacted in any way.

And while Plaintiffs complain about potential undercounts in various cities and populous counties with allegedly low self-response rates, Pls.' Mot at 28–29, their own expert notes that self-response rates are *also* "disproportionately lower . . . in some rural areas." Thompson Decl. ¶ 21. In fact, Plaintiffs' expert notes that (1) those rural areas have a response rate under 51.3 percent, Thompson Decl. ¶ 21, which is at or below the 51.4 to 64.6 percent range[10] that Plaintiffs identify in their constituent communities, Pls.' Mot. at 28–29, and (2) this low response rate is "likely" to result in "increased undercounts" for these rural areas, Thompson Decl. ¶ 21. Yet Plaintiffs completely fail to consider how any potential undercount in those rural communities, or any other communities, could affect Plaintiffs' share of representation or funding. *See* Pls.' Mot. at 21–34 (contending that Plaintiffs' communities may be undercounted, but offering no evidence regarding how any such undercount may relate to counts in other jurisdictions).

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[10] Plaintiffs practically argue themselves out of Article III standing by acknowledging that certain Plaintiffs live in areas with self-response rates *equal to or above* the national average. *See* Pls.' Mot. at 28–29 (Yakima County, Washington and Maricopa County, Arizona).

As a result, the Court would need to guess how those undercounts, if they occur at all, may affect Plaintiffs.

Such guesswork does not support jurisdiction, much less an injunction. *See Clapper*, 568 U.S. at 414 n.5 (no Article III standing exists if a plaintiff's theory of injury rests on an "attenuated chain of inferences necessary to find harm"). In the census context, the Supreme Court has consistently scrutinized claims of census harm to ensure that prospective litigants have demonstrated not some amorphous "increased risk" of an undercount untethered from the count of other areas, but an actual or likely injury from the census count. *See, e.g.*, *New York*, 139 S. Ct. at 2565 (finding standing after trial where plaintiffs would "lose out on federal funds" "if noncitizen households [were] undercounted by as little as 2%" due to inclusion of a citizenship question on the census questionnaire); *Utah*, 536 U.S. at 458 (noting that the challenged methodology indisputably changed which state received a Representative); *House of Representatives*, 525 U.S. at 330 (noting that plaintiffs produced evidence showing that under the challenged plan a State would lose a representative compared to the prior method). Here, by contrast, Plaintiffs present nothing of the sort. Instead, they generally claim that they will be injured by an undercount, seemingly no matter how small. That falls far short of the requisite standard.

Nor can they bypass that Article III standard by simply stating that the Replan's NRFU and post-data processing phases are shorter than prior censuses. *See, e.g.*, Pls.' Mot. at 16–18. As Mr. Fontenot explains, "[t]he Census Bureau designed the 2020 Census NRFU operation to leverage automation and technological advances to control and track the NRFU workload and improve the efficiency of enumerators and the process of collecting census responses." Fontenot Decl. ¶ 60. With improvements like a state-of-the-art Field Operational Control System and iPhones for field work, 2020 NRFU "replaces paper-based NRFU operations used in past Censuses, providing a faster, more accurate, more efficient and more secure means of data collection." *Id.* ¶¶ 59–61.

Similarly, "[t]he 2020 Census leveraged significant advances in computing technology that have occurred since the 2010 Census" to significantly enhance its post-data processing operations. *Id.* ¶ 71. The Census Bureau has optimized its "computer processing systems" in "partnership with industry leaders using the latest hardware, database, and processing technology available" to "accelerate [its] processing time to fit within the re-planned schedule." *Id.* ¶ 72. So the Replan's compressed timeframe for completing NRFU and post-data processing, while less than ideal, simply demonstrates the enormous technological advancements that make this year's census the most efficient and flexible in history. *See, e.g., id.* ¶¶ 41, 81; *see generally id.* ¶¶ 20–77. It says nothing about whether there will be an undercount in any particular area, much less a significant differential undercount.

Plaintiffs fall far short of the required showing to establish Article III standing. But that makes sense because "the absence of any particular individual or class to litigate these claims gives support to the argument that the subject matter is committed to the surveillance of Congress, and ultimately to the political process." *United States v. Richardson*, 418 U.S. 166, 179 (1974). So while Plaintiffs may lack standing "within the narrow confines of Art. III jurisdiction," they are free "to assert [their] views in the political forum or at the polls." *Id.*

III. PLAINTIFFS CANNOT PREVAIL ON THEIR ENUMERATION CLAUSE CLAIM

If the Court finds this case justiciable, Plaintiffs are nonetheless unlikely to succeed on their Enumeration Clause claim. Indeed, in almost three decades of census-related litigation, the Supreme Court has *never* found an Enumeration Clause violation. *See New York*, 139 S. Ct. at 2567 (holding that a citizenship question on the census questionnaire does not violate the Enumeration Clause); *Utah*, 536 U.S. at 452 (holding that hot-deck imputation does not violate the Enumeration Clause); *House of Representatives*, 525 U.S. at 344 (holding that statistical sampling violates the Census Act and declining to reach the Enumeration Clause claim); *Wisconsin*, 517 U.S. at 1 (holding that the Secretary did not

violate Enumeration Clause by failing to correct a census undercount with data from a post-enumeration survey); *Franklin*, 505 U.S. at 788 (holding that the method used to count federal employees serving overseas did not violate Enumeration Clause). This case presents no reason to break from those Supreme Court precedents, especially because any injunction by this Court is directly appealable to the Supreme Court. 28 U.S.C. § 1253.

The Constitution's reference to "actual Enumeration" is simple: population is to be determined by a person-by-person headcount, rather than through estimates or conjecture. Prior to the first census in 1790, the Framers settled on an interim number of Representatives allocated to each State. U.S. Const. art. I, § 2, cl. 3 (providing the number of Representatives for each State "until such enumeration shall be made" within "three Years after the first Meeting of the Congress of the United States"). This allocation was based on "estimates" of the population derived from "materials ranging from relatively complete enumerations . . . to fragmentary data such as contemporary local population estimates, militia registrations, tax records, church records, and official vital statistics." U.S. Dep't of Commerce, Historical Statistics of the United States, 1789–1945 (1949).

Given that context, "Article I makes clear that the original allocation of seats in the House was based on a kind of 'conjectur[e],' in contrast to the deliberately taken count that was ordered for the future. What was important was that contrast—rather than the particular phrase used to describe the new process." *Utah*, 536 U.S. at 475 (citations omitted); *see id.* at 493 (Thomas, J., concurring in part and dissenting in part) ("[A]t the time of the founding, 'conjecture' and 'estimation' were often contrasted with the actual enumeration that was to take place pursuant to the Census Clause."); *House of Representatives*, 525 U.S. at 363 (Stevens, J., dissenting) ("The words 'actual Enumeration' require post-1787 apportionments to be based on actual population counts, rather than mere speculation or bare estimate."); Thomas R. Lee, *The Original Understanding of the Census Clause: Statistical Estimates and the Constitutional Requirement of an "Actual*

Enumeration," 77 Wash. L. Rev. 1, 20 (2002) (providing an in-depth examination of this contrast and its historical context).

The Replan endeavors to do exactly the person-by-person headcount required by the Constitution without any reliance on prohibited estimates or guesswork. Plaintiffs tacitly acknowledge as much, *see* Pls.' Mot. at 18, and focus not on any impermissible estimation, but on their speculative belief that the Replan will result in a "significant undercount," Pls.' Mot. at 30. Yet Plaintiffs do not even attempt to identify any meaningful standard by which to evaluate whether the Replan achieves a constitutionally adequate census. There's a reason for that: no such standard exists. "[D]espite the command of the Enumeration Clause that there be an 'actual enumeration' during a decennial census, there has never in our country's history been a completely accurate enumeration of the entire population, and absolute perfection is neither possible nor required." *NAACP v. Bureau of Census*, --- F. Supp. 3d ---, 2020 WL 1890531, at *7 (D. Md. Apr. 16, 2020); *see Wisconsin*, 517 U.S. at 6 (recognizing that "no census is recognized as having been wholly successful in achieving" perfect accuracy); *see also Karcher v. Daggett*, 462 U.S. 725, 732 (1983) (recognizing that "census data are not perfect," and that "population counts for particular localities are outdated long before they are completed"); *Carey v. Klutznick*, 653 F.2d 732, 735 (2d Cir. 1981) ("Although the mechanics of the counting process have been improved in [every] census[], there has never been a perfect count."). That Plaintiffs have subjectively prejudged the 2020 Census to be a failure by some unknown and inscrutable metric is not sufficient to prevail on their Enumeration Clause claim.

Nor can Plaintiffs find refuge in the *Wisconsin* reasonable-relationship test. In *Wisconsin*, the Supreme Court considered whether the Secretary violated the Enumeration Clause by declining to statistically adjust the 1990 census to rectify alleged differential undercounts. 517 U.S. at 10–11. The Court cited Congress's "virtually unlimited discretion in conducting the decennial 'actual Enumeration,'" and explained

that Congress had in turn delegated its "broad authority" to the Secretary. *Id.* at 19. It then announced that the Secretary's decision not to adjust the census count "need bear only a reasonable relationship to the accomplishment of an actual enumeration of the population, keeping in mind the constitutional purpose of the census." *Id.* at 20. The Court observed that a similar standard had been applied in *Montana* and *Franklin*, both of which similarly involved Executive Branch decisions to adjust the census *after* it was completed. *See Franklin*, 505 U.S. at 804 (reviewing the Secretary's decision to allocate overseas federal personnel to their home States); *Montana*, 503 U.S. at 460 (considering the method used to apportion House seats among the States).

The Supreme Court recently confirmed the limited applicability of *Wisconsin*'s reasonable-relationship test, explaining that it is only used when reviewing "decisions about the population count itself"—*i.e.*, census data *already collected* by the Bureau. *New York*, 139 S. Ct. at 2566 (citing *Wisconsin*, 517 U.S. at 4 and *Franklin*, 505 U.S. at 790–91). If the *Wisconsin* test applied in every case remotely implicating the final census count, at least some member of the Supreme Court would have conceivably applied that standard in *House of Representatives* (concerning statistical sampling), *Utah* (concerning hot-deck imputation), or even in *New York* itself (concerning a citizenship question). None of them did. *See New York*, 139 S. Ct. at 2566–67 (explicitly eschewing the *Wisconsin* reasonable-relationship standard in determining the constitutionality of a citizenship question); *Utah*, 536 U.S. at 464 (foregoing the *Wisconsin* reasonable-relationship standard in determining the constitutionality of hot-deck imputation); *House of Representatives*, 525 U.S. at 346–47 (Scalia, J., concurring in part) (discussing the constitutionality of statistical sampling without reference to the *Wisconsin* reasonable-relationship standard); *id.* at 363 (Stevens, J., dissenting) (same).

Plaintiffs' Enumeration Clause claim here—in contrast to *Wisconsin*—challenges detailed operational aspects of the Census Bureau's plans to actually *conduct* the census, well before "the population count itself" is determined. So Plaintiffs' claim should

instead be assessed under Congress's (and by delegation the Secretary's) "virtually unlimited discretion" to conduct the census "in such Manner as they shall by Law direct." U.S. Const., art. I, § 2, cl. 3; *Wisconsin*, 517 U.S. at 19.

Measured against that standard, Plaintiffs cannot prevail. Choices over how to allocate resources, conduct data processing, and manage timetables in order to meet a statutory deadline amidst a pandemic are prototypical questions about the "Manner" in which the person-by-person headcount should be conducted, falling well within the scope of the Secretary's "broad authority over the census." *Wisconsin*, 517 U.S. at 17. And, again, Plaintiffs nowhere allege that Defendants are conducting something other than an "actual Enumeration," like an impermissible estimate or an educated guess of the population. Instead, Plaintiffs simply dislike the "actual Enumeration" being conducted, and complain about an "inevitable undercount of minority populations." Pls.' Mot. at 34. But the possibility of a differential undercount exists in every census and does not inherently violate the Enumeration Clause—the Constitution does not require perfection. *See Utah*, 536 U.S. at 504 (Thomas, J., concurring in part and dissenting in part) (canvassing the history of census undercounts, including the first census in 1790); *City of New York v. U.S. Dep't of Commerce*, 34 F.3d 1114, 1117 (2d Cir. 1994) ("This phenomenon, known as the 'differential undercount,' has skewed every census since at least 1940. The Census Bureau started measuring the differential undercount in that year."), *rev'd sub nom. Wisconsin*, 517 U.S. at 1. Even Plaintiffs' own experts acknowledge that differential undercounts are commonplace in the census. Thompson Decl. ¶ 21; Hogan Decl. ¶ 9; O'Hare Decl. ¶ 32; Brace Decl. ¶ 33. So if the Secretary is attempting to individually count every resident of the United States, any undercount (differential or otherwise) is the constitutionally permissible result of attempting to enumerate upwards of 330 million people across 3.8 million square miles.

Plaintiffs get no closer to an Enumeration Clause violation with their other passing quibbles. For example, they seem to take issue with the Census Bureau's planned use of

certain enumeration techniques, like proxy responses, administrative records, and imputation. *See* Pls.' Mot. at 24–26. But none of those practices are themselves unlawful, and Plaintiffs wisely do not argue otherwise. *See, e.g.*, *Utah*, 536 U.S. at 457–59, 473–79 (approving the Census Bureau's use of "hot-deck imputation" in the census); *Franklin*, 505 U.S. at 794–96, 803–06 (approving the Census Bureau's use of "home of record" information from Defense Department personnel files in the census).

Plaintiffs also insinuate that the sheer length of certain 2020 Census operations somehow violates the Enumeration Clause when compared to prior censuses. *See* Pls.' Mot. at 32 (noting that "Defendants have now announced their intent to proceed with the shortest NRFU operation in modern history"). But there is no constitutionally mandated duration for particular census operations. That bizarre theory would mean that nearly every census has been unconstitutional simply because the 1790 Census allowed a year or more to count certain States. *See* Argument Section I., *supra*. Not to mention that such a preposterous constitutional principle would cripple the Census Bureau's ability to harness new technology and perform the enumeration more quickly, efficiently, and with less taxpayer dollars. This case is the paragon: the Census Bureau is able to compress the time needed for NRFU *precisely because* of technological advances like a state-of-the-art optimizer and the digitization of field work. Fontenot Decl. ¶¶ 59–72. This Court should reject the absurd notion of a constitutionally required, judicially-managed procrustean census, and it should "decline [Plaintiffs'] invitation to measure the constitutionality of [census operations] by a standard that would seem to render every census since 1790 unconstitutional." *New York*, 139 S. Ct. at 2567.

Notably, Plaintiffs could not succeed on their constitutional claim even if the Court were to disregard the text, history, and case law surrounding the Enumeration Clause and simply ask, as Plaintiffs urge, whether the Bureau's planned operations bear a "reasonable relationship to the accomplishment of an actual enumeration." Pls.' Mot. at 30 (quoting *Wisconsin*, 517 U.S. at 19). For one, an "actual Enumeration" simply means a

person-by-person headcount. *See supra.* So unlike the *post hoc* statistical adjustment at issue in *Wisconsin*—which implicated the concept of estimation—there is no dispute that the Replan endeavors to count each U.S. resident individually. *Compare* Pls.' Mot. at 18 *with Wisconsin*, 517 U.S. at 24 (examining the Secretary's decision that an "'actual Enumeration' would best be achieved without the [ ] statistical adjustment of the census"). For another, Defendants are aware of no decision finding a violation of the reasonable-relationship test. *See NAACP v. Bureau of Census*, --- F. Supp. 3d ---, 2020 WL 1890531, at *6 (D. Md. Apr. 16, 2020) ("I have located no case where a court has found a violation of the *Wisconsin* reasonable relationship standard."). And the Census Bureau's extraordinary effort to meet Congress's statutory deadline, in the midst of a global pandemic and a series of natural disasters, should not be the first. In moving to the Replan, the Census Bureau "evaluated the risks and quality implications of each suggested time-saving measure and selected those that [the Bureau] believed presented the best combination of changes to allow [it] to meet the statutory deadline without compromising quality to an undue degree." Fontenot Decl. ¶ 88. Nothing more can be required if the "substantial deference" owed by this Court to the "virtually unlimited discretion" of Congress and the Secretary is to mean anything. *See NAACP*, --- F. Supp. 3d ---, 2020 WL 1890531, at *6.

IV. PLAINTIFFS CANNOT SATISFY THE OTHER PRELIMINARY-INJUNCTION FACTORS

The "extraordinary remedy" of a preliminary injunction may not be awarded when a plaintiff fails to demonstrate a likelihood of success on the merits. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22, 32–33 (2008); *see also see Munaf v. Geren*, 553 U.S. 674, 690 (2008) (likelihood of success requires far more than identifying "serious, substantial, difficult, and doubtful" questions); *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997) ("[A] preliminary injunction is an extraordinary and drastic remedy, one that should not be granted unless the movant, *by a clear showing*, carries the burden of persuasion." (internal

quotes and citations omitted; emphasis in original)). So Plaintiffs' unlikelihood of success on the merits is itself sufficient to deny their preliminary-injunction motion.

But Plaintiffs' position only gets worse as the Court proceeds further. Because Plaintiffs are seeking an injunction that would compel the Census Bureau to yet again re-configure and extend its operations, Pls.' Mot. at 39, they are requesting a mandatory injunction. *See Mountain Valley Pipeline, LLC v. 6.56 Acres of Land*, 915 F.3d 197, 216 n.8 (4th Cir. 2019) (mandatory injunctions are "those that alter rather than preserve the status quo"). Such injunctions are "particularly disfavored," and require Plaintiffs to demonstrate that their "right to relief is indisputably clear." *Profiles, Inc. v. Bank of Am. Corp.*, --- F. Supp. 3d ---, 2020 WL 1849710, at *3 (D. Md. Apr. 13, 2020) (citing *id.*). Just as they fail to establish a likelihood of success on the merits, Plaintiffs cannot satisfy this demanding standard for the remaining injunction factors: irreparable injury, balance of harms, and the public interest. *See Winter*, 555 U.S. at 20.

A. Plaintiffs cannot establish any imminent and irreparable harm.

Most significantly, Plaintiffs fail to establish that they are "likely to suffer irreparable harm in the absence of preliminary relief." *Winter*, 555 U.S. at 20. Plaintiffs cannot "demonstrate that absent a preliminary injunction they will suffer an injury that is neither remote nor speculative, but actual and imminent, and one that cannot be remedied if a court waits until the end of trial to resolve the harm." *Grand River Enter. Six Nations, Ltd. v. Pryor*, 481 F.3d 60, 66 (2d Cir. 2007) (internal quotation marks omitted). Because a preliminary injunction "is one of the most drastic tools in the arsenal of judicial remedies," *id.*, Plaintiffs' burden to show irreparable harm is necessarily higher than what is required to establish standing. *See, e.g., Mazurek*, 520 U.S. at 972.

Here, Plaintiffs fail this test for the same reasons that they fail to establish standing: they cannot show that they will suffer any imminent and certain injury. As explained above, Plaintiffs' assertions that their communities are likely to be undercounted as a

result of the Replan are speculative. They are also inconsistent with the evidence presented by Mr. Fontenot. *See* Fontenot Decl. ¶ 97 ("[T]he Census Bureau is confident that it can achieve a complete and accurate census and report apportionment counts by the statutory deadline following the Replan Schedule.").

Even more significant, however, is Plaintiffs' failure to connect any alleged undercount in their communities to potential undercounts in *other* jurisdictions. Because Plaintiffs are competing for dollars and legislative seats with other communities in their States and across the country, they can only be injured by inaccuracies that affect their members disproportionately. *See Kantor*, 91 F.3d at 185 (finding lack of standing where court could not determine "what effect any methodology for counting the homeless would have on the federal funding of any particular appellant," noting that "if a more accurate count would have enlarged some communities' shares, it likely would have reduced the shares of other communities"); *see, e.g.*, 42 U.S.C. § 1396d(b) (Medicaid formula measuring a State's per capita income against the national average per capita income); 49 U.S.C. § 5305(d)(1) (apportioning public transit funds to States based on the population of urbanized areas in each State compared to the total population of urbanized areas in all States).

There is no evidence in the record here to establish (1) the undercount in Plaintiffs' communities; (2) how that undercount compares to undercounts in other communities; and (3) how that comparison will result in some appreciable funding or representational loss for Plaintiffs. Absent this evidence, Plaintiffs cannot be said to establish anything more than the abstract "possibility of irreparable injury." *Nken v. Holder*, 556 U.S. 418, 434 (2009). But, as the Supreme Court has emphasized, the "'possibility' standard is too lenient" a basis upon which to issue the drastic remedy of a preliminary injunction. *Winter*, 555 U.S. at 22. So Plaintiffs' failure to establish anything more than the theoretical possibility of harm means that requested injunction should be denied.

If Plaintiffs' theory of irreparable harm were accepted, anyone who comes to court complaining about census operations and the mere prospect of an undercount could obtain an injunction as a matter of course to drastically alter a $15.6 billion census operation. That is not, and cannot be, the law. *See id.*

B. The public interest and harm to the government weigh heavily against a preliminary injunction.

On the other side of the ledger, the harm to the government and the public interest from an injunction would be ruinous and immediate. *See Nken*, 556 U.S. at 435 (explaining that harm to opposing party and the public interest "merge" when relief is sought against the government). As a legal matter, judicial intervention would usurp Congress's and the Executive's discretion over the census. *See* Argument Section I., *supra.* Congress has set the December 31 deadline, has so far declined to extend it, and has created an expectation that States and localities reliant on census data for redistricting and other purposes will receive it at a particular time. And as a practical matter, the requested injunction may make it *more* difficult to execute the census. Fontenot Decl. ¶¶ 100–08.

There is no denying that § 141(b)'s end-of-year statutory deadline presents a number of challenges. But if the Court sets aside the Replan, the Bureau would have to generate a *new* plan to comply with § 141(b)'s deadline or, if the Court somehow disregards that statutory provision, whatever new timelines the Court may impose. *See id.* This would require another re-planning of the various operations and staffing allocations of a nationwide census—one of the largest peacetime mobilizations in American history—whose field operations are nearly complete. *See id.* As the congressional clock ticks away with no statutory relief in sight, the Census Bureau would need to complete this massive re-Replan in perhaps only a few days. And, of course, there is no guarantee that any judicially mandated re-Replan would better achieve Plaintiffs' unknown and inscrutable "standard" of census accuracy.

With "the decennial census [ ] again generat[ing] a number of [ ] controversies," *Franklin*, 505 U.S. at 790, and the extraordinary disruption caused by the COVID-19 pandemic and various natural disasters, the public interest favors only one course: allowing the Census Bureau to complete the census under its current plan—the only plan that complies with the current statutory deadline. In denying a similar preliminary-injunction motion earlier this year, Judge Grimm said it best:

> The founders were clear in their allocation of where the power and authority to plan and execute the census should lie—with Congress, which in turn has delegated its broad authority to the Secretary. While Plaintiffs are right to be concerned about a differential undercount . . . it would not be in the public interest for me to substitute my judgment for that of the Constitution, Congress, the Secretary, and the Census Bureau, which would certainly disrupt the conduct of the census in ways that would have consequences far beyond the reaches of Prince George's County. Balancing the impact of granting the injunction against the alternative of allowing the census to proceed as planned, with the Plaintiffs having the opportunity to prosecute their Enumeration Clause challenge after the results are known . . . seems to me to be far more in the public interest.

NAACP v. Bureau of the Census, No. 18-cv-0891 (D. Md. March 5, 2020), ECF No. 82 (citations omitted). The Census Bureau is confident that its Replan will produce the best possible census under the circumstances. *See* Fontenot Decl. ¶¶ 82, 97. Plaintiffs can ask for, and obtain, no more from this Court.

V. PLAINTIFFS CANNOT SIDESTEP THE THREE-JUDGE COURT

"A district court of three judges shall be convened . . . when *an action* is filed challenging the constitutionality of the apportionment of congressional districts." 28 U.S.C. § 2284(a). The "action" here challenges not just the duration of census operations, but also "the apportionment" calculation by the President under 2 U.S.C. § 2a.[11] *See*

[11] As Plaintiffs themselves note, one California "action" (as here) involves claims "directly challenging the constitutionality of apportionment" and was concomitantly assigned to a three-judge court. Pls.' Mot. at 1 n.2 (citing No. 20-cv-05167 (N.D. Cal.

Second Am. Compl. ¶¶ 273–322, ECF No. 98. Everyone agrees on that point, which is why a three-judge court was convened to hear this case. Letter, ECF No. 101 (Judge Xinis requesting a three-judge court under § 2284(a) and noting that "[t]he parties did not oppose the referral"); Order, ECF No. 104 (appointing three-judge court under § 2284(a)); *see New York v. Trump*, ---F. Supp. 3d ---, 2020 WL 5422959, at *36 n.21 (S.D.N.Y. Sept. 10, 2020) (noting that an challenge to "the apportionment" was "properly heard by a three-judge panel" under § 2284). And once a three-judge court is convened, a single judge is not allowed to "hear and determine *any* application for a preliminary or permanent injunction."[12] 28 U.S.C. § 2284(b)(3) (emphasis added). Plaintiffs cannot sidestep that unequivocal text now. *See* Pls.' Mot. at 1.

"A straightforward reading of the pertinent language suggests that the entire case, and not just the constitutional claims [triggering § 2284], must be heard by a three-judge court." *Page v. Bartels*, 248 F.3d 175, 187–88 (3d Cir. 2001) (Becker, C.J.). "This is because the language of § 2284 itself is broadly applicable to 'actions'—not narrowly to 'claims'—challenging the constitutionality of the apportionment." *Id.*; *Thomas v. Reeves*, 961 F.3d 800, 802 n.2 (5th Cir. 2020) (en banc) (Costa, J., concurring) (explaining that "§ 2284(a) refers to 'action[s] . . . filed,' not individual claims"); Black's Law Dictionary, "Action"

2020)). A different California "action"—despite substantial overlap in parties and identical plaintiffs' counsel—does *not* include such claims and was *not* assigned to a three-judge court. Pls.' Mot. at 1 n.2 (citing No. 20-cv-0577 (N.D. Cal. 2020)). This proves Defendants' point that § 2284's applicability hinges on the "action" at issue, not the claims in any particular motion. *Page v. Bartels*, 248 F.3d 175, 187–88 (3d Cir. 2001) (Becker, C.J.).

[12] Although a single judge may "grant a temporary restraining order," that order can "remain in force only until the hearing and determination by the district court of three judges o[n] an application for a preliminary injunction." *Id.* § 2284(b)(3). Because Plaintiffs simultaneously move for a temporary restraining order and a preliminary injunction, § 2284(b)(3)'s allowance for a single-judge temporary restraining order is overcome by its prohibition on a single-judge preliminary injunction.

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(11th ed. 2019) (defining "action" as "[a] civil or criminal judicial proceeding"); *cf. City of Chicago v. Int'l Coll. of Surgeons*, 522 U.S. 156, 166 (1997) (holding that "federal claims suffice to make the actions 'civil actions'" for removal purposes under 28 U.S.C. § 1441(a) even when there are also non-removable state-law claims). So if § 2284 is properly invoked, all claims "are subject to § 2284(a)'s requirement that they be heard by a three-judge district court."[13] *Page*, 248 F.3d at 188. "That is consistent with the common practice when both constitutional and statutory challenges to reapportionment are brought—the constitutional hook for three-judge jurisdiction sweeps in the statutory claims." *Thomas v. Bryant*, 919 F.3d 298, 305 n.4 (5th Cir. 2019).

The Court should summarily reject Plaintiffs' bizarre attempt to sidestep both the three-judge court to which they agreed and the plain language of § 2284. Because a single judge cannot "hear and determine *any* application for a preliminary or permanent injunction," 28 U.S.C. § 2284(b)(3) (emphasis added), the full three-judge court should deny Plaintiffs' motion.

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[13] To the extent courts have declined to address claims that would not themselves trigger § 2284, those decisions were based on pre-1976 interpretations of § 2284 before the statute was overhauled, dealt with situations where the claims triggering § 2284 had already been dismissed, or both. *See Page*, 248 F.3d at 189 ("[T]he 1976 amendments limited the scope of the Three Judge Court Act considerably, making it questionable whether the policy considerations that drove the original, narrow construction are still applicable today. These revisions militate in favor of our broader reading of § 2284(a)'s scope."); *see, e.g.*, *Hagans v. Lavine*, 415 U.S. 528, 543 (1974) (allowing a single judge to adjudicate a statutory claim before a three-judge court adjudicates the constitutional challenges that triggered the pre-1976 version of § 2284); *Gordon v. Exec. Comm. of Democratic Party of City of Charleston*, 335 F. Supp. 166, 170 (D.S.C. 1971) (three-judge court) (resolving three-judge-court claims, declaring the "statutory court [ ] accordingly dissolved," and stating that "[a]ny rights asserted by the plaintiffs under other federal statutes or Constitutional provisions can be asserted only before the [single-judge] District Court.").

CONCLUSION

For the reasons discussed above, the Court should deny Plaintiffs' motion for temporary restraining order or preliminary injunction. Plaintiffs should petition Congress, not this Court, for appropriate relief.

DATED: September 11, 2020

Respectfully submitted,

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BC-DOC-CEN-2020-001602-001379

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

LA UNIÓN DEL PUEBLO ENTERO, *et al.*, Plaintiffs, v. DONALD J. TRUMP, in his official capacity as President of the United States, *et al.*, Defendants.	No. 8:19-cv-02710-PX-PAH-ELH

DECLARATION OF ALBERT E. FONTENOT, JR.

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

I. EXECUTIVE SUMMARY

1. I am the Associate Director for Decennial Census Programs at the U.S. Census Bureau, and I submit this declaration to:

- Explain the magnitude, complexity, and planning involved in the 2020 decennial census, including the tightly integrated nature of census operations and processing;
- Detail the changes made to the original design in light of the COVID-19 pandemic; and
- Discuss the impacts of extending field operations past their current end date of September 30, 2020.

II. QUALIFICATIONS

2. I am the Associate Director for Decennial Census Programs, in which capacity I serve as adviser to the Director and Deputy Director of the Census Bureau on decennial programs. In this role, I provide counsel as to the scope, quality, management and methodology of the decennial census programs; provide executive and professional leadership to the divisions and central offices of the Decennial Census Programs Directorate; and participate with other executives in the formulation and implementation of broad policies that govern the diverse programs of the Census Bureau. I have served in this capacity since November 12, 2017.

3. I began my career with the Census Bureau after retiring from a successful 40-year career as a senior executive in the private sector with midsize manufacturing companies where I was responsible for providing visionary leadership, developing innovative corporate growth and development strategies. I served as Vice President of Marketing, Vice President of Research and Development, and, for the last 14 years, as President and Chief Executive Officer.

4. In addition to a successful corporate career I served as Adjunct Professor in the MBA program in the Keller Graduate School of Management from 2005–2013 where I taught Leadership and Organizational Development, Marketing Management, Corporate Finance, Statistics, and Marketing. I earned a BA in management and MBA in management and finance from DePaul University and Doctor of Ministry in pastoral ministry from Bethel Theological Seminary

5. I served as a as a commissioned officer in U. S. Army and was decorated in combat in Vietnam. After leaving active service, I remained in the US Army reserve attaining the rank of Major.

6. After retirement from private sector corporate management, I began my career with the Census Bureau in 2009 as a Field Operations Supervisor in Southern California for the 2010 Census. I quickly rose through the ranks and managed the Nonresponse follow-up operations for the 2010 Census as Area Manager responsible for census activities in Los Angeles County, the State of Hawaii, San Bernardino County and

Riverside County California. After 2010, I served in positions of increasing responsibility as Survey Supervisor, Senior Supervisory Survey Statistician, Assistant Regional Director for the Los Angeles Region, and Regional Director for the Chicago Region. I moved from the field to the Census Bureau headquarters to assume the position as Chief of the Field Division and subsequently Assistant Director of Field Operations, Assistant Director for Decennial Census Operations, then Associate Director for the Decennial Census.

7. From 2012–16, I represented the Field Directorate on the team that developed and wrote the Operations plan for the 2020 Decennial Census.

8. I have in-depth firsthand knowledge about the planning, management, and execution of Census Bureau field operations and effective mission-oriented leadership. I serve as the Chairman of the Census Crisis Management Team; I served as a member of the 2020 Census Design Executive Guidance Group; I am a member of the Census Data Quality Executive Guidance Group; and I chair the 2020 Census Operations Planning Group. Additionally, I represent the Decennial Census Program in our engagement with two of the three committees that advise the Census Bureau: the Census Scientific Advisory Committee and the National Advisory Committee.

III. A COMPLEX DESIGN AND BUDGET FOR THE 2020 CENSUS

9. 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 has been the most significant factor informing every decision made in designing, planning, testing, and executing the decennial Census.

10. The Census Bureau's mandate in conducting the decennial census is to count everyone living in the United States, including 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, we expend significant funds, efforts, and resources 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.

11. 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. We monitor and manage the status and progress of the 2020 Census—the operations and systems in large part using a master schedule, which has over 27,000 separate lines of census activities. Thousands of staff at Census Bureau headquarters and across the country support the development and execution of the 2020 census operational design, systems, and procedures. In addition, the 2020 Census requires the hiring and management of hundreds of thousands of field staff across the country to manage operations and collect data in support of the decennial census.

12. The 2020 Census operational design is tailored to enumerate all persons, including hard-to-count populations. Almost every major operation in the 2020 Census contains components designed to reach hard-to-count populations. This includes: census outreach, census content and forms design, finding addresses for enumeration, field infrastructure, multiple modes for self-response, Non-Response Follow-Up (NRFU) operations that enumerate households that did not self-respond to the census, and other operations designed specifically for the enumeration of population groups that have been historically hard to count. 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, available at https://www.census.gov/programs-surveys/decennial-census/2020-census/planning-management/planning-docs/operational-plan.html. Examples include:

- Verifying address lists using address data provided by community organizations, satellite technology, and in-person 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 hard-to-count communities.

13. The Operational Plan cited above is an overall plan that integrates numerous sub-operations. Details on most of these sub-operations can be found on our website at https://www.census.gov/programs-surveys/decennial-census/2020-census.html. A partial list of the major operations for which we have posted detailed operations plans includes:

a. Count Review

b. NRFU

c. Integrated Communications Plan

d. Intended Administrative Data Use

e. Formal Privacy Methods

f. Post Enumeration Survey (PES)

g. Integrated Partnership and Communications

h. Count Question Resolution

i. Forms Printing and Distribution

j. Response Processing

k. Evaluations and Experiments

l. Counting Federally Affiliated Americans Overseas

m. Field Infrastructure and Logistics

n. Data Products and Dissemination

o. Geographic Delineations

p. Local Update of Census Addresses Operation

q. Update Enumerate Operations

r. Archiving

s. Internet Self Response

t. Non-ID Processing

u. Update Leave

v. Address Canvassing

14. The Census Bureau obtained approval under the Paperwork Reduction Act from the Office of Management and Budget for the data collections involved in the 2020 Census. The Operational Plan is a project management document and, as in prior censuses, we did not obtain clearance for it. We presented information about our plans as we developed them in quarterly public Project Management Reviews, and we obtained input on our plans from both our Census Scientific Advisory Committee and National Advisory Committee. We consulted with other agencies throughout the decade about data security, postal delivery, acquisition of records, and the like, though we did not ask other agencies to review or approve our project management plans.

15. We allocate vast resources 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.

16. The complexity and inter-related nature of census operations is echoed in the budget for the 2020 Census. The overall budget estimate for the 2020 Census—covering fiscal years 2012 to 2023—is $15.6 billion. This represents enough funding to successfully complete the 2020 Census in virtually all possible scenarios, including the current challenging circumstances. In fact, the Government Accountability Office (GAO) recently reviewed this budget estimate1 and determined that, as of January 2020, the estimate 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.

17. As of this writing, the Census Bureau has been appropriated in aggregate just under $14 billion to use for the 2020 Census, covering fiscal years 2012 through 2020. 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.

18. Combined, prior to the COVID-19 pandemic operational adjustments, there remain just over $2 billion in contingency funds that have been appropriated, but which we have not needed to use. With only minimal exceptions, Congress appropriated these

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[1] This is known as the 2020 Census Life Cycle Cost Estimate (LCCE) Version 2.0. 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.

funds to allow us to flexibly and quickly respond to any and all risks to the 2020 Census that might be realized and have an impact on the operations.

19. That is exactly what the Census Bureau has done in these challenging times. We have always planned to exhaust any resources necessary to fulfill the Census Bureau's mission in counting everyone living in the United States once, only once, and in the right place. In all scenarios, the focus of our resources includes the hard-to-count. We have designed and implemented the 2020 Census to enumerate the most willing and able to respond in our most efficient and cost effective manner, thereby freeing the majority of our resources to reach hard-to-count communities using a bevy of techniques specifically tailored to reach them.

IV. CENSUS STEP 1: LOCATING EVERY HOUSEHOLD IN THE UNITED STATES

20. The first operational step in conducting the 2020 Census was to create a Master Address File (MAF) that represents the universe of addresses and locations to be counted in the 2020 Census. This operation constitutes a significant part of the 2020 Census, and our plans to enumerate every resident once, only once, and in the right place.

21. A national repository of geographic data—including addresses, address point locations, streets, boundaries, and imagery—is stored within the Census Bureau's Master Address File/Topologically Integrated Geographic Encoding and Referencing (MAF/TIGER) System. The MAF/TIGER System provides the foundation for the Census Bureau's data collection, tabulation, and dissemination activities. It is used to generate

the universe of addresses that will be included in a decennial census. 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 tabulated to the correct geographic location as the final 2020 Census population and housing counts are prepared.

22. For all of these reasons, the Census Bureau implemented a continuous process for address list development in preparation for the 2020 Census. 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). In-field address list development involves individuals traversing a specified geographic area and validating or updating the address list based on their observations and, if possible, interaction with residents of the housing units visited.

23. 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' Delivery Sequence File (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.

24. 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.

25. 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.

26. 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.

27. 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 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.

28. In-Field Address Canvassing occurred between August 2019 and October 2019. Of the 50,038,437 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. There were 2,685,190 new addresses identified during fieldwork, of which 1,553,275 matched 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.

29. 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.

30. The MAF/TIGER System created the foundation for the 2020 Census. The Census Bureau believes that the Census Bureau's MAF/TIGER System is the most complete and accurate in history.

V. CENSUS STEP 2: ENCOURAGING SELF-RESPONSE THROUGHOUT THE 2020 CENSUS

31. In order to encourage everyone in the United States to self-respond, the Census Bureau designed, tested, and implemented and Integrated Communications Program, the IPC. The two major components of this program are the ICC, the Integrated Communications Contract, and the IPP, the Integrated Partnership Program.

A. Advertising and Media

32. The ICC is the major contract that supports all components of the communications campaign for the 2020 Census. For the 2020 Census, the push to educate people and motivate response to the 2020 Census represented the largest advertising campaign in U.S. government history.

33. 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, while the Census Bureau currently plans to spend approximately $695 million on the 2020 Census Integrated Communications Contract. The $695 million spent on the communications program will mean an 18% increase in per-person spending over the 2010 amount.

34. To run the ICC in connection with the Census Bureau, a contract was awarded to VMLY&R, a major legacy-advertising firm with over 80 years of experience. 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. 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.

35. Every part of the 2020 Census communications program was grounded in research. Based on the commitment to being a data driven campaign, beginning in 2018, we extensively researched how people perceived the census and what would motivate them to complete it. Models were developed to predict areas and audiences of low response across the country. 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 could be deployed to maximize impact.

36. As a result of that research, we mounted a media campaign with stories in news media across the country in print, social, and digital media. The campaign was

tested in over 120 focus groups across the country, and driven by efforts to reach historically undercounted audiences. More than 1,000 advertisements, in English and 43 other languages, were developed to communicate the importance of responding to the 2020 Census. 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.

37. On March 29, 2019, the Census Bureau launched 2020census.gov—a key information hub about the census, how to complete it, and how it will affect communities across the country. Three days later, on April 1, 2019, we held a press conference to unveil the campaign platform: "Shape Your Future. START HERE." On January 14, 2020, we unveiled highlights of the public education and outreach campaign. That same day, we began airing ads to reach 99 percent of the nation's 140 million households, including historically undercounted audiences and those that are considered hard to reach.

38. The massive multimedia campaign sought to engage stakeholders and partners, support recruitment efforts and the Statistics in Schools program, and communicate the importance of the census through paid advertising, public relations, social media content, and the new web site. This was the first census where we made 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.

39. The push to have a greater digital presence allowed the Census Bureau to reach a mobile audience, tailor messages, micro-target, and shift campaign ads and messages as needed. Online media, particularly search engines and social networking sites, made up a significant portion of digital connections. Nearly every person living in the United States was reached an average of 40 times throughout the campaign, from television, radio, newspaper and online ads, as well as outdoor locations such as billboards and bus stops.

40. The Census Bureau adapted its outreach strategies in response to delayed census operations due to COVID-19, increasing advertising and outreach to specific areas of the country with lower response rates. We quickly adjusted our messaging, pivoting from our original campaign to encourage people to respond online from the safety of their own homes. The use of micro-targeting allowed 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. This targeting continues through NRFU as we encourage the public to cooperate with enumerators. This targeting has allowed us to make each dollar spent on the advertising campaign more effective than in any previous census.

B. Partnerships with Community Organizations

41. The second major element of the Integrated Communications Program is partnerships. There are two prongs to the Partnership Program, the National Partnership

Program that works from Census Bureau headquarters mobilizing national organizations, and the Community Partnership and Engagement Program, that 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 numbers involved for both programs significantly exceed the totals reached in prior censuses.

42. 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), 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.

43. 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.

VI. CENSUS STEP 3: SELF-RESPONSE

44. The design of the 2020 Census depends on self-response from the American public. In an effort to ensure the most efficient process to enumerate households, the Census Bureau assigns every block in the United States 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).

45. 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 delivered on a flow basis unless a household responds. 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 ID,[2] the URL for the online questionnaire, and information for responding by phone.

46. Internet Choice is targeted to areas of the nation that we believe are least likely to respond online. Historical response rates from other Census Bureau surveys,

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[2] 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.

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 the 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.

47. 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.

48. Self-response began in March 2020 and will continue until the end of data collection. The total self-response period for the 2020 Census will be longer than the 2010 self-response period.

VII. CENSUS STEP 4: NONRESPONSE FOLLOWUP (NRFU)

49. NRFU is the field operation designed to 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 that did not self-respond to the decennial census questionnaire.

50. After giving everyone an opportunity to self-respond to the census, census field staff (known as enumerators), 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.

51. 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 primarily 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 either a telephone or an in-person contact attempt (however the vast majority of attempts will be in-person).

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

53. 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.

54. In both the 2010 and 2020 Census, a single determination of a vacant or nonexistent 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.

55. If a knowledgeable person cannot be found to confirm the status of vacant or non-existent, use of administrative records may provide 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. 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.

56. 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 high quality administrative records from trusted sources, the Census Bureau will use the administrative records to complete the enumeration. We consider administrative records to be of high quality if they are corroborated with multiple sources. Examples of high-quality administrative records 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.

57. 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.

58. 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 non-responding 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 on the third unsuccessful attempt to find residents at that address.

59. The Census Bureau designed the 2020 Census NRFU operation to leverage automation and technological advances to control and track the NRFU workload and improve the efficiency of enumerators and the process of collecting census responses. The 2020 Census design for NRFU replaces paper-based NRFU operations used in past Censuses, providing a faster, more accurate, more efficient and more secure means of data collection.

60. The Census Bureau has developed a robust and modern Field Operational Control System to handle many tasks and makes many decisions historically made by individuals. The Field Operational Control System creates daily enumerator workloads using an optimizer that takes into account the location of cases in the workload, the number of attempts a case has received, the time of day to contact an address to maximize response, travel time and mileage from case to case, the location of enumerators, and the hours each enumerator is available to work for a given day. Cases are sorted in the optimal order to ensure enumerators travel to their cases and conduct interview attempts

in the most efficient manner possible. Workloads are generated each night and transmitted to enumerators to work the next day.

61. Enumerators use government furnished iPhones to receive daily assignments and to collect census data. Use of iPhones and the capabilities afforded by automation allow for near real-time case status updates, transmission of response data, and increased enumerator efficiency. Enumerators receive daily workloads of nonresponding addresses, as generated by the optimizer. Enumerators work the addresses in the order prescribed by the optimizer, to determine the Census Day status of the housing unit and, when occupied, to enumerate the housing unit. The data collection application on the iPhone guides the enumerators through their activities for completing interviews. It provides enumerators with scripting for the introduction and the specific census questions and provides extensive help screens for answering questions a respondent may ask during the interview. At the end of each day, enumerators uses case management capabilities on their iPhone to enter work availability for the upcoming five days, as well as to enter/verify payroll information, including hours worked, mileage, and other expenses incurred during their shift.

62. To summarize, 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.

VIII. CENSUS STEP 5: QUALITY CONTROL DURING DATA COLLECTION

63. The Census Bureau is committed to a quality NRFU operation and has in place several programs to monitor and promote a quality data collection, such as the NRFU Reinterview Program, the Decennial Field Quality Monitoring Operation, and the Coverage Improvement Operation.

64. The NRFU Reinterview Program involves contacting a small number of households to conduct another interview—to help us ensure that enumerators are conducting their jobs correctly and are not falsifying responses. We have streamlined this operation as part of the Replan, using information collected from the mobile devices used by enumerators. The data from these mobile devices tell us where the enumerators were physically located while they were conducting the interviews, how long they spent on each question in the interview, time of day of the interview, and other detail data about the interview process. Having this information—which is new for the 2020 Census—provides management with information on how the census takers are doing their jobs, and allows us to select reinterview cases in a targeted fashion.

65. A second quality check program, new for the 2020 Census, is the Decennial Field Quality Monitoring operation. This operation monitors overall adherence to field procedures in order to identify unusual patterns. We used this near real-time data analysis successfully during the Address Canvassing operation in 2019, and it is currently

active in the NRFU operation. The goal of the program is to identify and investigate potential quality issues. In this program we examine data from individual field representatives and larger scale data, scanning for the possibility of both individual and systemic data quality problems. The program monitors outlier metrics, and produces reports that we analyze on a daily basis. Management staff use these reports to investigate suspicious activities and follow up as needed.

66. Another quality check operation, the Coverage Improvement Operation, seeks to resolve erroneous enumerations (people who were counted in the wrong place or counted more than once) and omissions (people who were missed) from all housing unit data. Coverage Improvement will attempt to resolve potential coverages issues identified in responses from the Internet Self-Response, Census Questionnaire Assistance, and NRFU operations, as well as from the paper questionnaires.

67. The Census Bureau believes that these quality programs (Reinterview, Decennial Field Quality Monitoring, and Coverage Improvement), taken together, provide a robust quality check for our data collection operations. We believe that our quality program remains an effective deterrent to poor performance, and an appropriate method to identify enumerators who fail to follow procedures. None of these programs, to date, reveals a pattern of substandard data collection.

68. The Census Bureau has also formed a Data Quality Executive Guidance Group that brings together the Census Bureau's experts in the fields of census operations,

statistical methodology, acquisition and utilization of administrative records, and in the social, economic and housing subject areas. The group's mission is to provide direction and approvals about quality assessments of changes to the operational plans and of the 2020 Census data during and post data collection. We plan to release Demographic Analysis estimates of the population in December, prior to the release of the apportionment counts, as previously planned.

69. Finally, as noted by the Director in his August 3, 2020 statement, under the Replan the Census Bureau is working to meet a similar level of household responses as in prior censuses. In short, the Census Bureau has robust programs in place to monitor data quality and has no indication that its NRFU operation is collecting "substandard" data.

IX. CENSUS STEP 6: POST-DATA COLLECTION PROCESSING

70. The next major step in the census, after the completion of data collection operations, is post processing. Post processing refers to the Census Bureau's procedures to summarize the individual and household data that we collect into usable, high quality tabulated data products. Our post processing procedures and systems are meticulously designed, tested and proven to achieve standardized, thoroughly vetted, high quality data products that we can stand behind.

71. The 2020 Census leveraged significant advances in computing technology that have occurred since the 2010 Census. Internet data collection, use of smart-phones

for field data collection, digital input of phone data collection, and state-of-the-art paper data capture have enabled the Census Bureau to consolidate and prepare the raw census data for processing more rapidly than ever before. Additionally, our computer applications include built-in quality controls that guide respondents through the data collection process and help to ensure higher data accuracy at the point of data input than ever before.

72. The computer processing systems at Census Headquarters have also been optimized in partnership with industry leaders using the latest hardware, database, and processing technology available. Taking advantage of this processing power and speed, we have been able to accelerate our processing time to fit within the re-planned schedule.

73. Nonetheless, post data collection processing is a particularly complex operation, and the steps of the operation must generally be performed consecutively. It is not possible, e.g., to establish the final collection geography for the nation prior to processing housing units and group quarters that are added or corrected during NRFU. Similarly, it is not possible to unduplicate responses prior to processing all non-ID responses. In this sense, the post data collection activities are like building a house – one cannot apply dry wall before erecting the walls, any more than one could lay floor tile before the floor is constructed. There is an order of steps that must be maintained.

74. As part of developing the Replan Schedule, we looked at the possibility of starting the post data collection processing activities on a flow basis and reaffirmed that

there is little opportunity to begin until data collection operations close everywhere. The only processing step we could adjust in the schedule was initial processing of addresses, which we advanced by 26 days. It is not possible, however, to begin final census response processing in one region of the country while another region is still collecting data.

75. The information below provides additional detail about the post data collection activities under the Replan Schedule.

A. Incorporate address updates from the field data collection operations into MAF/TIGER

Original Dates: February 10 – August 10, 2020

Replan Dates: February 6– September 24, 2020

During the data collection operations, the census field staff can update address and physical location information and add addresses. These updates are incorporated into our address and geo-spatial MAF/TIGER databases. Once updated, each address must be associated to the correct state, county, tract, block group and block. Since it is critical to associate each address to the correct geography, we verify that the address and geo-spatial updates are incorporated correctly.

B. Produce the Final Collection Geography MAF/TIGER Benchmark

Original Dates: August 14 – September 1, 2020

Replan Dates: September 5 – 25, 2020

In preparation for the producing the final collection geography data files needed for producing the apportionment counts and redistricting data products, we create a benchmark of MAF/TIGER, which is a snapshot of the databases.

C. Produce the Final Collection Address Data Products from MAF/TIGER

Original Dates: September 2 – 14, 2020

Replan Dates: September 26 – Oct 14, 2020

Once the benchmark has been created, the final collection geographic data files are produced and verified.

D. Produce and review the Decennial Response File 1 (DRF1)

Original Dates: September 15 – October 14, 2020

Replan Dates: October 14– November 8, 2020

The verified final collection geography data are integrated with the response data. Integration of these data is also verified to ensure accuracy. The next set of activities involves the standardization of the collected information.

- First we determine the final classification of each address as either a housing units or a group quarters facility. Addresses can change from a housing unit to group quarters and vice versa. Initial status is set at the start of the data collection operations as either a housing unit or group quarters. During the enumeration operations, we collect information that informs us on the classification. For a small number of addresses the classification may change, for example a housing unit may

have been turned into a small group home. Based on the information collected we determine the status of every address as either a housing unit of group quarters.

- Next, we identify each unique person on the housing unit returns.
- As part of NRFU operation, we conduct a reinterview of a sample of cases to ensure quality. We incorporate the results of the reinterview.
- As part of the Internet self-response option and telephone operation, respondents can provide their data without their Census Identification Number (ID). These cases are assigned an ID which associates them to the final collection geography.
- Some group quarters will provide the information electronically. These files can contain duplicate records, so we need to remove the duplicates.
- We also determine the population count for all group quarters.
- We collect data in many ways, for example on-line, over the phone, on a paper questionnaire, electronic administrative files, and in person using an electronic questionnaire. As a result, we need to standardize the responses across the modes of collection.
- Finally, for the operations that collect data on a paper questionnaire, some housing units have more people than can fit on one paper questionnaire. The census field staff will use multiple paper questionnaires to enumerate the house. These continuation forms are electronically linked to form one electronic form.

E. Produce and review the Decennial Response File 2 (DRF2)

Original Dates: October 14 – November 4, 2020

Replan Dates: November 9 – 30, 2020

Once the previous step has been verified, we incorporate the results from the Self-Response Quality Assurance operation. As part of the group

quarters operations, we enumerate domestic violence shelters. Their locations and data are high sensitive and are handled with special procedures both in the field and in processing. Their data are incorporated at this point in the process. Finally, for a small number of addresses we receive multiple returns, for example where one person in a house completes the form on-line, and other completes the paper questionnaire. For these cases, we select a form that will be used as the enumeration of record.

F. Produce and review the Census Unedited File (CUF)

Original Dates: November 4 – 30, 2020

Replan Dates: December 1 – 14, 2020

Once the previous step has been verified, we incorporate administrative records data as the response data for housing units were we do not have an enumeration and have high quality administrative records data. Next we determine the status for every housing unit as occupied, vacant or non-existent. Non-existent units are removed from future processing. For every occupied housing unit, the population count is determined. For each person with write-in responses to the race and Hispanic origin questions, we merge in the information from automated and clerical coding operations. The coding operations assign a numerical value to the write-in responses. At this point in the post-data collection activities, for every

housing unit and group quarter their location (state, county, tract, block group and block) is assigned, their status (occupied, vacant or non-existent) is determined, and in occupied addresses the number of persons is known. In addition, at the person level the demographic information (relationship, age, date of birth, sex, race and Hispanic origin along with write-in code values) and at the housing unit level housing information (tenure) is determined. For the majority of these items, the respondent provided the information. However, for a small number of people and addresses the information may be missing or inconsistent with other provided information, for example the Person 1's spouse is five years old. The result of these processes is a file that contains records for every housing unit and group quarters along with person records for the people associated with the addresses. Note that some of the demographic information and response to the tenure question may be missing.

G. Produce, review and release the Apportionment Counts

Original Dates: December 1 – 28, 2020

Replan Dates: Dec 15- 31, 2020

Once the CUF has been verified, the process goes down two paths. The first path is to determine the apportionment counts. Since every housing unit and group quarters has a population count and linked to a state, we

can tabulation the state level population counts. In addition, we merge in the count of the Federally Affiliated Overseas population and the results of the Enumeration of Transitory Locations for each state. To ensure accuracy in the apportionment numbers, the state counts including the overseas population and apportionment numbers are verified by multiple independent ways. The results of the independent verifications are compared and reconciled, if necessary.

X. CENSUS STEP 0: RESEARCH AND TESTING OF THE 2020 CENSUS DESIGN

76. The operational design of the 2020 Census, discussed above, has been subjected to repeated and rigorous testing. 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. Design and testing of the 2020 Census was an iterative process: after each test, we revised our plans and assumptions as necessary.

77. Below are 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.

XI. CURRENT STATUS OF 2020 CENSUS OPERATIONS

78. As of September 10, 2020, over 97 million households, 65.7 percent of all households in the Nation, have self-responded to the 2020 Census. Combining the house-

holds that self-responded with those that field staff have enumerated under NRFU reveals that as of September 10, 2020 the Census Bureau has enumerated 90.1 percent of the nation's housing units.

79. The Census Bureau is now roughly 4 ½ weeks into the 7 ½ week schedule for conducting the NRFU operation. Under the Replan Schedule, NRFU is scheduled to last 7 ½ weeks, not 6 weeks as some of Plaintiffs' declarations state. As of September 10, 2020, we have completed roughly 75.1% of the NRFU workload. We were helped in achieving this result by the fact that we got a "head start" on data collection by beginning NRFU at select offices in July at a "soft launch." When we began NRFU in all areas on August 9 we had already enumerated over 7.4 million households. Additionally, over 90% of the households in 49 states, Washington D.C., and the Commonwealth of Puerto Rico have been enumerated.

80. While the number of enumerators hired and deployed has not been at the level anticipated, current progress indicates that we will nonetheless be able to complete NRFU before September 30. We currently have over 231,000 enumerators actively deployed, and we are conducting continuous replacement training sessions to increase that number.

81. The productivity rate for our enumerators thus far is above the planned rate. Our plans assumed a productivity rate of 1.55 cases/hour, and 19 hours/week average hours worked, but as of September 10, 2020 we have experienced a productivity rate of approximately 2.19 cases/hour, and 20.0 hours/week averaged work hours.

82. As the Director stated on August 3, 2020, the Census Bureau intends to meet a similar level of household responses as collected in prior censuses, including outreach to hard-to-count communities. We are, however, facing significant risks to complete all states by this date, due to factors beyond the Census Bureau's control, such as wildfires in the western part of our country, major storms, resurgence of COVID-19 restrictions and other similar disruptions.

XII. REPLANNING THE CENSUS – MULTIPLE TIMES

83. The Census Bureau's planning for the 2020 Census was, in my professional opinion, excellent. Our plan was comprehensive and thoroughly tested. In March 2020, however, it became clear that COVID-19 was a serious health issue, and we were forced to change our plans around the time we began our self-response operation.

84. On March 18, 2020 the Census Bureau initially announced a two-week suspension of field operations to protect the health and safety of our employees and the American public because of the COVID-19 Pandemic. Self-response continued during this period through Internet, telephone and paper questionnaires. On March 28, 2020 the Census Bureau announced an additional two week suspension, until April 15, 2020.

85. At that time, the career professional staff at the Census Bureau undertook the project of replanning each of the field operations based on our best predictions of when we could safely begin sending staff into the field to interact with the public. On April 13, 2020 staff finalized the plan to adjust field operations, and I presented the plan to the Secretary of Commerce and Department of Commerce management. The plan involved delaying our key high personal contact operations by 90 days. Update Leave, which had started on March 15 and been stopped because of COVID-19 on March 17, would resume pursuant to a new schedule beginning on June 13 and concluding on July 9. In-person Group Quarters operations which had been scheduled from April 2 – June 5 would be rescheduled from July 1–September 3, and our largest field operation, NRFU, which was scheduled from May 13–July 31, would be moved to August 11- October 31. We rescheduled self-response to conclude with the end of Field Operations so instead of ending on July 31 as indicated in the original plan, it was extended to October 31. This schedule required Congress to provide legislative relief from the statutory deadlines of December 31, 2020, for the submission of the Apportionment counts to the President, and March 31, 2021, for the delivery of redistricting data to the states. A request statutory relief from Congress was made for 120 days to enable us to complete the field operations and post enumeration processing.

86. On April 13, 2020, the Secretary of Commerce and the Director jointly announced the new Census Schedule and stated that they would seek statutory relief from

Congress of 120 additional calendar days. This new schedule set a completion date for field data collection and self-response of October 31, 2020. For clarity, I will refer to this as "the COVID Schedule." The COVID Schedule assumed Congressional action and called for the delivery of apportionment counts to the President by April 30, 2021 (120 days after the statutory deadline) and redistricting data files to the states no later than July 31, 2021.

87. Once it became apparent that Congress was not likely to grant the requested statutory relief, in late July the career professional staff of the Census Bureau began to replan the Census operations to enable Census to deliver the apportionment counts by the statutory deadline of December 31, 2020. On July 29, the Deputy Director informed us that the Secretary had directed us, in light of the absence of an extension to the statutory deadline, to present a plan at our next weekly meeting on Monday, August 3, 2020 to accelerate the remaining operations in order to meet the statutory apportionment deadline. I gathered all the senior career Census Bureau managers responsible for the 2020 Census at 8:00 a.m. on Thursday, July 30 and instructed them to gather their staff of professional demographers, survey analysts, statisticians, and programmers and begin to formalize a plan to meet the statutory deadline. At that time I consulted with the Associate Director of Communications and we directed that the COVID Schedule be removed from our website while we replanned. We divided into various teams to

brainstorm how we might assemble the elements of this plan, and held a series of meetings from Thursday to Sunday. We developed a proposed replan that I presented to the Secretary on Monday August 3.

88. In developing the proposed replan we considered a variety of options and evaluated risk for each suggested time-saving measure. We evaluated the risks and quality implications of each suggested time-saving measure and selected those that we believed presented the best combination of changes to allow us to meet the statutory deadline without compromising quality to an undue degree. The challenge was to shorten the field data collection operation by 30 days, and to conclude the post processing operation in only 3 months, as opposed to 5 months in prior schedules. We began with a review of the status of all field outreach operations, and assessed the impacts of possible revisions on the Census Bureau's ability to complete those operations within the compressed timeline. The six million housing units in the Update Leave Operation (which provides Census invitations to housing units that do not receive regular US mail) had been completed in early July, and we had received over two million self-responses and the remaining housing units would be moved into the NRFU operation to be visited by enumerators for personal interviewing. The Group Quarters enumeration operation which had begun on July 1st was on track to be completed on schedule by September 3, 2020 and would not be negatively affected by compressing the balance of the Field Schedule. The enumeration of persons staying in transitory locations (Campgrounds, RV

parks, marinas and hotels without a home elsewhere) was scheduled to be conducted from September 3–September 28. That operation could be conducted as planned within the replan schedule timeline.

89. The COVID-19 pandemic had precluded the Census Bureau from sending staff to conduct our Service Based Enumeration (SBE) operation. SBE is conducted at emergency and transitional shelters, soup kitchens and regularly scheduled food vans and targeted non-sheltered outdoor locations (TNSOL), and is designed to insure that people experiencing homelessness are counted); it was originally scheduled to be conducted March 30–April 2. We had conducted an extensive consultation in May and early June with a panel of 67 national service providers, federal and state agencies to determine the best time frame to conduct this operation to best replicate the weather, migratory behaviors and other factors affecting this population. The overwhelming consensus of the stakeholders, and the input from Census experts, was that the best time to conduct this operation would be mid-late September. Based on that stakeholder consultation we selected September 22-24 to conduct the SBE and TNSOL operations with appointments made with service providers in early September. A review of this operation indicated that we could conducted it in the replan as currently scheduled without disruption.

90. We also reviewed NRFU, our largest and most critical operation. The Census Bureau had conducted soft launches of all our major operations (during a soft launch

a small portion of the operation starts early to insure that all the planned and tested systems work as designed under real field conditions with real respondents and actual newly hired temporary employees). The NRFU Soft Launch was planned with six offices that could be safely started based on COVID risk profiles (developed using CDC, HHS, State and Local health guidance), availability of staff, and provisioning of Personal Protective Equipment. The original plan was to begin the operation in one office from each of our six regions starting on July 16th (Cycle 1a) and to follow on July 23rd (Cycle 1b - one week later) with six additional offices picked from coastal areas that would be prone to Hurricane risk. As the plan developed we were unable to take offices from all of the areas in the original plan because of high COVID risk and state and local stay at home orders, however we were able to select 6 offices for each cycle and these offices commenced NRFU field operations without incident on the planned dates. On July 14, as the pandemic controls began to be lifted, and our concerns grew over lack of action on a waiver of the December 31, 2020 apportionment statutory deadline, we decided to expand NRFU operations to all offices that could meet the safety, health, and staffing requirements – to start those offices in advance of the initial planned start date of August 11, 2020. We deployed NRFU operations in 35 additional offices on July 30, 2020 and 39 additional offices on August 6, 2020. We then made the decision to pull forward all remaining offices from August 11 to August 9. All ACOs had begun NRFU operations by

August 9 and we had enumerated over 7.4 million housing units before the Replan Schedule's official start date of August 11.

91. Concurrent with the early start of NRFU operations, we observed higher levels of overall staff productivity resulting from the efficiency of the Optimizer (a software program that both schedules work for our enumerators and then routes them in the most effective routing). The increased productivity that we observed during the soft launch period was a factor in our ability to design the replanned field operations to end by September 30, 2020. The bonus plan to increase hours also contributed to our ability to create a replan to meet this deadline. We presented the Replan Schedule to the Secretary on August 3, he accepted it, and the Director announced it that same afternoon. For clarity, I will refer to this schedule as "the Replan Schedule."

92. The Replan Schedule intends to improve the speed of the NRFU operations without sacrificing completeness. Under the Replan Schedule, the Census Bureau has responded to the shortened calendar period for NRFU operations by taking steps to increase the ability of its employees in the field to work as efficiently as possible. This involves increased hours of work per enumerator, spread across the total workforce, to get the same work hours as would have been done under the original time frame. We incentivize this behavior by providing monetary bonuses to enumerators in who maxim-

ize hours worked, and retention bonuses to those who continue on staff for multiple successive weeks. Successful completion of NRFU is dependent on hours worked, not days worked.

93. We have aimed to improve the effectiveness of our count by continuing to maintain an optimal number of active field enumerators by conducting additional training sessions, and keeping phone and tablet computer devices for enumeration in use for the maximum time possible, thereby decreasing the inefficiency created by training new enumerators.

94. The Census Bureau was able to adopt the Replan Schedule because the design of the 2020 Census allows a more efficient and accurate data collection operation in a shorter timeframe than was possible in the 2010 Census. Improvements that make this possible include use of our route and case optimization software, use of handheld devices, and streamlined processing. Additionally, it is worth noting that largely because of the schedule delays, the self-response period for the 2020 Census will be longer than the self-response period for the 2010 Census.

95. The Replan Schedule also necessitated some changes to the content and timing of our post processing operation. These changes include:

- We shortened address processing from 33 to 20 days. This required eliminating 13 days of processing activities that will be deferred until the creation of the redistricting data products.

- We cancelled the internal independent review of the final list of addresses that will be used to tabulate 2020 Census data (what we call "the MAF Extract").
- We eliminated redundant quality control steps, and the multiple file deliveries that supported those steps, in order to enable a state-by-state flow of deliveries for processing. (Previous procedures delivered data to the next step only when the entire country had been reviewed by multiple teams).
- We optimized employee assignments to ensure maximum staff resource usage during this shortened production period – i.e., implemented a seven-day/week production schedule.
- We compressed the time allotted for subject matter expert review and software error remediation, cutting 21 days from the schedule.

96. These changes increase the risk the Census Bureau will not identify errors during post processing in time to fix them.

97. Nevertheless, the Census Bureau is confident that it can achieve a complete and accurate census and report apportionment counts by the statutory deadline following the Replan Schedule. The 2020 Census operational design is tailored to enumerate all persons, including hard-to-count populations.

98. The Census Bureau has kept the Office of Management and Budget informed about schedule developments for both the COVID Schedule and the Replan Schedule, and has filed nonsubstantive changes that have been published in the Federal Register. OMB was not required to approve the changes to the operational plan, nor did it. As with the 2018 Operational Plan, we did we not ask other agencies to review or approve either the COVID Schedule or Replan Schedule.

XIII. IMPACTS OF GRANTING A PRELIMINARY INJUNCTION

99. On September 5, 2020 the District Court for the Northern District of California entered a Temporary Restraining Order (TRO) enjoining the Census Bureau from "implementing the August 3, 2020 Replan or allowing to be implemented any actions as a result of the shortened timelines in the August 3, 2020 Replan, including but not limited to winding down or altering any Census field operations, until the Court conducts its September 17, 2020 hearing on Plaintiffs' PI motion." In compliance with the TRO, the Census Bureau issued the guidance attached as Exhibit A to its field staff. It also took action at the Headquarters level to ensure that no action in the period of September 5–17 would be contrary to the TRO.

100. If a Court grants a Preliminary Injunction, the Census Bureau will need to replan the remaining census operations again.

101. The timing of any Court order changing the schedule is particularly important, as prior to the Temporary Restraining Order, the Census Bureau had already begun to take steps to conclude field operations. As I will explain further, the fact that we are concluding field operations in ACOs that have completed their workload is a normal part of the NRFU operation, and is not specific to the Replan Schedule.

102. The Census Bureau manages its nonresponse follow up operation (NRFU) out of "Census Field Supervisor areas" or "CFS areas" within each of the nation's 248

ACOs. CFS areas are supervisory work assignment areas consisting of 4,000-5,500 housing units. As of September 10, 2020, roughly 25% (3,782) of CFS areas nationwide are eligible for what we call "the closeout phase," and 3,461 are actually in the closeout phase, and roughly 70 have actually reached conclusion. The closeout phase refers to the process of focusing our best enumerators to resolve the remaining cases in that area. CFS areas are eligible for closeout procedures when they cross the 90% completion mark. Under the Replan, all CFS areas would have become eligible for closeout procedures on September 11. This does not mean that all CFS areas would have been moved to closeout procedures on that date, only that regional directors could have made this decision. Under the TRO, we have directed that no CFS area can be moved into closeout procedures until it reaches 90% completion. The Census Bureau is continuing to work across the nation to obtain responses from all housing units, and has not begun closeout procedures for any CFS area with under 90% completion.

103. It is a normal and planned part of the NRFU operation for an ACO to move into the closeout phase and complete operations. We used closeout procedures in NRFU in the 2010 Census and always planned to do the same for the 2020 Census. If we have not wound down in some areas, it is because we are still counting. Some ACOs have greater initial workload, and some started earlier than others –therefore, moving to completion varies by ACO and is a reflection of workload and local conditions and results in

the allocation of enumerator resources from areas that are complete to areas that require more work.

104. As of September 10, 2020 we are finished with 75.1% of the NRFU field work and over 90.1% of the housing units in the nation have been enumerated and those numbers increase daily. Additionally, 30 states have 90% or more of their housing unit enumeration completed, and in 13 additional states, including Washington D.C. and the Commonwealth of Puerto Rico, we have completed over 85% of the housing units in those states. As we complete areas, staff are offered an opportunity to assist by enumerating in other areas that are not yet complete. Some staff elect that option, others choose not to go outside of their home area, and as their area is completed, they are released. As we complete more field work, the number of staff who are still active and the need for staff declines, and our ability to ramp up is severely hampered.

105. Reduced numbers of field staff would be a barrier to reverting to the COVID Schedule were the Court to rule later in September. Prior to issuance of the TRO, based on progress to date, we had already begun terminating some of our temporary field staff in areas that had completed their work, as is standard in prior censuses. It is difficult to bring back field staff once we have terminated their employment. Were the Court to enjoin us tomorrow we would be able to keep more staff on board than were the Court to enjoin us on September 29, at which point we will have completed enumeration of most of the nations' housing units and terminated many more employees.

106. Were the Court to enjoin us, we would evaluate all of the changes we made for the Replan Schedule and determine which to reverse or modify. We would go through each and every aspect of remaining operations and determine how best to use the remaining time to maximize the accuracy and completeness of the census results.

107. Finally, we wish to be crystal clear that if the Court were to extend the data collection period past September 30, 2020, the Census Bureau would be unable to meet its statutory deadlines to produce apportionment counts prior to December 31, 2020 and redistricting data prior to April 1, 2021. The post processing deadlines for the Replan Schedule are tight, and extending the data collection deadline would, of necessity, cause the Census Bureau to fail to be able to process the response data in time to meet its statutory obligations. We have already compressed the post processing schedule from 5 months to only 3 months. We previously planned and tested our post processing systems assuming that we would follow a traditional, sequential processing sequence, and the 3-month schedule necessary for the Replan Schedule has already increased risk. We simply cannot shorten post processing beyond the already shortened 3-month period.

108. As I have tried to make clear in this Declaration, the decennial census is a massive, complex, and interrelated endeavor. Particularly troubling is the prospect of continual, conflicting, and evolving court orders from this this and other courts, including appellate courts. While Census Bureau staff have demonstrated considerable resilience and flexibility during this difficult year, some certainty as to the amount of time

available to conclude data collection and post processing will increase the likelihood of a successful outcome.

XIV. Commitment to Transparency and High Quality Enumeration

109. In my role as Associate Director, I remain committed to transparency about 2020 Census operations. The Census Bureau has been posting detailed information on its website about both self-response and NRFU completion progress:

https://2020census.gov/en/response-rates/self-response.html

https://2020census.gov/en/response-rates/nrfu-completion.html

https://2020census.gov/en/response-rates/nrfu.html

The 2020 Census is the first to post NRFU workload completion rates, which is now available at the ACO level and may be seen at https://2020census.gov/en/response-rates/nrfu-completion.html. By "completion rate" or "completed" we are referring to the percent of housing units in the ACO that we have resolved as occupied with an in-terview (either resident or proxy), or confirmed as a vacant unit or deleted (as not a housing unit).

110. I have briefed staff for House and Senate leadership every Friday since April (except for August 7), and I have provided a transcribed briefing to Congress. We produce a massive amount of documents and other information to the Office of the In-spector General and the General Accounting Office every week, and these organizations interview Census Bureau staff on almost a daily basis.

111. In my role as the Associate Director, I remain committed to conducting a high-quality field data collection operation as explained above, and the ultimate goal of a complete and accurate census.

I have read the foregoing and it is all true and correct.
DATED and SIGNED:

Albert E Fontenot Digitally signed by Albert E Fontenot
Date: 2020.09.11 21:00:52 -04'00'

Albert E. Fontenot, Jr.
Associate Director for Decennial Census Programs
United States Bureau of the Census

Exhibit A

Fw: Important Information related to Census Bureau's Compliance with today's Federal Court Order

James T Christy (CENSUS/LA FED) [redacted]@census.gov>
Sat 9/5/2020 11:59 PM
To: [redacted]@census.gov>

1 attachments (205 KB)
TRO ORDER 9-5-20.pdf;

FYI

James Christy
U.S. Census Bureau
LA [redacted] HQ [redacted] Cell [redacted]
census.gov Connect with us on Social Media
Shape Your Future | Start Here 2020census.gov

From: James T Christy (CENSUS/LA FED [redacted]@census.gov>
Sent: Saturday, September 5, 2020 11:57 PM
To: James T Christy (CENSUS/LA FED) [redacted]@census.gov>
Subject: Important Information related to Census Bureau's Compliance with today's Federal Court Order

Guidance for Census Bureau Field Employees

A federal district court for the Northern District of California issued a temporary restraining order at 9:29 PM EDT on 9/5/2020 in the case of National Urban League v. Ross, No. 20-05799. The Order provides that the Census Bureau and the Commerce Department "are enjoined from implementing the August 3, 2020 Replan or allowing to be implemented any actions as a result of the shortened timelines in the August 3, 2020 Replan, including but not limited to winding down or altering any Census field operations, until the Court conducts its September 17, 2020 hearing on Plaintiffs' PI motion."

The Census Bureau and the Commerce Department are obligated to comply with the Court's Order and are taking immediate steps to do so.

The Bureau and the Department are also in the process of preparing additional guidance and will distribute that guidance shortly.

Enumeration will continue.

The Order is attached for reference.

Direct any questions to your regional management.

James Christy
U.S. Census Bureau
LA [redacted] HQ [redacted]
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Fw: Guidance for Field Managers

James T Christy (CENSUS/LA FED) [redacted]@census.gov>

Mon 9/7/2020 12:02 AM

To: **FLD Regional Directors**[redacted]**@census.gov>**
Cc: [redacted]@census.gov>

2 attachments (130 KB)

Guidance for Field Managers related to Action Required following the 9-5 Court Order.pdf; Guidance for Field Managers related to Action Required following the 9-5 Court Order.docx;

The attached documents the actions the Census Bureau will take or has taken to implement the September 5 Temporary Restraining Order. It includes adjustments you will need to make in your operations. **Please note that it continues on to a second page.** At this point, please do not share this document with your staff. We will discuss this on a conference call tomorrow. Look for an invite shortly.

James Christy
U.S. Census Bureau
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From: Albert E Fontenot (CENSUS/ADDC FED)[redacted]@census.gov>
Sent: Sunday, September 6, 2020 11:52 PM
To: James T Christy (CENSUS/LA FED)[redacted]@census.gov>
Subject: Fwd: Guidance for Field Managers

Jamey

Let me know when you send to the RDs.

Al

Albert E. Fontenot Jr.
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Guidance for Field Managers related to Action Required following the 9/5 Court Order

The following are actions the Census Bureau will take or has taken to implement the September 5 Temporary Restraining Order enjoining the Bureau and the Commerce Department from:

"implementing the August 3, 2020 Replan or allowing to be implemented any actions as a result of the shortened timelines in the August 3, 2020 Replan, including but not limited to winding down or altering any Census field operations, until the Court conducts its September 17, 2020 hearing on Plaintiffs' PI motion."

Field Managers will take the following actions to come into compliance with the September 5 Order and to preserve continuity of field operations pending further litigation developments:

- Refrain from releasing data collection staff (enumerators and CFSs) in Area Census Offices where operational progress indicates the area is in Phase 2 or the Closeout phase of the NRFU operation. The Optimizer will continue to assign available work to staff who enter work availability. Continue to release staff for reasons related to performance, quality concerns or conduct, as was appropriate before the Replan.
- The fixed date of September 11, 2020, as the date on which all CFS areas become eligible for the Closeout phase has been removed. We will implement Phase 2 only after we have enumerated 85% of housing units in a CFS area and we will implement the Closeout phase only when we reach 90%, which allows us to collect more quality data than the pre-Replan thresholds. Do not implement Phase 2 or the Closeout phase until these benchmarks have been met.
- The workload assigned for follow-up will reflect the following reversions to pre-Replan status:
    - We are restoring field verification of self-reported vacant housing units.
    - We will resume making six contact attempts to confirm vacant housing units, instead of the one contact attempt set forth in the Replan.
    - We will resume making six contact attempts on vacant/delete cases with conflicting information, instead of the one contact attempt set forth in the Replan.
    - We will resume making six contact attempts on addresses designated for reinterview and SRQA contacts, instead of the one contact attempt set forth in the Replan.
    - We will reintroduce random sample reinterview cases, as had been used to supplement analytical sample reinterview cases before the Replan.

Continue to take the following actions, consistent with pre-Replan procedures:

- Continue to conduct and schedule replacement training in areas that are showing low completion rates.
- Continue to have staff travel from areas that are at higher levels of completion to areas that are underperforming because of insufficient staffing numbers. This includes within and across regional boundaries.
- Continue to use the outbound telephone enumeration option for areas that are difficult to reach for in-person interviews, and as a supplement to in-person interviewing activities.
- Continue using "pop count only" during the final enumeration attempts (which occur in the last part of the Closeout Phase), as we have done in every prior decennial census.
- Continue to close CFS areas when enumeration of all housing units in that area is complete.

Additionally, continue to utilize enumerator and CFS awards programs as designed to maintain the maximum feasible level of staffing and staff footprint throughout the field.

From: Enrique Lamas (CENSUS/DEPDIR FED) [Enrique.Lamas@census.gov]
Sent: 9/14/2020 7:11:51 PM
To: Ron S Jarmin (CENSUS/DEPDIR FED) [Ron.S.Jarmin@census.gov]; Christa D Jones (CENSUS/DEPDIR FED) [Christa.D.Jones@census.gov]
Subject: Re: Likely topics to discuss with Secretary Ross through 12/31/2020

Let's talk at COO

Enrique Lamas
Senior Advisor
Director's Office
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Office: 301-763-3811

From: Ron S Jarmin (CENSUS/DEPDIR FED) <Ron.S.Jarmin@census.gov>
Sent: Monday, September 14, 2020 2:29 PM
To: Christa D Jones (CENSUS/DEPDIR FED) <Christa.D.Jones@census.gov>; Enrique Lamas (CENSUS/DEPDIR FED) <Enrique.Lamas@census.gov>
Subject: Likely topics to discuss with Secretary Ross through 12/31/2020

Following up on a phone call with Karen on Friday, I've summarized several key items that will likely be the subject of discussion with the Secretary, the current status and the Bureau's position on who owns related decisions. I'd like your thoughts, edits, additions, subtractions, etc. This can be fodder for COO as well. Will eventually be share with the KDK and the Dir.

(b) (5)

[redacted]

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From: Christa D Jones (CENSUS/DEPDIR FED) [Christa.D.Jones@census.gov]
Sent: 9/14/2020 9:26:01 PM
To: Ron S Jarmin (CENSUS/DEPDIR FED) [Ron.S.Jarmin@census.gov]; Enrique Lamas (CENSUS/DEPDIR FED) [Enrique.Lamas@census.gov]
Subject: Re: DOC
Attachments: Topics to discuss with Secretary Ross through 12_31 cdj.docx

Here's my thoughts, but I forgot to use track changes. I added the first sentence and moved, then edited the Presidential Memorandum paragraph.

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Sent: Monday, September 14, 2020 5:13 PM
To: Enrique Lamas (CENSUS/DEPDIR FED) <Enrique.Lamas@census.gov>; Christa D Jones (CENSUS/DEPDIR FED) <Christa.D.Jones@census.gov>
Subject: DOC

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Topics to discuss with Secretary Ross through 12/31/2020

The Department is demonstrating an unusually, high degree of engagement in technical matters, which is unprecedented relative to the previous censuses.

1. Completion of NRFU by 9/30. If there are many states substantially below the target 99% completion rate, do we stay in the field past the 9/30 deadline? If we do, we won't be able to deliver the apportionment data to the Secretary and President by the 12/31 statutory deadline. The Census Bureau is currently engaged in extraordinary efforts to achieve the 99% target in every state by the end of September. However, this may not be achievable and a decision to end field work by schedule date or work completeness will need to be made. The Census Bureau views this as policy decision that political leadership should make.
2. Imputation. The Secretary and other political personnel have expressed interest in the Census Bureau's use of imputation in the 2020 Census. Interest was expressed in both item (filling in missing items in a self-response, adrec enumeration or NRFU record) and status and count imputation (resolving cases with no response). Status and count imputation impact the CUF (Census unedited file) that underlies the 12/31 apportionment products. Item imputation impacts the CEF (census edited file) that impacts the 4/1 PL-94-171 redistricting products. The Census Bureau views imputation methodologies as its responsibility as an independent statistical agency.
3. Post-collection processing. Due to the compressed schedule, political leadership has expressed interest in ways that processing can be accelerated to meeting statutory deadlines. The Census Bureau has found efficiencies that can generate a completed CUF in time to produce resident population and foreign affiliated overseas residents for each state to meet the apportionment deadline assuming no major processing glitches are encountered. The Census Bureau views post-collection procedures as its responsibility as an independent statistical agency.
4. Disclosure Avoidance. The Secretary and other political personnel have expressed interest in the methods the Census Bureau will be using to protect privacy and confidentiality as required by law for the 2020 Census. To summarize, two important decisions have already made by Census Bureau's DSEP (Data Stewardship Executive Policy) Committee: i) to adopt differential privacy has the statistical disclosure avoidance methodology for the 2020 Census and ii) to leave the resident population and federally affiliated overseas counts as invariants (i.e., published as enumerated). The DSEP will soon be meeting to decide the value of the privacy parameter – epsilon – for the PL 94-171 and other data products. If state level counts of unauthorized immigrants counted in the 2020 Census are to be released, the DSEP will also need to decide if they require disclosure protection. The adoption of differential privacy has been controversial across the data user community. Essentially, there's a direct tradeoff between privacy protection and detailed and accurate statistics. Where are on that continuum one lands is a choice. The only policy guidance on that choice is title 13, which calls for strict privacy protections. The Census Bureau views disclosure avoidance procedures and policies as its responsibility as an independent statistical agency. Moreover, these decisions are the purview of the DSEP and not of political leadership.
5. Production of the CEF and other downstream data products (e.g., PL 94-171, CVAP and other data products). The Secretary and other political personnel have expressed interest in the redistricting, the citizen voting age population and other data products constructed from the

2020 Census. Notably, the Census Bureau is using administrative records to produce improved (block level) CVAP data. The Census Bureau is still assessing whether it will be able to make adjustments under the compressed schedule to deliver the PL data by 4/1 as required by statute. The Census Bureau views the procedures and schedule of the release of these data products as its responsibility as an independent statistical agency.

Finally, with respect to the Presidential memo, we are also concerned by the level of direct engagement with the methodology. As we've reported throughout the past weeks, the Census Bureau's response to the 7/21 Presidential memo has been to begin developing a method to identify unauthorized residents in administrative data, some of which the Bureau obtained after EO 13880. These admin record identified unauthorized immigrants would then be matched to the 2020 Census to find those enumerated in the census. The number found in each state would be then transmitted to the Secretary and the President. This process lives downstream from the production of the CUF, the current schedule for the availability of these counts is 1/7. While the Bureau has ceased work on this due to court order and is awaiting legal and policy guidance on whether work can progress during legal proceedings, we view the development of the methodology as a technical activity and it has been our goal to deliver the most objective data possible given the constraints and the potential use of the information. In many respects, while the Presidential Memorandum may be a statement of the Administration's policy, the Census Bureau views the development of the methodology and processes as its responsibility as an independent statistical agency.

From: James Whitehorne (CENSUS/ADDC FED) [James.Whitehorne@census.gov]
Sent: 9/15/2020 1:32:18 PM
To: Ali Mohammad Ahmad (CENSUS/ADCOM FED) [ali.m.ahmad@census.gov]
CC: Kathleen M Styles (CENSUS/ADDC FED) [kathleen.m.styles@census.gov]
Subject: Presentation for NCSL this Friday
Attachments: 2020_09_18_NCSL_September_Update.pptx

Good morning Ali -
I am presenting to NCSL on Friday afternoon and Kathleen wanted me to share my presentation with you in case there is something in it that you feel needs to be cleared before I conduct the briefing. The first three slides are basic background on the 2020 Census and our progress tools. The editing and imputation slides are taken from the presentation I gave to the Poynter Institute when we did the event sponsored by Georgetown U. The redistricting and DAS slides are from previous presentations with an update on the latest demonstration product we are producing. The CVAP slides are a combination of the one I have given repeatedly and a brief high level one of the CVAP discussion that will be happening at CSAC 1/2 hour before my presentation. I will essentially be telling people who are interested to go view the CSAC recording when it gets posted.
Thanks
James

****

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The 2020 Census and The 2020 Census Redistricting Data Program

James Whitehorne
Chief, Census Redistricting and Voting Rights Data Office

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Census 2020

Agenda

- Current activities
- Progress monitoring tools
- Editing and imputation
- Redistricting Data Program
- Disclosure Avoidance
- Citizenship by Voting Age by Race and Ethnicity special tabulations

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Census 2020

2020 Census

Status

The Census is happening now. You can respond online, by phone, or by mail.

- https://my2020census.gov/
- Census takers are following up. Even if you've responded, a census taker may still visit to verify your address or response. We encourage cooperation as it helps ensure an accurate count.

The enumeration of transitory and temporary locations (ETL) is underway.

- September 9 to September 28
- ETL enumerates those living in housing such as RV parks, campgrounds, marinas, and temporary housing such as hotels and motels. The operation also counts people living at racetracks, carnivals and circuses.

The enumeration of service-based locations (SBE) begins next week

- September 22 to September 24
- SBE enumerates people without conventional housing and people who may be experiencing homelessness.
  - Emergency and transitional shelters; Soup kitchens; Regularly scheduled mobile food van stops; pre-identified non-sheltered outdoor locations

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Census 2020

2020 Census

Status – Tools for monitoring Census progress

Total Response Rates by State

- The Top Five States
- https://2020census.gov/en/response-rates.html

Top Five States (Total Enumerated as of 9/12/2020)		
1	Idaho	99.2%
2	West Virginia	98.0%
3	Hawaii	97.8%
4	Washington	97.3%
5	Maine	96.8%

2020 Census Housing Unit Enumeration progress by State

- https://2020census.gov/en/response-rates/nrfu.html

2020 Census Housing Unit Enumeration Progress by State

Sort by: State

Report Date: 9/13/2020
As of 9/12/2020, percentage of housing units:

State	Self-Responded	Enumerated in Nonresponse Follow-up (NRFU)	Enumerated
U.S. Total	65.8	26.5	91.3
Alabama	62.4	26.6	89.0
Alaska	53.5	46.1	99.6
Arizona	62.5	32.4	94.9
Arkansas	59.0	34.8	93.8
California	68.2	25.8	94.0
Colorado	69.0	22.3	91.3
Connecticut	69.7	26.4	96.2
Delaware	63.6	26.0	89.6
District of Columbia	62.3	27.1	89.4
Florida	62.5	24.2	86.7
Georgia	61.2	22.8	83.9
Hawaii	62.3	35.5	97.8
Idaho	68.9	30.3	99.2
Illinois	70.3	24.1	94.4
Indiana	68.6	27.2	95.8
Iowa	70.5	18.3	88.7
Kansas	69.1	27.7	96.8
Kentucky	67.5	21.5	89.0
Louisiana	58.0	26.1	84.1
Maine	67.6	29.2	96.8
Maryland	70.0	23.3	93.3
Massachusetts	68.2	26.0	94.9
Michigan	70.0	20.9	91.0
Minnesota	74.4	20.9	95.3
Mississippi	59.4	24.4	83.8
Missouri	68.1	26.0	94.1
Montana	65.1	24.0	89.0
Nebraska	71.1	21.0	92.0
Nevada	65.4	25.3	90.7
New Hampshire	66.1	27.2	93.3
New Jersey	65.1	26.3	91.4
New Mexico	66.8	38.6	105.4
New York	62.4	28.6	91.0
North Carolina	61.6	24.8	86.5
North Dakota	64.5	27.7	92.2
Ohio	69.8	23.7	93.5
Oklahoma	66.0	28.7	94.7
Oregon	68.4	27.8	96.2
Pennsylvania	68.5	24.8	93.3

Note: Percentages may not sum due to rounding. A limited number of areas were part of the NRFU "soft launch" beginning July 16, 2020, and could have higher operational rates due to more frequent visits. Percentages for the U.S. Total do not include housing units in Puerto Rico.

Source: U.S. Census Bureau.

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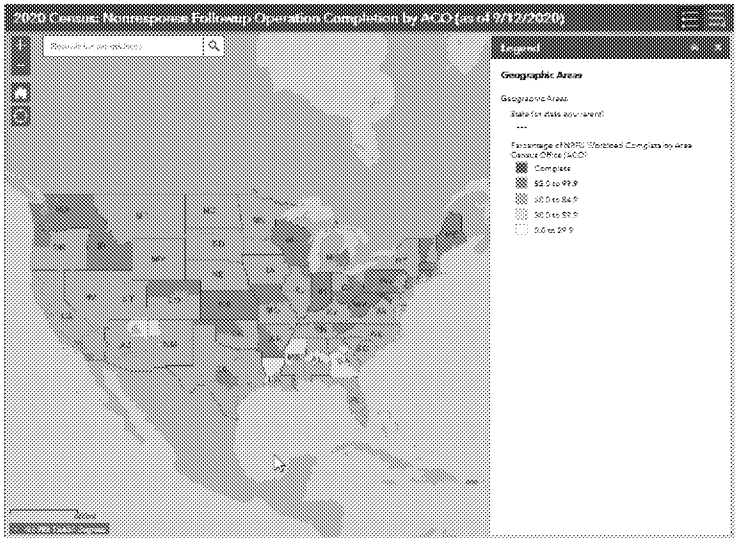
United States Census 2020

2020 Census

Status – Tools for monitoring Census progress



2020 Census Nonresponse Followup Operation Completion by ACO

- https://2020census.gov/en/response-rates/nrfu-completion.html

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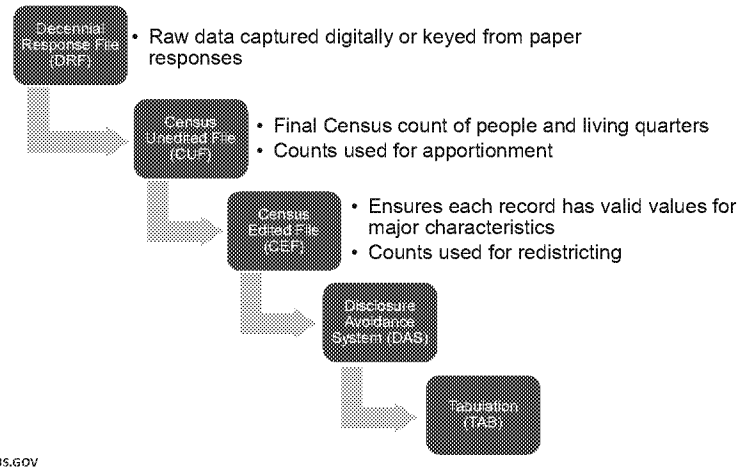
Census 2020

2020 Census

Generalized Flow Of Response Data



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2020 Census
Imputation and Editing

- Count Imputation
  - The process used to estimate missing or misreported data.
  - Conducted during the construction of the Census Unedited File
  - Uses other data to replace missing count information from housing units identified as occupied

- Characteristic Imputation and Editing
  - Conducted during the construction of the Census Edited File
  - The process used to ensure valid responses to a subset of required fields
  - Characteristic imputation and Editing begins post-data collection after the household population is established and does not add people to the Census.
  - Edits are used to ensure certain consistencies among characteristics.
  - Characteristic imputation is used to ensure that each person and housing unit on the final census file has valid values in the person and housing items.
  - Administrative records are used to improve data quality in characteristic imputation.

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Census 2020

The next stage of the process revolves around the concepts of editing and imputation. There are essentially two types of these actions. We have count imputation and we have characteristic editing and imputation.

Count Imputation is used to replace missing count information from housing units that have been identified and verified as occupied. Count Imputation is conducted during the construction of the next stage of the process which is the creation of the Census Unedited File or the CUF. The completed CUF provides us with the first official counts from the decennial Census, the total population counts. These are the counts that are used for apportionment.

Once the CUF is complete, the next stage is to construct the Census Edited File or the CEF. As part of creating the CEF, edits and characteristic imputation are used to ensure that every record has a valid response for the person and housing responses in the Census.
Its important to understand the purpose of edits and characteristic imputation. The purpose is to ensure that every respondent has a valid response. Edits and characteristic imputation do Not add people to the Census. As I mentioned earlier, the total population counts for the Census are finalized with the CUF. The edits ensure consistency among characteristics such as a person being identified as a parent not being younger than a young child. The characteristic imputation ensures that each person and housing item has a valid response such as an occupied housing unit without a tenure status indicated, is it rented or owned. Administrative records will be used to improve the quality of the characteristic imputation.

2020 Census
Imputation and Editing

Types of Characteristic Imputation:

- Assignment: Assignment occurs when responses are either missing or inconsistent with other responses AND missing item values can be determined based on other information provided for that same person or household.
- Allocation: Allocation occurs when responses are either missing or inconsistent with other responses AND the missing item value can not be determined based on information provided for that same person. A response from another person within the housing unit or from a person in a nearby housing unit is used.
  - Substitution: Substitution is a special type of allocation when all of the person characteristics - relationship, sex, age, date of birth, race and ethnicity - for every person record in a housing unit are missing and must be imputed.

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There are different types of characteristic imputation:

Assignment is when responses are missing or inconsistent with others data supplied for that person or household can be used for that missing or inconsistent response. The simplest of these is when either birthdate or age is missing. The one you do have can be used to calculate that information.

Allocation is when you have the same situation but you can not make a determination for the missing or inconsistent response based on that already supplied person or household data. In these cases a response from another person within the housing unit or a nearby housing unit may be used.

Substitution is a special type of allocation. It is used when we know we have person records but all of the person characteristics for all of the person records in that housing unit must be imputed.

2020 Census
Imputation and Editing

Overview – 2010 Census Imputation Rates

Overall Imputation Rates

	Person-Level Items					Household -Level Item
	Relationship	Sex	Age/Date of Birth	Hispanic Origin	Race	Tenure
Imputed	2.1	1.6	5.1	4.5	4.1	3.5
Assigned	0.5	1.3	1.5	1.7	1.2	n/a
Allocated	1.7	0.3	3.6	2.8	2.9	3.5
Substituted	1.9 percent of all persons					

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Now that we know the 3 types of characteristic imputation, we can break out the 2010 rates by type and by the characteristic which you can see remain fairly small.

2020 Census

Imputation and Editing

2010 Census Age and Date of Birth Imputation Method

Age Only Reported

If age was reported but not date of birth, we keep the age value and assign a date of birth using a random number of possible dates for that age.

Date of Birth Only Reported

If date of birth was reported but not age, we calculate age based on the reported date of birth.

Inconsistent Age and DOB, 2+ Years

If both age and date of birth are reported, but the age calculated from the reported date of birth is inconsistent with reported age by two or more years, edits will determine which of the two is more consistent (using relationship, for example). The less consistent reported value will be edited.

Age Adjusted for Household Consistency

It may be necessary to adjust the age for householder/spouse to account for the number of children in the household.

Allocated from Hot Deck

In 2010, allocation came from 11 matrices. All spouses (including parents and parents-in-law) were considered opposite sex relationships. In all but the last two matrices, an age difference is allocated rather than an exact age.

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To help conceptualize these edits and characteristic imputation, I have a few examples around age and date of birth. The first scenario I mentioned earlier, one is provided and the other is missing – if age was reported but not the date of birth, we generate a random birthdate for that reported age. If it's the date of birth that was reported we calculate the age.

If both the age and date of birth are reported but they are inconsistent by 2 or more years, then we use edits to determine which is more consistent with other reported data and edit the other.

We may need to edit an age for consistency like the child/parent relationship from the previous slide.

Finally – if necessary an allocation from a hot deck can be used. A hot deck assigns a missing value from a record with similar characteristics. The characteristics in the hot deck vary depending on the nature of the unanswered questions.

Once all of this review and editing and imputation are completed, and remember, the majority of records need none of this work- this is a small percentage of the overall Census returns, then we have the completed CEF. This is the full census records with characteristics. We can now move to the next stage of the processing, the Disclosure avoidance system.

Redistricting Data Program

Phase 3 – P.L. 94-171 Redistricting Data Geographic Products

2020 Census P.L. 94-171 Redistricting Data Geographic Products	
Product Type	Census Web Address
Shapefiles	https://www.census.gov/geographies/mapping-files/time-series/geo/tiger-line-file.html
Maps	https://www.census.gov/geographies/reference-maps.html
Block Assignment Files	https://www.census.gov/geographies/reference-files.html
Block to Block Relationship Files	https://www.census.gov/geographies/reference-files/time-series/geo/relationship-files.html

- Shapefiles – geographic information system geometry files
- Maps (PDF only) – County Block; State Legislative with Voting District; Tract; School District
- Block Assignment Files – tables identifying the blocks used to build different geographic entities
- Block to Block Relationship Files – Crosswalk of 2010 blocks to 2020 blocks

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Redistricting Data Program

Phase 3 – P.L. 94-171 Redistricting Data Tabulation Product

2020 Census P.L. 94-171 Redistricting Data Tabulations
Table P1 – Race
Table P2 – Race for the Population 18 Years and Over
Table P3 – Hispanic or Latino, and not Hispanic or Latino by Race
Table P4 – Hispanic or Latino, and not Hispanic or Latino by Race for the Population 18 and Over
Table H1 – Occupancy Status (Housing)
New Table
Table P5 – Group Quarters Population by Group Quarters Type

- All tables produced at multiple geographies including census block
- Group Quarter types: Correctional Institutions for Adults, Juvenile Facilities, Nursing Facilities/Skilled Nursing, Other Institutional, College/University Student Housing, Military quarters, and other non-institutional
- Group quarters is total population only, no demographic breakdown

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Redistricting Data Program

Phase 3 – P.L. 94-171 Redistricting Data Products Delivery Timing

Phase 3 – Prototype Data

Activity	Date
Prototype geographic support products	February 2019 (Complete)
Prototype P.L. 94-171 Redistricting Data	March 2019 (Complete)

Phase 3 – Official Data

Activity	Original Planned Dates	New Planned Date
Geographic support products	Nov. 20, 2020 – Feb. 1, 2021	No later than April 1, 2021*
P.L. 94-171 Redistricting Data	Feb. 18, 2021 – March 31, 2021	No later than April 1, 2021*

* Statutory deadline, planned date still TBD

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2020 Census
Disclosure Avoidance

- All 2020 Census data products released after apportionment will have formal privacy protections applied through the use of differential privacy.
  - For the P.L. 94-171 Redistricting Data this will be through the use of the Top Down Algorithm (TDA)
    - The TDA is being streamlined to focus solely on the P.L. 94-171 Redistricting Data and the characteristics reported in that file. (Race, Age of 18+, Ethnicity, etc.)
  - The Census Bureau, using the 2010 Census as the data source, has been releasing interim output from the TDA as demonstration products
  - https://www.census.gov/programs-surveys/decennial-census/2020-census/planning-management/2020-census-data-products/2020-das-metrics.html

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Census 2020

2020 Census
Disclosure Avoidance

- October 29, 2019 – 2010 Demonstration Data Product Baseline
  - Test running system at scale and progress to date
- July 14, 2020 – Release interim output showing improvements (underlying data created 5/27/2020)
  - Released as Privacy Protected Microdata File (PPMF)
  - Tables created by IPUMS/NHGIS
    - https://www.nhgis.org/privacy-protected-demonstration-data#v20200527
  - Series of metrics added for review and comparison
- September 17, 2019 – Release interim output showing improvements (underlying data created X/XX/XXXX)
  - Released as Privacy Protected Microdata File (PPMF)
  - Tables expected to be created by IPUMS/NHGIS
  - Tailored specifically and only to the P.L. 94-171 Redistricting Data characteristics
  - Revised series of metrics added for review and comparison
- TBD – a final PPMF is expected prior to publishing the official data

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Redistricting Data Program

Citizen Voting Age Population by Race and Ethnicity (CVAP)

- Annual Tabulation using the American Community Survey 5-year estimates for 2011 through 2020 publications
  - Typically released in the 1st week of February each year
- 2020 Census CVAP Special Tabulation
  - Calculated using administrative records and released by the P.L. 94-171 deadline

Content
Total:
Hispanic or Latino
Not Hispanic or Latino:
White alone
Black or African American alone
American Indian and Alaska Native alone
Asian alone
Native Hawaiian and Other Pacific Islander alone
Some Other Race alone*
Black or African American and White
American Indian and Alaska Native and White
Asian and White
American Indian and Alaska Native and Black or African American
Remainder of Two or More Race Responses

Geography
Nation
State
Congressional District
State Legislative District, Upper Chamber
State Legislative District, Lower Chamber
County
Minor Civil Division (for CT, MA, ME, MI, MN, NH, NJ, NY, PA, RI, VT, and WI)
Tract
Block Group
Block*

***only for the 2020 Census Special Tabulation**

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Redistricting Data Program

Citizen Voting Age Population by Race and Ethnicity (CVAP)

- Internal Expert Panel is developing the methodology and is expected to publish their final methodology report by October 31, 2020
- The current status of this project is being presented at the Census Scientific Advisory Committee (CSAC) meeting today, 9/18/2020, at 1:25pm. This meeting is being recorded and will be made available here:
  - CSAC main page: https://www.census.gov/about/cac/sac.html
  - CSAC specific meetings page: https://www.census.gov/about/cac/sac/meetings.html
- There are essentially four different techniques being considered
  - 3 techniques rely on a combination of business rules and modeling
  - 1 technique relies on a latent class model for the full population

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Thank You

James Whitehorne
Chief, Census Redistricting & Voting Rights Data Office
Email: rdo@census.gov
Phone: 1-301-763-4039
Web: www.census.gov/rdo

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From: Enrique Lamas (CENSUS/DEPDIR FED) [Enrique.Lamas@census.gov]
Sent: 9/15/2020 6:13:16 PM
To: Ron S Jarmin (CENSUS/DEPDIR FED) [Ron.S.Jarmin@census.gov]; Christa D Jones (CENSUS/DEPDIR FED) [Christa.D.Jones@census.gov]; John Maron Abowd (CENSUS/ADRM FED) [john.maron.abowd@census.gov]; Victoria Velkoff (CENSUS/ADDP FED) [Victoria.A.Velkoff@census.gov]
Subject: Fw: Question on the effect of SDNY's Court Order on Census Work
Attachments: (b) (5) [redacted]

FYI

Enrique Lamas
Senior Advisor
Director's Office
U.S. Census Bureau
Office: 301-763-3811

(b) (5) [redacted]

(b) (5)

[redacted]

From: Steven Dillingham (CENSUS/DEPDIR FED) [steven.dillingham@census.gov]
Sent: 9/15/2020 9:37:59 PM
Subject: Fw: Letter to Dir. Dillingham re. apportionment
Attachments: FINAL Letter to Census Bureau Dir. Dillingham re. apportionment, 9-10-20.pdf

---

From: Christopher J Stanley (CENSUS/OCIA FED) <christopher.j.stanley@census.gov>
Sent: Thursday, September 10, 2020 2:41 PM
To: Steven Dillingham (CENSUS/DEPDIR FED) <steven.dillingham@census.gov>; Ali Mohammad Ahmad (CENSUS/ADCOM FED) <ali.m.ahmad@census.gov>; Steven K Smith (CENSUS/DEPDIR FED) <steven.k.smith@census.gov>; Nathaniel Cogley (CENSUS/DEPDIR FED) <nathaniel.cogley@census.gov>; Benjamin A Overholt (CENSUS/DEPDIR FED) <benjamin.a.overholt@census.gov>; Kevin Quinley (CENSUS/ADCOM FED) <kevin.quinley@census.gov>; Adam Michael Korzeniewski (CENSUS/DEPDIR FED) <adam.m.korzeniewski@census.gov>; Michael John Sprung (CENSUS/DEPDIR FED) <michael.j.sprung@census.gov>; Ron S Jarmin (CENSUS/DEPDIR FED) <Ron.S.Jarmin@census.gov>; Christa D Jones (CENSUS/DEPDIR FED) <Christa.D.Jones@census.gov>; Kathleen M Styles (CENSUS/ADDC FED) <kathleen.m.styles@census.gov>
Subject: Fw: Letter to Dir. Dillingham re. apportionment

Here is a new letter organized by Schatz.

From: Mark G Dorsey (CENSUS/ADCOM FED) <mark.g.dorsey@census.gov>
Sent: Thursday, September 10, 2020 2:02 PM
To: BOC Correspondence Quality Assurance (CENSUS) <boc.correspondence.quality.assurance@census.gov>
Cc: Christopher J Stanley (CENSUS/OCIA FED) <christopher.j.stanley@census.gov>; Alan Lang (CENSUS/OCIA FED) <alan.lang@census.gov>; Bina K Saafi (CENSUS/OCIA FED) <bina.k.saafi@census.gov>; Stuart P Durst Jr (CENSUS/OCIA FED) <Stuart.P.Durst.Jr@census.gov>
Subject: Fw: Letter to Dir. Dillingham re. apportionment

Please control.

From: Ito, Trelaine (Schatz) <Trelaine_Ito@schatz.senate.gov>
Sent: Thursday, September 10, 2020 1:55 PM
To: Mark G Dorsey (CENSUS/ADCOM FED) <mark.g.dorsey@census.gov>
Subject: Letter to Dir. Dillingham re. apportionment

Hi Mark,

Attached is a letter from Senator Schatz and 19 of his colleagues to Director Dillingham with specific questions about apportionment following the 2020 Census. I will note the request for a response by Sept. 24.

Please let me know if you have any questions.

Thank you,
Trelaine

Trelaine Ito, MS
Legislative Assistant, Office of U.S. Senator Brian Schatz (D-HI)

722 Hart Senate Office Building
Tel: (202) 224-3934, Fax: (202) 228-1153
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Follow Senator Schatz on Twitter & Facebook

United States Senate

September 10, 2020

The Honorable Dr. Steven Dillingham
Director
U.S. Census Bureau
4600 Silver Hill Road
Washington, DC 20233

Dear Director Dillingham:

We write to raise concerns about the data and methodologies that the Census Bureau will use to develop apportionment counts for each of the states. With the president's unconstitutional memorandum excluding undocumented people from apportionment, coupled with your agency's decision to end the 2020 Census count one month early, we also raise serious concerns about a fair and accurate distribution of congressional representation—a fundamental and crucial aspect of our constitutional democracy.[i]

From the time of our founding, the Constitution established a democracy premised on the idea that all persons—no matter where they are from, regardless of whether they can vote—deserve representation in our government. To ensure representation for all, the Constitution, through both Article I, Section 2 and the Fourteenth Amendment, explicitly requires the federal government to accurately conduct an "actual Enumeration" of the people.[ii] The Fourteenth Amendment places a clear duty on the federal government to count the "whole number of persons in each State."[iii] In other words, the federal government must count *all people* living in the United States, whether they are citizens or non-citizens, whether they were born in the United States or in a distant part of the world, whether they are living here in accordance with our laws or not.

Furthermore, the framers of the Fourteenth Amendment considered immigrants, undocumented or otherwise, as *people* entitled to equal representation, insisting that the "whole immigrant population should be numbered with the people and counted as part of them."[iv] The Supreme Court has affirmed this constitutional understanding, emphasizing that "the Framers chose to use population . . . as the basis for representation,"[v] and that "representatives serve all residents, not just those eligible or registered to vote."[vi]

Following the Supreme Court's ruling to block this administration's attempt to add a citizenship question to the 2020 Census, the president issued an executive order directing Commerce Secretary Wilbur Ross to collect citizenship information from other governmental sources.[vii] Per this directive, the Census Bureau has amassed a collection of administrative records from various sources—some from existing agreements with federal, state, and local agencies, and others from newly established partnerships.[viii]

However, the collection of citizenship information is not uniform across the country. This raises the prospect that the Census Bureau will have incomplete information as to the citizenship status

of all persons residing in the country. For example, some federal agencies have agreed to share citizenship information with the Census Bureau.[ix] However, a person's immigration status can change over time. The administrative data on a person is only as good as the moment when the agency interacts with that person.[x] For example, a person who entered the country without documentation may have received Deferred Action for Childhood Arrivals protection, or may have started a path to citizenship by serving in the military, or may have been granted asylum protection. Depending on when a person interacts with an agency, their status may be very different from what it is currently.

At the same time, not every state is sharing citizenship data. States such as Iowa, Nebraska, South Carolina and South Dakota agreed to share driver's license and state identification card information.[xi] But states like Pennsylvania, New Hampshire, and Illinois denied the Census Bureau's request to share information.[xii] Furthermore, state administrative data on citizenship can be unreliable and inaccurate.[xiii] As a result, your agency will have arbitrarily collected information based on state officials who decide to share or not information about their citizens, some of which will contain citizenship information, and some will not.

This arbitrary collection of citizenship information implicates the president's unconstitutional attempt to exclude undocumented people from fair representation in the Congress. Apportionment is a geographic division of congressional seats. If only certain states are sharing citizenship information—and the data shared is itself unreliable or inaccurate—and federal data sets do not capture all persons in the country, then the data available to the Census Bureau for apportionment tabulation will be incomplete and run afoul of the Constitution. The resulting reapportionment report submitted to the U.S. House of Representatives by the president will be an inaccurate, arbitrary, and unconstitutional distribution of congressional seats across the country, based on states that either had or did not have citizenship information for selected portions of their population.[xiv] An arbitrary collection of data will produce a bad output based on that data—garbage in, garbage out.

In addition, the *Census Act* prohibits the Census Bureau from using sampling methods to determine apportionment. In 1999, the U.S. Supreme Court rejected the Census Bureau's proposed uses of statistical sampling to calculate the population for purposes of congressional apportionment following the 2000 decennial census.[xv] A similar effort by the agency to use statistical sampling to determine the numbers of undocumented people in each state should be rejected by the courts.

These problems are further exacerbated by the agency's decision to end self-response and non-response follow up operations a month early—from October 31 to September 30.[xvi] The shortened schedule risks the accuracy of the Census Bureau's data products, including the apportionment tabulation, and raises risks that errors will neither be found nor fixed. A federal judge recently issued a temporary restraining order to stop the Census Bureau from winding down or altering 2020 Census field operations until a September 17 hearing.[xvii] Furthermore, the administration's refusal to include statutory deadline extensions in their negotiations with congressional leaders on coronavirus relief legislation, raise questions about their commitment to addressing these concerns.[xviii]

To address some of these concerns, we ask that you provide answers to the following questions:

- In implementing Executive Order 13880, can the Census Bureau collect administrative record data uniformly and universally across the country? If so, how?
- What are the models and methodologies that the Census Bureau is currently developing and studying to tabulate apportionment? Does the agency have enough time to study, test, and implement these apportionment models and methodologies prior to the December 31, 2020 deadline? How will these models and methodologies comply with the *Census Act*'s prohibition on the use of statistical sampling for apportionment purposes?
- An agency document on 2020 Census operations and data processing notes that "A compressed review period creates risk for serious errors not being discovered in the data – thereby significantly decreasing data quality."[xix] The document also notes that "serious errors discovered in the data may not be fixed — due to lack of time to research and understand the root cause or to re-run and re-review one or multiple state files." How will the Census Bureau ensure that its apportionment tabulation does not contain significant errors?
- As the Census Bureau implements the president's July 21, 2020, memorandum, how will you ensure that the apportionment tabulation is developed in a way that is not arbitrary when the agency uses administrative data collected through agreements with other federal, state, and local agencies that is not uniformly shared and may contain errors and inaccuracies?
- To what degree of confidence can the Census Bureau assure the public that its apportionment tabulation is not arbitrary, does not contain significant errors, and is a fair and representative distribution of congressional seats? What is the basis for the agency's confidence, considering many of the quality assurance processes that will be side-stepped or completed hastily under the condensed timeframe?

These questions raise serious concerns about one of the most fundamental constitutional activities: the apportionment of congressional representation. With the end of the 2020 Census and the apportionment deadline fast approaching, we request your written response by September 24, 2020. Thank you for your attention to our request.

Sincerely,

BRIAN SCHATZ
United States Senator

PATRICK LEAHY
United States Senator

RON WYDEN
United States Senator

KIRSTEN GILLIBRAND
United States Senator

SHERROD BROWN
United States Senator

JACK REED
United States Senator

RICHARD BLUMENTHAL
United States Senator

CORY A. BOOKER
United States Senator

TOM UDALL
United States Senator

ELIZABETH WARREN
United States Senator

JEANNE SHAHEEN
United States Senator

SHELDON WHITEHOUSE
United States Senator

EDWARD J. MARKEY
United States Senator

AMY KLOBUCHAR
United States Senator

JEFFREY A. MERKLEY
United States Senator

/s/ Martin Heinrich
MARTIN HEINRICH
United States Senator

MAZIE K. HIRONO
United States Senator

TIM KAINE
United States Senator

BERNARD SANDERS
United States Senator

JACKY ROSEN
United States Senator

cc: The Honorable Wilbur L. Ross, Jr.
Secretary
U.S. Department of Commerce

---

[i] "Excluding Illegal Aliens From the Apportionment Base Following the 2020 Census," Memorandum, 85 FR 44679, 21 July 2020, https://www.federalregister.gov/documents/2020/07/23/2020-16216/excluding-illegal-aliens-from-the-apportionment-base-following-the-2020-census.

[ii] U.S. Const. art. I, § 2, cl. 3.

[iii] *Id*. Amend. XIV, § 2.

[iv] Cong. Globe, 39th Cong. 1st 432 (1866).

[v] *Utah v. Evans*, 536 U.S. 452, 478 (2002).

[vi] *Evenwel v. Abbott*, 136 S. Ct. 1120, 1132 (2016).

[vii] "Collecting Information About Citizenship Status in Connection With the Decennial Census," EO 13880, 11 July 2019, 84 FR 33821, https://www.federalregister.gov/documents/2019/07/16/2019-15222/collecting-information-about-citizenship-status-in-connection-with-the-decennial-census.

[viii] Hansi Lo Wang, "To Figure Out Who's A Citizen, Trump Administration Is Using These Records," *NPR*, 20 May 2020, https://www.npr.org/2020/05/20/855062093/to-figure-out-whos-a-citizen-trump-administration-is-using-these-records.

[ix] Hansi Lo Wang, "To Produce Citizenship Data, Homeland Security To Share Records With Census," *NPR*, 4 Jan. 2020, https://www.npr.org/2020/01/04/793325772/to-produce-citizenship-data-homeland-security-to-share-records-with-census.

[x] Tye Rush, Suzanne Almeida, Keshia Morris, "Whitewashing Representation: How using citizenship data to gerrymander will undermine our democracy," Common Cause Education Fund, 2019, https://www.commoncause.org/wp-content/uploads/2019/10/WhitewashingRepresentation_WEBFINAL.pdf.

[xi] Hansi Lo Wang, "Four States Are Sharing Driver's License Info To Help Find Out Who's A Citizen," *NPR*, 14 July 2020, https://www.npr.org/2020/07/14/890798378/south-dakota-is-sharing-drivers-license-info-to-help-find-out-who-s-a-citizen.

[xii] Ibid.

[xiii] ACLU, "ACLU 2020 Census State Administrative Records Comment," 15 Nov. 2019, https://www.aclu.org/letter/aclu-2020-census-state-administrative-records-comment.

[xiv] 13 U.S.C. § 141 (b): The tabulation of total population by States under subsection (a) of this section as required for the apportionment of Representatives in Congress among the several States shall be completed within 9 months after the census date and reported by the Secretary to the President of the United States.

[xv] *Department of Commerce v. United States House of Representatives*, 525 U.S. 316, (1999).

[xvi] "U.S. Department of Commerce Secretary Wilbur Ross and U.S. Census Bureau Director Steven Dillingham Statement on 2020 Census Operational Adjustments Due to COVID-19," U.S. Census Bureau, 13 April, 2020, https://2020census.gov/en/news-events/press-releases/statement-covid-19-2020.

[xvii] Mike Schneider, "Census Bureau stops layoffs for door knockers after order," *AP News*, 8 Sept. 2020, https://apnews.com/3605213c469e941ccd630b7b618d11e7.

[xviii] "In New Letter, Schumer And Pelosi Say Trump Administration's Efforts To Rush Census Count Despite Expert Warnings Are Politically Motivated And Threaten Census Accuracy, Call For Full Disclosure Of Decision-Making Process," Senate Democrats, 4 Sept. 2020, https://www.democrats.senate.gov/newsroom/press-releases/in-new-letter-schumer-and-pelosi-say-trump-administrations-efforts-to-rush-census-count-despite-expert-warnings-are-politically-motivated-and-threaten-census-accuracy-call-for-full-disclosure-of-decision-making-process.

[xix] "Operational and Processing Options to Meet Statutory Date of December 31, 2020 for Apportionment," U.S. Census Bureau, 3 Aug. 2020, https://oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/Census%20Slide%20Deck%20Aug%203%2020.pdf.

From: Ron S Jarmin (CENSUS/DEPDIR FED) [Ron.S.Jarmin@census.gov]
Sent: 9/16/2020 1:40:51 PM
To: Enrique Lamas (CENSUS/DEPDIR FED) [Enrique.Lamas@census.gov]; Christa D Jones (CENSUS/DEPDIR FED) [Christa.D.Jones@census.gov]
Subject: Fw: Follow-up from Friday call

(b) (5) [redacted]

Ron S Jarmin, PhD., Deputy Director
U.S. Census Bureau
o: 301-763-1858 | m: (b)(6) [redacted]
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From: Ron S Jarmin (CENSUS/DEPDIR FED)
Sent: Tuesday, September 15, 2020 2:43 PM
To: Karen Kelley <kkelley@doc.gov>
Subject: Follow-up from Friday call

Karen,

Here's my stab at a list of topics to discuss with Secretary Ross through the end of the year. You should feel free to add any I may have missed. Respectfully, I've attempted to be transparent and frank about how the professional staff of the Census Bureau views these issues.

(b) (5) [redacted]

(b) (5)

[redacted]

Thanks

Ron S Jarmin, PhD., Deputy Director
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From: Misty L Heggeness (CENSUS/ADRM FED) [misty.l.heggeness@census.gov]
Sent: 9/16/2020 9:56:11 PM
To: John Maron Abowd (CENSUS/ADRM FED) [john.maron.abowd@census.gov]; Kimberly L Leonard (CENSUS/PPSI FED) [kimberly.l.leonard@census.gov]
CC: William R Bell (CENSUS/ADRM FED) [William.R.Bell@census.gov]; Shana Banks (CENSUS/PPSI FED) [shana.j.banks@census.gov]; Helen Y Abraham (CENSUS/PPSI FED) [helen.y.abraham@census.gov]
Subject: Re: CVAP is cleared to go
Attachments: 20200907_csac2020presentation_wrb.pptx

Slides attached - without disclaimer.

Misty L. Heggeness, PhD
Special Assistant to the Associate Director and Chief Scientist
Senior Advisor for Evaluations and Experiments
Principal Economist
Research and Methodology
U.S. Census Bureau
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From: John Maron Abowd (CENSUS/ADRM FED) <john.maron.abowd@census.gov>
Sent: Wednesday, September 16, 2020 5:18 PM
To: Kimberly L Leonard (CENSUS/PPSI FED) <kimberly.l.leonard@census.gov>
Cc: William R Bell (CENSUS/ADRM FED) <William.R.Bell@census.gov>; Shana Banks (CENSUS/PPSI FED) <shana.j.banks@census.gov>; Helen Y Abraham (CENSUS/PPSI FED) <helen.y.abraham@census.gov>; Misty L Heggeness (CENSUS/ADRM FED) <misty.l.heggeness@census.gov>
Subject: Re: CVAP is cleared to go

+Misty who can get the deck for you. Please add the approved disclaimer. We do not have a copy of the final language. Thanks,

John M. Abowd, PhD, Associate Director and Chief Scientist
Research and Methodology
U.S. Census Bureau
O: 301.763.5880 M: simulring on cell
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On Sep 16, 2020, at 5:00 PM, Kimberly L Leonard (CENSUS/PPSI FED) <kimberly.l.leonard@census.gov> wrote:

Bill,

I just received confirmation that the CVAP slides have been cleared. Please send me the slide deck as soon as possible. If you do not have the disclaimer statement on the title page, we will add it.

Thanks in advance!

Kim Leonard
External Stakeholder Program Manager
Office of Program, Performance and Stakeholder Integration (PPSI)
301-763-7281 (office)
(b)(6) [redacted] *(mobile)*

Estimating Citizen Voting Age Population: An Experimental Product

William Bell

Senior Mathematical Statistician for Small Area Estimation

U.S. Census Bureau

September 18, 2020

This presentation was developed for the September 2020 CSAC meeting. It presents ongoing research to inform interested parties and to encourage discussion. Views expressed are those of the presenter, not those of the United States Census Bureau. This work is a collaborative effort, and would not be possible without major contributions from members of the CVAP Internal Expert Panel, the CVAP Technical Working Group, and the CVAP Implementation Team. Data presented were approved for dissemination by the Census Bureau Disclosure Review Board (CBDRB-FY20-CED006-0031). ~~Results shown here are pre-decisional and still under review.~~

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CVAP Teams

2020 Census Methods Internal Expert Panel

John M. Abowd (chair), William Bell, Michael Berning, J. David Brown, John L. Eltinge, Patrick J. Cantwell, Misty L. Heggeness (coordinator), Howard R. Hogan (until retirement), Jenny Hunter-Childs, Christa Jones (deputy chair), V. Thomas (Tom) Mule, Roberto Ramirez, Joseph Schafer, Victoria Velkoff

Citizen Voting Age Population (CVAP) Technical Working Group

William Bell, J. David Brown (lead), Stephanie (Jamie) Busick, Misty L. Heggeness, Ryan Janicki, Andrew Keller, Darcy Morris, V. Thomas (Tom) Mule, Joseph Schafer, Matthew Spence, Lawrence Warren, Moises Yi

Citizen Voting Age Population (CVAP) Implementation Team

John M. Abowd, Michael Berning, J. David Brown, Stephanie (Jamie) Busick, Michael Clark, Jaya Damineni, Karen Deaver, Michael Hawes, Liza Hill, Cynthia Davis Hollingsworth, Jane Ingold, Andrew Keller, V. Thomas (Tom) Mule, Danielle Ringstrom, Teresa Sabol, David Sheppard, Damon Smith, Steven Smith, Matthew Spence, Thomas Thornton, James Treat (chair), Epaphrodite Uwimana, James Whitehorne

All original data presented in this presentation have passed Census Bureau Disclosure Review Board approval (CBDRB-FY20-CED006-0031).

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Outline of Presentation

I. Background on CVAP, data sources, and record linkage
II. Summary of main points of the presentation
III. Results related to fitness for use of the data sources
IV. Results for estimation of citizens – testing done using the 2010 Census Edited File as the frame, combining it with admin and survey data sources

All original data presented in this presentation have passed Census Bureau Disclosure Review Board approval (CBDRB-FY20-CED006-0031).

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Citizen Voting Age Population (CVAP) Program

- A special tabulation of the population of U.S. citizens living in housing units and group quarters by voting age (18+), race, and ethnicity, down to census block groups, published by the Redistricting and Voting Rights Data Office, U.S. Census Bureau (RDO@CENSUS.GOV).
- Historically used for research, evaluation, and enforcement of the *Voting Rights Act*, including estimates required by Section 203 (identification of jurisdictions required to provide language support for participation in the electoral process for citizens with limited English capabilities).
- Original CVAP estimates were produced from the 2000 Census long form.
- With elimination of the long form in 2010, for the last decade CVAP has been based on American Community Survey (ACS) five-year estimates, updated annually.
- The post-2020 Census CVAP Special Tabulation estimates will be produced for Census tabulation blocks using 2020 Census and administrative records data, and possibly survey data sources.

All original data presented in this presentation have passed Census Bureau Disclosure Review Board approval (CBDRB-FY20-CED006-0031).

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Race/ethnicity groups for the 2020 CVAP

Not Hispanic or Latino

1. American Indian or Alaskan Native (AIAN) alone
2. **Asian alone**
3. **Black or African American alone**
4. Native Hawaiian or Other Pacific Islander alone
5. **White alone**
6. Some Other Race alone
7. AIAN and White
8. Asian and White
9. Black or African American and White
10. AIAN and Black or African American
11. Remainder of two or more race responses

12. **Hispanic or Latino**

Results here focus on the four largest race/ethnicity groups, which are in bold.

All original data presented in this presentation have passed Census Bureau Disclosure Review Board approval (CBDRB-FY20-CED006-0031).

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Data sources available for CVAP

- 2020 Census
  - Census Unedited File (CUF): used in record linkage
  - Census Edited File (CEF): serves as frame for estimation of citizens
- SSA Numident
  - Applications for Social Security Numbers (SSNs) and subsequent transactions
  - Primary reference file for the Census Bureau's Person Identification Validation System (PVS) (Wagner and Layne, 2014) – used to assign Protected Identification Keys (PIKs) for record linkage
  - Information on nativity (country of birth), citizenship and noncitizen legal status
  - Covers large share of population – Nearly 90% of persons in the 2010 Census were successfully found in Numident (Rastogi and O'Hara, 2012)

SSA = Social Security Administration. All original data presented in this presentation have passed Census Bureau Disclosure Review Board approval (CBDRB-FY20-CED006-0031).

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Additional Administrative Sources of Citizenship Data

- Department of State Passport Data (all U.S. passports, citizens)
- USCIS naturalizations (citizens) – all persons naturalized since 2001
  - Exception: children automatically naturalized because their parents naturalized when child did not also get a naturalization certificate
- USCIS lawful permanent residents – green card holders (noncitizens)
- ITINs – individual taxpayer identification numbers (noncitizens)

Very limited additional coverage found from the following sources:

- ADIS – Customs and Border Protection Arrivals and Departures Information System
- SEVIS – Immigration and Customs Enforcement (ICE) Office of Student and Exchange Visitor Information System
- WRAPS – State Dept. Worldwide Refugee Admissions Processing System
- Federal law enforcement records (U.S. Marshals Service, Bureau of Prisons)
- SNAP and TANF data from some states
- Driver's license files from Nebraska and South Dakota

USCIS = U.S. Customs and Immigration Service. ITINs refers to personal tax identifiers in the range reserved for Individual Taxpayer Identification Numbers, which is public information. SNAP = Supplemental Nutrition Assistance Program. TANF = Temporary Assistance to Needy Families. All original data presented in this presentation have passed Census Bureau Disclosure Review Board approval (CBDRB-FY20-CED006-0031).

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Survey Data Sources

- ACS (American Community Survey)
- CPS (Current Population Survey)
- AHS (American Housing Survey)
- SIPP (Survey of Income and Program Participation)

 All original data presented in this presentation have passed Census Bureau Disclosure Review Board approval (CBDRB-FY20-CED006-0031).

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Record Linkage

- Link records from other files to records in a Reference File constructed from SSA Numident records and occurrences of ITINs. This allows assignment of Protected Identification Keys (PIKs) to the other file records, which are then used for matching of records across the various files.
  - Probabilistic record linkage
  - SSN verification, then combinations of name, address, date of birth
- EPIKs: Unduplicated unlinked records with sufficient PII, put in Enhanced Reference File (ERF), and assign PIKs to as many ERF records as possible that do not already have PIKs (while maintaining record linkage quality)
  - For simplicity, we refer to these "enhanced process PIKs" as EPIKs
  - EPIK process incorporates noncitizens without SSNs
- 2020 Census records, and other data sources, are assigned PIKs and EPIKs via linkage to the Reference File and the Enhanced Reference File
- Link administrative and survey records containing citizenship to the 2020 Census via the PIKs and EPIKs.

SSA = Social Security Administration. ITINs refers to personal tax identifiers in the range reserved for Individual Taxpayer Identification Numbers, which is public information. All original data presented in this presentation have passed Census Bureau Disclosure Review Board approval (CBDRB-FY20-CED006-0031).

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Record Linkage (continued)

- EPIK linkages provide citizenship information for just 0.11% of the 2018 ACS estimated population, including both primary and secondary source linkages.
- Linkage process assigns separate quality score for each link attempt (combination of linkage variables)
  - SSN verification most reliable
  - Matching including address is more reliable than name and date of birth matching without address
- Create a single quality indicator (probability of correct linkage) from linked records using information on the link attempts and the attempt's quality score. See slides #44-45.
  - Exclude links with Pr(link correct) < .99 from estimation process to minimize linkage error.

Numident = Social Security Administration Numerical Identification file. All original data presented in this presentation have passed Census Bureau Disclosure Review Board approval (CBDRB-FY20-CED006-0031).

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Notes on quality of citizenship data records

- Many administrative sources require documentation of citizenship. We regard these data as highly reliable.
  - Ex. SSA Numident, passport data, USCIS naturalizations
- Data that is not current and indicates a noncitizen can be incorrect since the person may have since naturalized.
  - Currency is not of much concern for data indicating citizens
- Survey data on citizenship is subject to various errors:
  - Incorrect status reported (more frequent for true noncitizens)
  - Out-of-date reports of noncitizen status
  - Imputations for nonresponse to citizenship question on survey
- Record linkage errors can lead to errors in citizenship status for any data source.
  - Apply record linkage quality threshold to minimize linkage errors

SSA Numident = Social Security Administration Numerical Identification file. USCIS = U.S. Customs and Immigration Service. All original data presented in this presentation have passed Census Bureau Disclosure Review Board approval (CBDRB-FY20-CED006-0031).

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Summary of main points of the presentation

1. Combining the primary administrative data sources provides reliable data on citizenship for a large percentage of the population (91% in tests using 2018 ACS data or 2010 Census data)
   - Administrative sources used included SSA Numident, State Dept. passport data, USCIS lawful permanent residents and naturalizations, ITINs
   - Additional data sources beyond these provide very limited additional coverage
   - Prediction via imputation or modeling is needed for the cases not assigned citizenship status
2. Four approaches investigated for estimation of citizens:
   - Business Rules (BR) plus Hot Deck imputation from BR cases for the Census NBR (non-business rule) cases
     - Business Rules assign citizenship status to Census records based on the citizenship data sources linked to each record (assignments made for 91% of the records in the testing done, leaving 9% for imputation)
   - Business Rules plus Logistic Regression fitted to BR cases, applied to Census NBR cases
   - Business Rules plus Logistic Regression fitted to ACS NBR cases, applied to Census NBR cases
   - Latent Class model using multiple citizenship indicators (including Census BR and NBR cases, ACS data, …)

ITINs refers to personal tax identifiers in the range reserved for Individual Taxpayer Identification Numbers, which is public information. USCIS = U.S. Customs and Immigration Service. See slides #7-8 for a list of the additional data sources. All original data presented in this presentation have passed Census Bureau Disclosure Review Board approval (CBDR8-FY20-CED006-0031).

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Summary of main points of the presentation (continued)

3. We compared results of the four estimation approaches, applied using the 2010 CEF (Census Edited File) and associated administrative and survey records, for the following four subsets of the CEF records:
   - BR cases (91%): very strong agreement across approaches
   - NBR-PIK: large differences across approaches, but this is a very small fraction of the population
   - NBR-SS: substantial differences across approaches for Hispanics and Nonhispanic Asian Alone
     - SS = sent to search for a PIK, NSS = not sent to search for a PIK
   - NBR-NSS: some differences seen across approaches, but generally smaller than for NBR-SS
4. An important difference between the estimation approaches is what data serve as the "training sample" used to produce a predictor of citizenship for the CEF NBR cases
   - **Hot Deck** imputation: training sample = CEF BR cases
   - **BR Logistic** regression: training sample = CEF BR cases
   - **ACS Logistic** regression: training sample = ACS NBR cases with ACS reported citizenship status
   - **Latent Class** model: no distinct subset of data used as a training sample; draws information from CEF and ACS BR and NBR cases, and other data sources

BR cases are CEF records with citizenship status assigned from linked data sources according to "business rules". NBR cases (No Business Rules) are CEF records for which citizenship status could not be assigned by the business rules. All original data presented in this presentation have passed Census Bureau Disclosure Review Board approval (CBDRB-FY20-CED006-0031).

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Administrative Record Coverage of the 2018 ACS Estimated Population

Source	Percent of ACS Population (PIKs)
Numident	90.4
Citizen value for citizenship	66.9
Missing citizenship, U.S. born (citizens)	14.6
Noncitizen value for citizenship	7.8
Foreign born or uncertain country of birth, missing citizenship	1.0
U.S. Passports (citizens)	48.6
USCIS	11.5
Naturalizations (citizens)	6.6
Lawful permanent residents and refugees (noncitizens)	5.0
ITINs (noncitizens)	0.5

Notes: These percentages use ACS survey weights. The total 2018 ACS estimated population age 18 and over is 253,800,000.

USCIS = U.S. Customs and Immigration Service. ITINs refers to personal tax identifiers in the range reserved for Individual Taxpayer Identification Numbers, which is public information. All original data presented in this presentation have passed Census Bureau Disclosure Review Board approval (CBDRB-FY20-CED006-0031).

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Amount of Agreement on Citizenship Status by SSA Numident, Passports, USCIS, ITINs

Totals	% of 2018 ACS Estimated Population	
	No restrictions on record linkage	With record linkage quality restrictions
Agreement	87.36	87.90
on citizens	81.46	81.96
on noncitizens	5.91	5.94
Disagreements	3.43	2.68
Missing (no linked admin records citizenship)	9.21	9.42

USCIS = U.S. Customs and Immigration Service. ITINs refers to personal tax identifiers in the range reserved for Individual Taxpayer Identification Numbers, which is public information. "With record linkage quality restrictions" indicates links are accepted only if the predicted Pr{link is correct} ≥ .99; see slide #45. All original data presented in this presentation have passed Census Bureau Disclosure Review Board approval (CBDRB-FY20-CED006-0031).

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Citizenship Business Rules (using 2018 ACS as the population frame)

Criteria for assigning citizen	Rule assignment	% of 2018 ACS Population: No restrictions on record linkage	% of 2018 ACS Population: With record linkage quality restrictions
Numident citizen	Citizen	66.94	66.94
Numident missing citizenship but U.S.-born	Citizen	14.63	14.63
U.S. passport	Citizen	3.01	2.79
USCIS naturalization certificate	Citizen	0.29	0.28
If not U.S. citizen according to above criteria, even without record linkage quality restriction:			
Numident noncitizen	Noncitizen	5.27	5.33
ITIN	Noncitizen	0.52	0.52
USCIS lawful permanent resident or refugee	Noncitizen	0.12	0.09
ICE SEVIS record	Noncitizen	0.06	0.06
ADIS record not born in U.S.	Noncitizen	D	D
WRAPS record	Noncitizen	D	D
Has PIK, but no citizenship assignment	**Model**	0.05	0.37
No PIK	**Model**	**8.98**	**8.98**

"With record linkage quality restrictions" indicates links are accepted only if the predicted Pr(link is correct) ≥ .99; see slide #45. "D" indicates that the number is suppressed due to disclosure restrictions. ITINs refers to personal tax identifiers in the range reserved for Individual Taxpayer Identification Numbers, which is public information. USCIS = U.S. Customs and Immigration Service. See slides #6-8 for definitions of the various data sources. All original data presented in this presentation have passed Census Bureau Disclosure Review Board approval (CBDRB-FY20-CED006-0031).

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Citizen and Noncitizen Shares for Business Rules

Business rule assignment	% of 2018 ACS Estimated Population	
	No restrictions on record linkage	With record linkage quality restrictions
Citizen	84.88	84.64
Noncitizen	5.98	6.02
Missing	9.03	9.34

"With record linkage quality restrictions" indicates links are accepted only if the predicted Pr(link is correct) ≥ .99; see slide #45. All original data presented in this presentation have passed Census Bureau Disclosure Review Board approval (CBDRB-FY20-CED006-0031).

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Business Rules vs. 2008-2012 ACS Estimated Percent Citizens

Sample with Both Business Rules and ACS As-Reported Citizenship Present

Race/ethnicity	Business rules	ACS As-Reported
Total	**93.5**	**93.4**
NH White Alone	98.4	98.5
NH Black Alone	95.5	95.7
Hispanic	73.3	72.4
NH Asian Alone	70.9	69.3

All original data presented in this presentation have passed Census Bureau Disclosure Review Board approval (CBDRB-FY20-CED006-0031).

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Comparison of 2018 ACS As-Reported to 2018 Business Rules Citizenship

	Column Percents		
	BR Citizen	**BR Noncitizen**	**ACS Total**
ACS Citizen	99.29	**10.60**	
ACS Noncitizen	**0.71**	89.40	
Benchmark Total	100.00	100.00	

	Cell Percents		
ACS Citizen	93.11	**0.66**	93.77
ACS Noncitizen	**0.66**	5.56	6.23
Benchmark Total	93.78	6.22	

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Four approaches to determining or predicting citizenship for Census cases

- **Hot Deck**: Business Rules (BR) plus hot deck imputation (BR covers ≈ 91% of the data)
- **BR logistic**: BR plus logistic regression with BR data
- **ACS logistic**: BR plus logistic regression with NBR cases in the ACS sample that have a response to the ACS citizenship question
- **LC**: Latent class model

NBR = no business rules citizenship determination. All original data presented in this presentation have passed Census Bureau Disclosure Review Board approval (CBDRB-FY20-CED006-0031).

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Business Rules (BR) plus hot deck imputation (Hot Deck)

- Accept BR determinations
- For NBR cases, impute citizenship from nearest neighbor (on address list) within imputation cells defined by a cross-classification of
  - Race and detailed Hispanic origin (17 groups)
  - Whether or not the housing unit had a non-PIKed person within the unit
  - Age groups: 18 – 29, 30 – 49, 50+
- There are small numbers of resolved cases in some cells.
- Very few cases needing imputation are in units where all persons are PIKed

NBR = no business rules citizenship determination. Detailed Hispanic origin categories are Mexican, Puerto Rican, Cuban, Central American, Latin American, and Other Hispanic. All original data presented in this presentation have passed Census Bureau Disclosure Review Board approval (CBDRB-FY20-CED006-0031).

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Business rules plus logistic regression with BR data (BR logistic)

- Accept BR determinations using linked data that pass a record linkage quality threshold. (See slide #44 for details.)
- Logistic regressions used to predict probabilities of citizenship for NBR cases:
  - Fit logistic regression for **BR householders** using tract indicators, CVAP race and Hispanic origin categories, and age domains (under 29, 30 to 49 and 50+) as main effects). Use this model to predict citizenship for **householders without BR citizenship**.
  - Fit logistic regression for **other household members with BR citizenship** using relationship to householder (11 categories), CVAP race and Hispanic origin categories, and age domains. This was **done separately for the cases where householders were BR citizens and for the cases where householders were BR noncitizens (two models).**
  - Predicted citizenship probabilities for **other household members without BR citizenship** were then obtained from

$$\Pr(\text{Other is Citizen}) = \Pr(\text{HH is citizen}) \times \Pr(\text{Other is Citizen}|\text{HH is citizen}) + [1 - \Pr(\text{HH is citizen})] \times \Pr(\text{Other is Citizen}|\text{HH is noncitizen})$$

- A different logistic regression model was used for group quarters residents (for GQs, there is no householder)

NBR = no business rules citizenship determination. All original data presented in this presentation have passed Census Bureau Disclosure Review Board approval (CBDRB-FY20-CED006-0031).

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BR plus logistic regression with ACS data (ACS logistic)

- **Motivation:** As-reported ACS estimated citizen shares vary widely depending on
  - whether or not citizenship information can be linked to the person's survey record and,
  - if not, the reason why not, especially for race/ethnic groups that have higher noncitizen shares (Asians and Hispanics).
  - This suggests differences between the BR versus NBR data **(nonignorable missingness)**.
- **Goal:** Use ACS data to address nonignorable missingness that can arise by using BR cases to develop predictions for the NBR cases.

NBR = no business rules citizenship determination. All original data presented in this presentation have passed Census Bureau Disclosure Review Board approval (CBDRB-FY20-CED006-0031).

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BR plus logistic regression with ACS data (ACS logistic, continued)

- Accept BR determinations using linked data that pass a record linkage quality threshold. (See slide #45 for details.)
- Fit logistic regression models to ACS data without BR determinations, but with ACS reported citizenship. Fit separate models to the following different groups of ACS cases:
  - NBR-PIK (no business rules but has PIK)
  - NBR-SS (no business rules and sent to PVS search for a PIK)
  - NBR-NSS (no business rules and not sent to PVS search for a PIK).
- The models use many regression variables including state indicators, age groups, race/ethnicity groups, sex, tenure, etc., plus citizenship status of householder interacted with relative vs. non-relative of householder.
- Apply fitted logistic regression model to CEF NBR cases to predict their citizenship probabilities.

NBR = no business rules citizenship determination. CEF = Census Edited File. All original data presented in this presentation have passed Census Bureau Disclosure Review Board approval (CBDRB-FY20-CED006-0031).

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Latent Class model (LC)

- Treat true citizenship status as a latent variable (L), imperfectly measured by multiple items from various data sources (Numident, passport data, USCIS data, ITINs, Bureau of Prisons and U.S. Marshall Service law enforcement data, ACS, CPS, AHS, SIPP).
  - L has three possible states: U.S.-born citizen, foreign-born citizen, and noncitizen
- Fit the latent-class model in two stages for its two parts:
  - **Measurement model** – describes relationships between L and the items that measure it.
  - **Prevalence model** – describes how the distribution of L varies over the population in relation to predictors (e.g., logistic regression).
- Carry over fitting results from Stage 1 to Stage 2 via person-level Bayes factors, with their natural interpretation as odds multipliers (for states of L).
- Compute probability of citizenship for each person based on all available items.

USCIS = U.S. Customs and Immigration Service. ITINs refers to personal tax identifiers in the range reserved for Individual Taxpayer Identification Numbers, which is public information. CPS = Current Population Survey. AHS = American Housing Survey. SIPP = Survey of Income and Program Participation. All original data presented in this presentation have passed Census Bureau Disclosure Review Board approval (CBDRB-FY20-CED006-0031).

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Notes on the four approaches to estimation of citizenship

- The first three accept the BR determinations (covers ≈ 91% of the data); the latent class modeling does not, but it nearly replicates the BR determinations.
  - In initial test implementations, the first three approaches used slightly different versions of the BRs. This is being harmonized.
- The first two approaches (hot deck and BR logistic) effectively assume that the NBR cases are like the BR cases, conditional on certain information (Missing at Random). However, ACS data provide evidence against this assumption.
- The third approach (ACS logistic) assumes the NBR cases found in the ACS sample are like all the other NBR cases, conditional on certain information. It also accepts the ACS citizenship responses for these cases, which include some error.
- The latent class model draws information from both CEF and ACS BR and NBR cases, and other data sources, to provide information on the NBR cases.

NBR = no business rules citizenship determination. CEF = Census Edited File. All original data presented in this presentation have passed Census Bureau Disclosure Review Board approval (CBDRB-FY20-CED006-0031).

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2010 CEF Percent of Cases by PIK Group

	Business Rules	NBR-PIK	NBR-SS	NBR-NSS	Population (1,000s)
Total	**90.9**	**0.12**	**5.8**	**3.3**	**234,600**
NH White Alone	93.2	0.12	3.9	2.8	157,100
NH Black Alone	88.0	0.04	6.9	5.2	27,320
Hispanic	83.2	0.18	12.8	3.8	33,350
NH Asian Alone	89.1	0.22	7.2	3.5	11,290

NBR-PIK is no business rules and has PIK. NBR-SS is no business rules and sent to PVS search. NBR-NSS is no business rules and not sent to PVS search. CEF = Census Edited File. All original data presented in this presentation have passed Census Bureau Disclosure Review Board approval (CBDR8-FY20-CED006-0031).

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Estimated Percent Citizens from Four Approaches 2010 CEF, All Cases

Race/Ethnicity	Hot Deck	BR logistic	ACS logistic	Latent Class Model	2010-2012 ACS
Total	**91.4**	**91.4**	**91.1**	**90.8**	**91.5**
NH White Alone	98.3	98.1	98.2	97.8	98.3
NH Black Alone	95.0	94.9	95.0	93.7	95.3
Hispanic	64.0	64.8	62.5	63.3	65.7
NH Asian Alone	67.7	67.5	67.2	68.3	67.4

The four estimation approaches (Hot Deck, BR logistic, ACS logistic, and Latent Class Model) are discussed on slides #20-26. CEF = Census Edited File. All original data presented in this presentation have passed Census Bureau Disclosure Review Board approval (CBDRB-FY20-CED006-0031).

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Estimated Percent Citizens from Four Approaches 2010 CEF, BR Cases (91% of total pop)

Race/Ethnicity	Hot Deck	BR logistic	ACS logistic	Latent Class Model	2010-2012 ACS
Total	**92.6**	**92.5**	**92.6**	**92.5**	**93.0**
NH White Alone	98.4	98.4	98.4	98.4	98.5
NH Black	95.5	95.5	95.5	95.4	95.6
Hispanic	67.8	67.5	67.7	67.2	71.3
NH Asian Alone	69.4	68.9	69.4	69.4	69.7

Notes: The 2010-2012 ACS column uses the ACS citizenship values. BR in 2010-2012 ACS is the assignment rules used in BR + Hot Deck (using primary sources only) applied to the same 2010-2012 ACS records as in the 2010-2012 ACS column.

The four estimation approaches (Hot Deck, BR logistic, ACS logistic, and Latent Class Model) are discussed on slides #20-26. CEF = Census Edited File. All original data presented in this presentation have passed Census Bureau Disclosure Review Board approval (CBDRB-FY20-CED006-0031).

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Estimated Percent Citizens from Four Approaches 2010 CEF, NBR-SS Cases (5.8% of total pop)

Race/Ethnicity	Hot Deck	BR logistic	ACS logistic	Latent Class Model	2010-2012 ACS
Total	**75.3**	**76.7**	**67.0**	**64.8**	**73.1**
NH White Alone	95.9	94.9	93.6	83.3	95.1
NH Black	91.4	89.5	88.5	70.4	90.9
Hispanic	42.0	48.6	29.0	37.2	33.4
NH Asian Alone	53.2	54.8	41.2	55.5	47.3

NBR-SS is no business rules and sent to PVS search. The four estimation approaches (Hot Deck, BR logistic, ACS logistic, and Latent Class Model) are discussed on slides #20-26. CEF = Census Edited File. All original data presented in this presentation have passed Census Bureau Disclosure Review Board approval (CBDRB-FY20-CED006-0031).

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Estimated Percent Citizens from Four Approaches 2010 CEF, NBR-SS Cases (12.8% of Hispanic pop) Hispanics

Race/Ethnicity	Hot Deck	BR logistic	ACS logistic	Latent Class Model	2010-2012 ACS
Hispanic	**42.0**	**48.6**	**29.0**	**37.2**	**33.4**
Mexican	39.9	48.2	25.6	34.0	30.3
Puerto Rican	96.3	70.0	97.4	87.7	97.2
Cuban	59.9	60.4	58.3	49.7	62.8
Central American	28.2	39.3	15.3	31.6	19.2
Latin American	37.1	47.6	26.5	36.5	33.7
Other Hispanic	62.7	60.0	47.2	47.9	75.1

NBR-SS is no business rules and sent to PVS search. The four estimation approaches (Hot Deck, BR logistic, ACS logistic, and Latent Class Model) are discussed on slides #20-26. All original data presented in this presentation have passed Census Bureau Disclosure Review Board approval (CBDRB-FY20-CED006-0031).

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Estimated Percent Citizens from 4 Approaches 2010 CEF, NBR-SS Cases (7.2% of NH Asian pop) NH Asian Alone

Race/Ethnicity	Hot Deck	BR logistic	ACS logistic	Latent Class Model	2010-2012 ACS
NH Asian Alone	**53.2**	**54.8**	**41.2**	**55.5**	**47.3**
Asian Indian	47.0	49.7	36.9	53.0	40.7
Chinese	51.7	53.5	39.0	52.7	44.1
Filipino	62.9	61.6	54.5	61.0	63.3
Japanese	57.3	61.6	44.3	58.6	54.8
Korean	48.3	53.7	29.1	54.8	35.1
Vietnamese	64.5	59.7	62.7	61.8	65.3
Other Asian	53.6	54.6	39.7	55.5	47.4

NBR-SS is no business rules and sent to PVS search. The four estimation approaches (Hot Deck, BR logistic, ACS logistic, and Latent Class Model) are discussed on slides #20-26. CEF = Census Edited File. All original data presented in this presentation have passed Census Bureau Disclosure Review Board approval (C8DR8-FY20-CED006-0031).

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Estimated Percent Citizens from Four Approaches 2010 CEF, NBR-NSS Cases (3.3% of total pop)

Race/Ethnicity	Hot Deck	BR logistic	ACS logistic	Latent Class Model	2010-2012 ACS
Total	**86.1**	**88.1**	**89.8**	**91.0**	**94.4**
NH White Alone	96.0	96.2	97.9	98.1	98.2
NH Black	91.7	92.2	95.1	94.9	96.6
Hispanic	54.6	63.1	61.7	68.6	69.2
NH Asian Alone	54.7	62.8	67.8	68.9	76.2

NBR-NSS is no business rules and not sent to PVS search. The four estimation approaches (Hot Deck, BR logistic, ACS logistic, and Latent Class Model) are discussed on slides #20-26. CEF = Census Edited File. All original data presented in this presentation have passed Census Bureau Disclosure Review Board approval (CBDRB-FY20-CED006-0031).

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Estimated Percent Citizens for 2010 CEF NBR-SS Group with Alternative Applications of the ACS Logistic Model by Training Sample and Source of Citizenship Status

	ACS logistic approach model used						
Race/Ethnicity	**ACS NBR-SS Sample, ACS Citizenship**	**ACS BR Sample, ACS Citizenship**	**ACS BR Sample, BR Citizenship**	**CEF BR Sample, BR Citizenship**	**BR logistic**	**Hot Deck**	**Latent Class Model**
Total	**69.0**	**76.6**	**77.9**	**77.3**	**76.7**	**75.3**	**64.8**
NH White Alone	93.6	95.0	95.1	95.0	94.9	95.9	83.3
NH Black Alone	88.5	89.6	89.8	89.6	89.5	91.4	70.4
Hispanic	29.0	48.2	51.3	50.0	48.6	42.0	37.2
NH Asian Alone	41.2	52.5	56.5	55.4	54.8	53.2	55.5

NBR-SS is no business rules and sent to PVS search. CEF = Census Edited File. The four estimation approaches (Hot Deck, BR logistic, ACS logistic, and Latent Class Model, not including the alternatives for the ACS logistic approach used here) are discussed on slides #20-26. All original data presented in this presentation have passed Census Bureau Disclosure Review Board approval (CBDRB-FY20-CED006-0031).

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Conclusions from comparing estimation approaches using 2010 CEF data as the frame

- The four approaches yield very similar results for citizenship estimates for the total 18+ population at the national level
- Some differences can be seen in (total 18+) national estimates for Hispanics, particularly Mexicans and Central Americans
- We have examined state level estimates in which we see similar patterns in the results though, as expected, with some variations across states. These results have not yet gone through a disclosure review.

The four estimation approaches (Hot Deck, BR logistic, ACS logistic, and Latent Class Model) are discussed on slides #20-26. CEF = Census Edited File. All original data presented in this presentation have passed Census Bureau Disclosure Review Board approval (CBDRB-FY20-CED006-0031).

Some larger differences can be seen when the estimates are broken out by PIK status

- BR cases: minimal differences
- NBR-PIK: very large differences, but this is a very small group
- NBR-SS: Large differences for Hispanics and for NH Asians, especially for Mexicans, Central Americans, Latin Americans, and Koreans
  - An experiment that applied the model from the ACS logistic approach in alternative ways showed that the largest contributor to differences between the estimation approaches for the NBR-SS group was whether BR cases or ACS NBR cases were used as the "training sample" for making predictions.
- NBR-NSS: Some differences seen across approaches, but generally smaller than for NBR-SS

NBR-PIK is no business rules and has PIK. NBR-SS is no business rules and sent to PVS search. NBR-NSS is no business rules and not sent to PVS search. The four estimation approaches (Hot Deck, BR logistic, ACS logistic, and Latent Class Model) are discussed on slides #20-26. All original data presented in this presentation have passed Census Bureau Disclosure Review Board approval (CBDRB-FY20-CED006-0031).

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Further research planned and underway

- Apply the four approaches using 2018 ACS data as the frame, along with corresponding 2018 administrative sources. See if we get similar results to those shown here from using the 2010 CEF as the frame.
- Harmonize to a common set of business rules.
- Refine the models used, drawing on results of the analyses done to date.
  - Since the ACS provides a much smaller data set than a census, there can be some limitations on model refinement for the application to the 2018 ACS, especially as it relates to detailed population subgroups and geography.
  - For the Latent Class Model, this requires certain enhancements to the modeling software.
  - Research linking of administrative files to census housing unit records (where person records could not be linked)
- Refine the record linkage quality measure.

CEF = Census Edited File. All original data presented in this presentation have passed Census Bureau Disclosure Review Board approval (CBDRB-FY20-CED006-0031).

Disclosure Avoidance

- Data in this presentation were protected using the Disclosure Review Board's current rules for legacy data at the national level
- The 2020 CVAP data product will be protected using the 2020 Disclosure Avoidance System
  - Using a privacy-loss budget determined by the Data Stewardship Executive Policy Committee and charged to the 2020 Census
  - Using the TopDown Algorithm
  - Constrained to be fully consistent with the geographic, race and ethnicity definitions used in Table P4 of the 2020 PL94-171 redistricting data

All original data presented in this presentation have passed Census Bureau Disclosure Review Board approval (CBDRB-FY20-CED006-0031).

Questions for the committee

1. Should we use the secondary data sources and EPIK linkages given the limited additional coverage that they provide?

2. Do you have suggestions for how we decide on which data to use as the "training sample" for developing citizenship predictions for the cases not covered by the Business Rules?
   - The BR cases themselves, or some subset – Issue: evidence that the BR cases differ from the non-BR cases.
   - ACS non-BR cases with ACS as-reported citizenship – Issues: evidence of reporting error in ACS, particularly for noncitizens, plus potential for 2020 ACS to be less comparable to the 2020 Census (than was the case in 2010).
   - Use the Latent Class model, which makes use of both these data sources, and others.
   - Formulate some mathematical comparison criterion?
   - Combine results from more than one estimator – how?

3. Do you have suggestions for explaining (primarily to a technical audience) how we made this decision?

4. Do you have suggestions for ways to convey uncertainty reflecting prediction error, which is not due to sampling error, and is partly due to certain systematic errors? (Note the second question.)

Note: We plan to release a report on this work by October 31, 2020 that will indicate which estimation approach we have chosen and why, so near-term responses to these questions are appreciated.

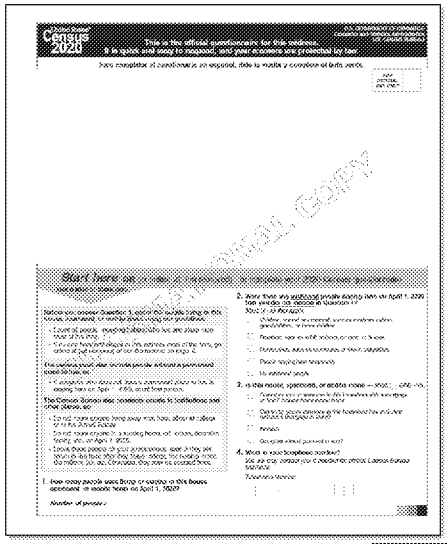
"EPIK" refers to PIKs obtained through an enhanced process; see slides #9-10. All original data presented in this presentation have passed Census Bureau Disclosure Review Board approval (CBDRB-FY20-CED006-0031).

Additional slides with more details follow

All original data presented in this presentation have passed Census Bureau Disclosure Review Board approval (CBDRB-FY20-CED006-0031).

2020 Decennial Census

- CUF (Census Unedited File) – to be used for record linkage
- CEF (Census Edited File)
  - serves as the frame for the CVAP estimates
  - we use other data sources to predict the probability of citizenship for each CEF person record (may be 0, 1, or in between) and then add up these predictions to tabulate estimated numbers of citizens



All original data presented in this presentation have passed Census Bureau Disclosure Review Board approval (CBDRB-FY20-CED006-0031).

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Census 2020

Social Security Administration (SSA) Numident File

- Applications for Social Security Numbers (SSNs) and subsequent transactions
- Primary reference file for the Census Bureau's Person Identification Validation System (PVS) (Wagner and Layne, 2014)
- Information on nativity, citizenship and noncitizen legal status

Strengths

- Covers large share of population – Nearly 90% of persons in the 2010 Census were successfully found in Numident (Rastogi and O'Hara, 2012)
- Numident report of citizenship can be accepted with high confidence

Weaknesses

- Reports of non-citizenship are less reliable, because naturalizations are not always reported to SSA
- No coverage of those in the resident population without SSNs

All original data presented in this presentation have passed Census Bureau Disclosure Review Board approval (CBDRB-FY20-CED006-0031).

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Census 2020

Record Linkage Process

- Link records from other files to records in a Reference File constructed from SSA Numident records and occurrences of ITINs. This allows assignment of Protected Identification Keys (PIKs) to the other file records, which are then used for matching of records across the various files.
  - Probabilistic record linkage
  - SSN verification, then combinations of name, address, date of birth
- Unduplicate unlinked records with sufficient PII, put in Enhanced Reference File (ERF), and assign PIKs to as many ERF records as possible that do not already have PIKs (while maintaining record linkage quality)
  - For simplicity, we refer to these "enhanced process PIKs" as EPIKs
  - EPIK process incorporates noncitizens without SSNs
- 2020 Census records are assigned PIKs and EPIKs via linkage to the Reference File and the Enhanced Reference File
- Link administrative and survey records containing citizenship to the 2020 Census via the PIKs and EPIKs.

SSA = Social Security Administration. ITINs refers to personal tax identifiers in the range reserved for Individual Taxpayer Identification Numbers, which is public information. All original data presented in this presentation have passed Census Bureau Disclosure Review Board approval (CBDRB-FY20-CED006-0031).

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Census 2020

Record linkage quality threshold: Business rules plus logistic regression with BR data

Linkage process assigns a separate quality score for each linkage attempt (PVS module and pass)

Accept BR determinations using linked data that pass the following record linkage quality threshold.

- Quality threshold is Pr(correct link) ≥ .99, where the linkage probabilities were determined by a decision tree analysis applied to links between Numident foreign-born records and other source records that indicated noncitizen. Note that if another source says noncitizen and the Numident says they were U.S.-born, this is likely to be a linkage error.
- Variables used in making the decision tree were source, PVS module and pass combined indicator, and the record linkage score. This was done separately for each state.
- Decision tree predictor developed with noncitizen records was also used to predict probabilities of correct links for citizens.

PVS = Person Identification Validation System, which is used to assign PIKs, the Protected Identification Keys.
All original data presented in this presentation have passed Census Bureau Disclosure Review Board approval (CBDRB-FY20-CED006-0031).

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Census 2020

Record linkage quality threshold: Business rules plus logistic regression with ACS data

Accept BR determinations using linked data that pass the following record linkage quality threshold.

Create single quality score from logistic regressions with noncitizen observations in the file.

- Dependent variable = 1 if linked to foreign-born Numident record, = 0 if linked to U.S.-born Numident record
- Independent variables are linkage attempt and score
- Fitted logistic regression model is applied to linked records (whether indicating citizen or noncitizen) to predict the probability that the link is correct. (Where tables indicate "record linkage quality restriction" this mean links are accepted only if their predicted probability of being correct is ≥ .99.)

All original data presented in this presentation have passed Census Bureau Disclosure Review Board approval (CBDRB-FY20-CED006-0031).

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Census 2020

Conclusions about fitness for use of data sources

- Combining the primary administrative data sources provides reliable data on citizenship for a large percentage of the population (91% as estimated using 2018 ACS data)
  - SSA Numident, State Dept. passport data, USCIS lawful permanent residents and naturalizations, ITINs (with limited additional return from the ADIS, SEVIS, and WRAPS data)
- Additional data sources (SNAP/TANF, driver's licenses, BOP, USMS, ACS, AHS, CPS, and SIPP) provide very limited additional return due to:
  - Limited population coverage of most sources (for surveys, ACS is the one exception)
  - Overlap with the primary admin sources, especially for citizens (incremental coverage is just 0.03%, as estimated using 2018 ACS population)
  - Records for noncitizens that are out-of-date
  - Record linkage problems with some sources (assessing quality of record links is important)

ITINs refers to personal tax identifiers in the range reserved for Individual Taxpayer Identification Numbers, which is public information. USCIS = U.S. Customs and Immigration Service. See slides #7-8 for definitions of the additional data sources. All original data presented in this presentation have passed Census Bureau Disclosure Review Board approval (CBDRB-FY20-CED006-0031).

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Census 2020

Shares of 2018 ACS Estimated Population by Source Citizenship Combinations

Disagreements

Numident	U.S. Passport	USCIS	ITIN	% of 2018 ACS Estimated Population: No restrictions on record linkage	% of 2018 ACS Estimated Population: With record linkage quality restrictions
Noncitizen	Citizen	Citizen	Absent	1.97	1.68
Noncitizen	Absent	Citizen	Absent	0.27	0.26
Noncitizen	Citizen	Noncitizen	Absent	0.23	0.12
Noncitizen	Citizen	Absent	Absent	0.08	0.41
Cumulative Total				**2.55**	**2.47**
Citizen	Absent	Noncitizen	Absent	0.09	0.04
Citizen	Citizen	Noncitizen	Absent	0.67	0.16
Missing Citizenship, Foreign-Born	Citizen	Noncitizen	Absent	0.11	< 0.01
Cumulative Total				**3.42**	**2.68**
Missing Citizenship, U.S.-Born	Absent	Noncitizen	Absent	< 0.01	D
Missing Citizenship, U.S.-Born	Citizen	Noncitizen	Absent	< 0.01	D
Absent	Citizen	Citizen	Noncitizen	0.00	0.00
Absent	Citizen	Noncitizen	Noncitizen	0.00	0.00
Absent	Citizen	Absent	Noncitizen	0.00	0.00
Total disagreements				**3.43**	**2.68**

Notes: This uses the 2018 ACS voting-age sample and its sampling weights. The total number of observations is 3,989,000.

"With record linkage quality restrictions" indicates links are accepted only if the predicted Pr{link is correct} ≥ .99; see slide #45. "D" indicates that the number is suppressed due to disclosure restrictions. USCIS (U.S. Customs and Immigration Service) citizens are from naturalization records; USCIS noncitizens are from lawful permanent resident, refugee, and asylee records. ITINs refers to personal tax identifiers in the range reserved for Individual Taxpayer Identification Numbers, which is public information. All original data presented in this presentation have passed Census Bureau Disclosure Review Board approval (CBDRB-FY20-CED006-0031).

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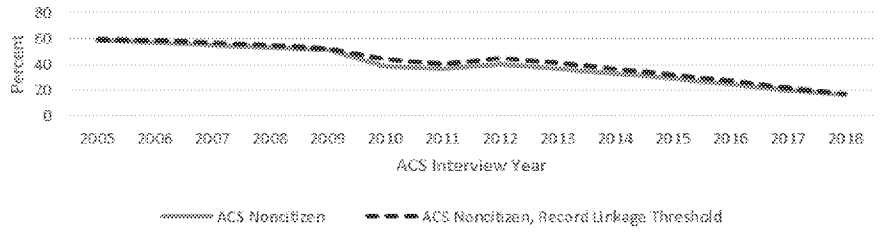
Percent ACS Noncitizens That Are 2020 Business Rule Citizens, by ACS Interview Year



The number of observations is 2,156,000 without a record linkage threshold, and 1,273,000 with one.

"Record linkage threshold" indicates cases that satisfy the quality restrictions that links are accepted only if the predicted Pr(linkage is correct) ≥ .99; see slide #45. All original data presented in this presentation have passed Census Bureau Disclosure Review Board approval (CBDRB-FY20-CED006-0031).

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Census 2020

Estimated Percent Citizens from Four Approaches 2010 CEF, NBR-SS Cases (5.8% of total pop) by observable characteristics

Characteristic	Hot Deck	BR logistic	ACS logistic	Latent Class Model	2010-2012 ACS
Householder Citizen	88.4	81.6	79.5	71.4	79.3
Householder Noncitizen	24.1	22.2	13.3	37.9	14.2
Difference	64.4	59.5	66.1	33.5	65.1
English Form	76.4	77.1	72.7	67.8	79.7
Non-English Form	30.0	37.8	7.6	23.4	13.8
Difference	46.5	39.9	65.1	44.4	65.9

NBR-SS is no business rules and sent to PVS search. The four estimation approaches (Hot Deck, BR logistic, ACS logistic, and Latent Class Model) are discussed on slides #20-26. CEF = Census Edited File. All original data presented in this presentation have passed Census Bureau Disclosure Review Board approval (CBDRB-FY20-CED006-0031).

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Census 2020

Estimated Percent Citizens from Four Approaches 2010 CEF, NBR-SS Cases (5.8% of total pop) by observable characteristics (continued)

Characteristic	Hot Deck	BR logistic	ACS logistic	Latent Class Model	2010-2012 ACS
Non-Relative and HHLDR a Citizen	88.0	73.4	81.4	71.7	84.8
Non-Relative and HHLDR a Noncitizen	23.9	16.6	14.4	37.2	14.2
Difference	64.1	56.8	67.0	34.5	70.6

NBR-SS is no business rules and sent to PVS search. HHLDR is householder. The four estimation approaches (Hot Deck, BR logistic, ACS logistic, and Latent Class Model) are discussed on slides #20-26. CEF = Census Edited File. All original data presented in this presentation have passed Census Bureau Disclosure Review Board approval (CBDRB-FY20-CED006-0031).

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Census 2020

From: James [james.whitehorne@gmail.com]
Sent: 9/18/2020 2:25:59 PM
To: James Whitehorne (CENSUS/ADDC FED) [James.Whitehorne@census.gov]
Subject: NCSL September presentation
Attachments: 2020_09_18_NCSL_September_Update.pptx

The 2020 Census and The 2020 Census Redistricting Data Program

James Whitehorne
Chief, Census Redistricting and Voting Rights Data Office

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Census 2020

Agenda

- Current activities
- Progress monitoring tools
- Editing and imputation
- Redistricting Data Program
- Disclosure Avoidance
- Citizenship by Voting Age by Race and Ethnicity special tabulations

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Census 2020

Good morning and thank you to NCSL for once again providing us with a forum in which we can provide information and address questions and concerns from our stakeholders. Today's presentation is a little disjointed in that I have some topics that are not always addressed in the same setting. I will talk a little bit about progress on the 2020 Census, imputation and editing or response data, a few reminders from the redistricting data program, our plans for disclosure avoidance, and finally the CVAP special tabulations.

2020 Census

Status

The Census is happening now. You can respond online, by phone, or by mail.

- https://my2020census.gov/
- Census takers are following up. Even if you've responded, a census taker may still visit to verify your address or response. We encourage cooperation as it helps ensure an accurate count.

The enumeration of transitory and temporary locations (ETL) is underway.

- August 31 to September 28
- ETL enumerates those living in housing such as RV parks, campgrounds, marinas, and temporary housing such as hotels and motels. The operation also counts people living at racetracks, carnivals and circuses.

The enumeration of service-based locations (SBE) begins next week

- September 22 to September 24
- SBE enumerates people without conventional housing and people who may be experiencing homelessness.
  - Emergency and transitional shelters; Soup kitchens; Regularly scheduled mobile food van stops; pre-identified non-sheltered outdoor locations

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Census 2020

I want to start with the most important message that you can take away from today and share with your constituents, friends, and family. It is not too late to respond to the Census. You can still respond online, by phone, or by paper if you still have the paper questionnaire we sent earlier. In addition, if you have already responded and you get a visit from a census worker, please work with them. There are many reasons why an enumerator may revisit an address that has responded, most of which involve quality assurance work. Your cooperation with these hard working folks is important and valuable.

Secondly, I would like to point out that we have two operations that have started up in September – enumeration of transitory locations and enumeration of service based locations. I will talk about these a little more in a few slides.

Completed Operations

Remote Alaska - Began on January 21, 2020. Completed on August 28, 2020, enumerating 33,749 housing units, 681 group quarters, and 131 transitory locations. It is conducted in the outlying areas of Alaska, including approximately 220 Alaska Native villages, with the following objectives:

- Verify and update the address list and feature data for tabulation of the 2020 Census.
- Determine the type and address characteristics for each living quarter.
- Enumerate respondents at housing units (HUs), group quarters (GQs), and transitory locations (TLs) in those areas.

Update Enumerate - Began on June 14, 2020. Completed on August 31, 2020. Enumerators updated the address list and enumerated the respondents at 7,587 housing units, using paper questionnaires. The work occurred in very remote areas like the northern parts of Maine and Southeast Alaska.

Update Leave - Began on May 6, 2020. Completed on August 13, 2020. Completed 6.8M housing units. Enumerators updated the address list and left a paper questionnaire. We do this in areas where the majority of households may not receive mail at their home's physical address (like households that use PO boxes or areas recently affected by natural disasters).

Group Quarters Enumeration - Group Quarters data collection began April 2, 2020 and closed out on August 26, 2020. Over 215,000 group quarter facilities were enumerated with a completion rate of close to 100-percent. GQE types include: college/university student housing, residential treatment centers, nursing facilities/skilled-nursing facilities, group homes, military barracks, correctional facilities, and workers' dormitories.

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Census 2020

Lets talk about some of the work that has already been completed.

The Census was able to successfully complete our Remote Alaska Operation. This is almost like a mini census for those outlying areas of Alaska and covers address listing, housing unit and group quarters enumerations and transitory location enumeration.

We also completed our Update Enumerate operation where, just like we all picture, enumerators went door to door updating address lists and enumerating households in very remote areas like northern parts of Maine and Southeast Alaska. 7,587 households

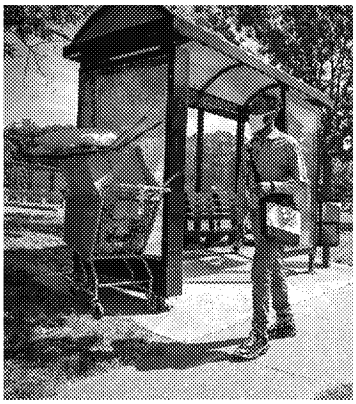
We completed our update leave operation where enumerators update our address list an drop off paper form for areas where households may not receive mail at their physical address or were affected by natural disasters. 6.8 million housing units

Finally, we have finished our group quarters enumeration. These are things like correctional facilities nursing homes military barracks. This is an important one for redistricting as this decade we have a group quarters table in the P.L. 94-171 Redistricting Data files.

Enumeration at Transitory Locations (ETL)

The goal of the ETL operation is to enumerate individuals in occupied units at transitory locations who do not have a Usual Home Elsewhere (UHE). A transitory location is a location that is comprised of living quarters where people are unlikely to live year round, due to the transitory/temporary/impermanent nature of these living quarters. Enumerators will canvass a transitory location in one visit to enumerate all occupied transitory units. Data collection for the ETL operations began on August 31, 2020 and will be completed by September 28, 2020.

Transitory locations include: Recreational Vehicle Parks, Campgrounds, Racetracks, Circuses, Carnivals, Marinas, and Hotels.



Enumeration at Transitory Locations Progress – As of September 15, 2020

Initial Workload	Cases Added	Total Workload	Completed & Closed Cases	Current Workload	Percent Completed & Closed
61,853	627	62,480	47,947	14,533	76.7%

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As I mentioned, we have a couple of operations going on this month. One that started on August 31 is the enumeration at transitory locations. This operation goes through September 28th and covers RV parks, campgrounds, racetracks, marinas, and the like where people may reside temporarily but also may not have a usual home elsewhere. As you can see by the workload listed in the table, this operation is well on its way to successfully completing its work.

2020 Census Service-Based Enumeration (SBE) Overview

Background

The SBE operation is conducted at service-based locations and targeted non-sheltered outdoor locations (TNSOLs) to enumerate people experiencing homelessness. These service locations include: emergency and transitional shelters (with sleeping facilities) for people experiencing homelessness, soup kitchens, and regularly scheduled mobile food vans.

Prior to operational adjustments made in lieu of COVID-19, SBE was scheduled to be conducted March 30 – April 1.

Consulted With Major Stakeholders

- In late May/early June we consulted with 67 national and local organizations to assist the Census Bureau in determining the best date to conduct SBE/TNSOL.
- Based on the feedback from our stakeholders, input from Census experts, and consultation with operational team leads, we have selected September 22 – 24 as the dates to conduct SBE and TNSOL.

Current Status

- Updating TNSOLs locations and making appointments with service providers.
- Current SBE workload: 49,045 (as of September 15, 2020)
  - TNSOLs: 33,604
  - Emergency and Transitional Shelters: 9,726
  - Soup Kitchens: 5,081
  - Regularly Scheduled Mobile Food Vans: 634

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Another September operation that occurs next week is the Service Based Enumeration operation. This is how Census captures people experiencing homelessness. This is done by doing a rapid canvassing of locations where services are provided, like shelters and soup kitchens, but also by enumerating locations where people experiencing homelessness are likely to congregate. These dates were selected in consultation with our partner organizations as the best for them to be able to support the operation and where the population profile is similar to that expected in an April timeframe.

Nonresponse Followup Field Operations – Current Status

Workload (as of September 15, 2020):

National Workload: 62,962,757 Cases

Completed Workload: 51,645,019 Cases

- 82.0% Percent Complete
- 77.8% Percent Goal

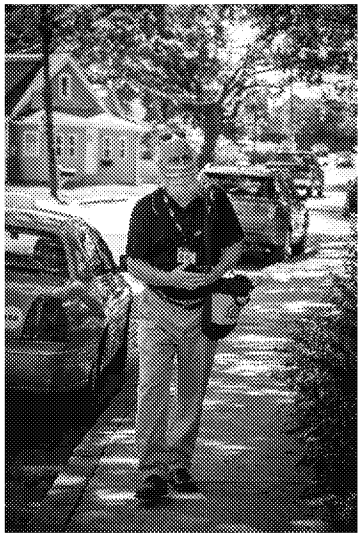
Productivity:

Average Hours worked per Week: 19.3*

Average Cases Completed per Hour: 2.13

Planned Cases Completed per Hour: 1.55

*September 3, 2020 – September 9, 2020



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The main operation at this time that has most of the public's attention is our Non-Response Followup operation or NRFU. NRFU is going well. As of Tuesday the 15th we were 82% complete which exceeds our goal for that date of 77.8%. Enumerators are working hard averaging 19.3% hours per week from the week of September 3rd to 9th.

2020 Census

Status – Tools for monitoring Census progress

Total Response Rates by State

- The Top Five States
- https://2020census.gov/en/response-rates.html

Top Five States (Total Enumerated as of 9/12/2020)		
1	Idaho	99.2%
2	West Virginia	99.0%
3	Hawaii	97.8%
4	Washington	97.3%
5	Maine	96.8%

2020 Census Housing Unit Enumeration progress by State

- https://2020census.gov/en/response-rates/nrfu.html

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2020 Census Housing Unit Enumeration Progress by State

Sort by: State

Report Date: 9/13/2020
As of 9/12/2020, percentage of housing units:

State	Self-Responded	Enumerated in Nonresponse Followup (NRFU)	Enumerated
U.S. Total	65.8	25.5	91.3
Alabama	62.4	26.6	89.0
Alaska	63.5	46.1	99.6
Arizona	62.5	27.4	89.9
Arkansas	66.0	34.8	94.8
California	68.2	25.8	94.0
Colorado	66.0	22.3	91.3
Connecticut	69.7	26.4	96.2
Delaware	63.6	26.0	89.6
District of Columbia	62.3	27.1	89.4
Florida	62.5	24.2	86.7
Georgia	61.2	22.8	83.9
Hawaii	62.3	35.5	97.8
Idaho	68.8	30.3	99.2
Illinois	70.3	24.1	94.4
Indiana	69.6	27.0	96.6
Iowa	70.5	16.3	86.7
Kansas	69.1	27.7	96.8
Kentucky	67.6	21.5	89.0
Louisiana	66.0	25.1	94.1
Maine	67.6	29.2	96.8
Maryland	70.0	23.3	93.3
Massachusetts	69.2	20.0	90.9
Michigan	70.0	20.9	91.0
Minnesota	74.4	20.9	95.3
Mississippi	69.4	24.4	93.8
Missouri	65.1	29.0	94.4
Montana	69.1	24.0	93.0
Nebraska	71.1	21.0	92.0
Nevada	65.4	25.3	90.7
New Hampshire	66.1	27.2	93.3
New Jersey	69.1	25.3	94.4
New Mexico	66.8	33.6	85.4
New York	62.4	26.6	91.0
North Carolina	61.6	24.8	86.3
North Dakota	64.5	27.7	92.2
Ohio	65.8	23.7	93.5
Oklahoma	66.0	26.7	86.7
Oregon	68.4	27.8	96.2
Pennsylvania	68.5	24.8	93.3

Note: Percentages may not sum due to rounding. * limited number of areas were part of the NRFU "soft launch" beginning July 16, 2020, and could have higher cooperation rates due to more time in the field. Percentages for the U.S. Total do not include housing units in Puerto Rico.

Source: U.S. Census Bureau.

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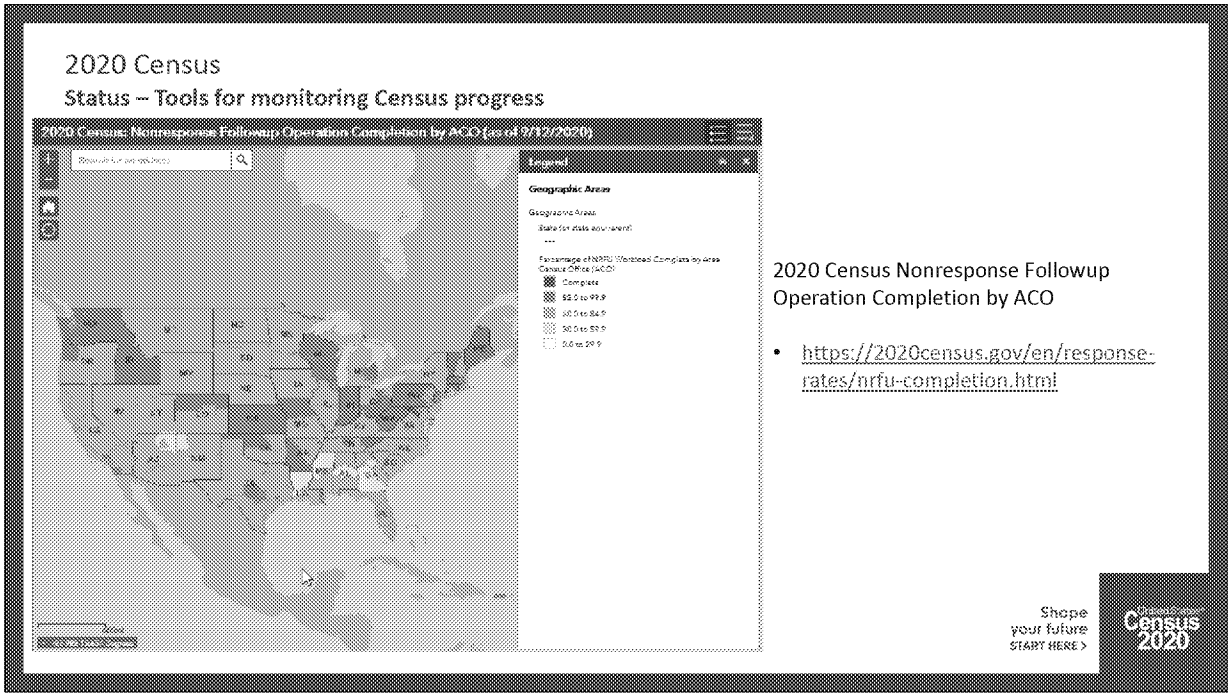
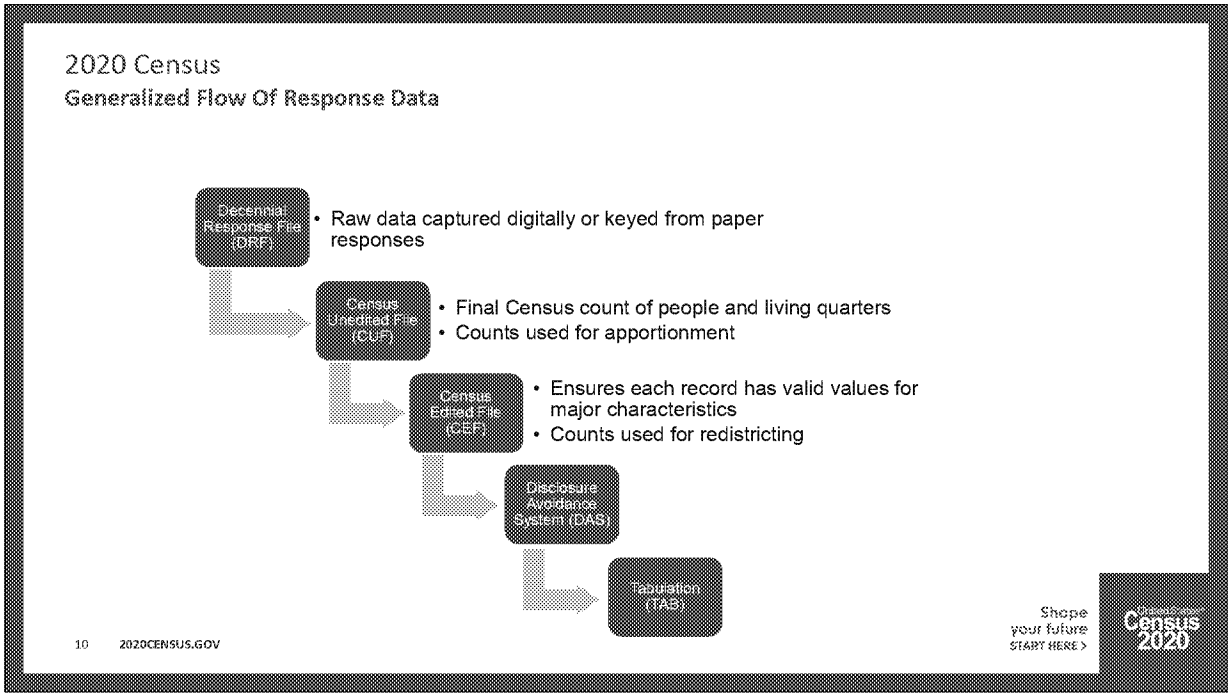
The Census Bureau has put together some tools to help the public track the progress of the NRFU operation.
Our response rate by state page has the self response, the enumerated in NRFU response, and the total enumeration rate for each state, the District of Columbia, and Puerto Rico. The tables on my slide are from the 12th but as of today we have two states that have crossed the 99% mark, Idaho and West Virginia, which is the census stated quality goal for each state. In addition Hawaii is 0.1% away from also hitting this mark.



For those of you who are not aware, the field enumerations are run through our area Census offices (ACOs). We are also providing a map that allows you to look at the NRFU progress by ACO.



So now I am going to switch gears a little to talk about what happens once we have the data in house. The Census responses go through a series of transformations before they get returned as data to the public. This is an overly simplified description of that typical flow.

2020 Census
Imputation and Editing

- Count Imputation
  - The process used to estimate missing or misreported data.
  - Conducted during the construction of the Census Unedited File
  - Uses other data to replace missing count information from housing units identified as occupied

- Characteristic Imputation and Editing
  - Conducted during the construction of the Census Edited File
  - The process used to ensure valid responses to a subset of required fields
  - Characteristic imputation and Editing begins post-data collection after the household population is established and does not add people to the Census.
  - Edits are used to ensure certain consistencies among characteristics.
  - Characteristic imputation is used to ensure that each person and housing unit on the final census file has valid values in the person and housing items.
  - Administrative records are used to improve data quality in characteristic imputation.

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Census 2020

When transforming responses into the subsequent formats is when we encounter the activities/concepts of imputation and editing. These show up as essentially two types of actions. We have count imputation and we have characteristic editing and imputation.

Count Imputation is used to replace missing count information from housing units that have been identified and verified as occupied. Count Imputation is conducted during the construction of the Census Unedited File or the CUF. The completed CUF provides us with the first official counts from the decennial Census, the total population counts. These are the counts that are used for apportionment.

Once the CUF is complete, the next stage is to construct the Census Edited File or the CEF. As part of creating the CEF, edits and characteristic imputation are used to ensure that every record has a valid response for the person and housing responses in the Census.
Its important to understand the purpose of edits and characteristic imputation. The purpose is to ensure that every respondent has a valid response. Edits and characteristic imputation do Not add people to the Census. As I mentioned earlier, the total population counts for the Census are finalized with the CUF. The edits ensure consistency among characteristics such as a person being identified as a parent not being younger than a young child. The characteristic imputation ensures that each person and housing item has a valid response such as an occupied housing unit without a tenure status indicated, is it rented or owned. Administrative records will be used to improve the quality of the characteristic imputation.

2020 Census
Imputation and Editing

Types of Characteristic Imputation:

- Assignment: Assignment occurs when responses are either missing or inconsistent with other responses AND missing item values can be determined based on other information provided for that same person or household.
- Allocation: Allocation occurs when responses are either missing or inconsistent with other responses AND the missing item value can not be determined based on information provided for that same person. A response from another person within the housing unit or from a person in a nearby housing unit is used.
  - Substitution: Substitution is a special type of allocation when all of the person characteristics - relationship, sex, age, date of birth, race and ethnicity - for every person record in a housing unit are missing and must be imputed.

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There are different types of characteristic imputation:

Assignment is when responses are missing or inconsistent with others data supplied for that person or household can be used for that missing or inconsistent response. The simplest of these is when either birthdate or age is missing. The one you do have can be used to calculate that information.

Allocation is when you have the same situation but you can not make a determination for the missing or inconsistent response based on the already supplied person or household data. In these cases a response from another person within the housing unit or a nearby housing unit may be used.

Substitution is a special type of allocation. It is used when we know we have person records but all of the person characteristics for all of the person records in that housing unit must be imputed.

2020 Census
Imputation and Editing

Overview – 2010 Census Imputation Rates

Overall Imputation Rates

	Person-Level Items					Household -Level Item
	Relationship	Sex	Age/Date of Birth	Hispanic Origin	Race	Tenure
Imputed	2.1	1.6	5.1	4.5	4.1	3.5
Assigned	0.5	1.3	1.5	1.7	1.2	n/a
Allocated	1.7	0.3	3.6	2.8	2.9	3.5
Substituted	1.9 percent of all persons					

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Now that we know the 3 types of characteristic imputation, we can break out the 2010 rates by type and by the characteristic which you can see remain fairly small.

2020 Census

Imputation and Editing

2010 Census Age and Date of Birth Imputation Method

Age Only Reported

If age was reported but not date of birth, we keep the age value and assign a date of birth using a random number of possible dates for that age.

Date of Birth Only Reported

If date of birth was reported but not age, we calculate age based on the reported date of birth.

Inconsistent Age and DOB, 2+ Years

If both age and date of birth are reported, but the age calculated from the reported date of birth is inconsistent with reported age by two or more years, edits will determine which of the two is more consistent (using relationship, for example). The less consistent reported value will be edited.

Age Adjusted for Household Consistency

It may be necessary to adjust the age for householder/spouse to account for the number of children in the household.

Allocated from Hot Deck

In 2010, allocation came from 11 matrices. All spouses (including parents and parents-in-law) were considered opposite sex relationships. In all but the last two matrices, an age difference is allocated rather than an exact age.

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To help conceptualize these edits and characteristic imputation, I have a few examples around age and date of birth. The first scenario I mentioned earlier, one is provided and the other is missing – if age was reported but not the date of birth, we generate a random birthdate for that reported age. If it's the date of birth that was reported we calculate the age.

If both the age and date of birth are reported but they are inconsistent by 2 or more years, then we use edits to determine which is more consistent with other reported data and edit the other.

We may need to edit an age for consistency like the child/parent relationship from the previous slide.

Finally – if necessary an allocation from a hot deck can be used. A hot deck assigns a missing value from a record with similar characteristics. The characteristics in the hot deck vary depending on the nature of the unanswered questions.

Once all of this review and editing and imputation are completed, and remember, the majority of records need none of this work- this is a small percentage of the overall Census returns, then we have the completed CEF. This is the full census records with characteristics. We can now move to the next stage of the processing, the Disclosure avoidance system.

2020 Census
Disclosure Avoidance

- All 2020 Census data products released after apportionment will have formal privacy protections applied through the use of differential privacy.
  - For the P.L. 94-171 Redistricting Data this will be through the use of the Top Down Algorithm (TDA)
    - The TDA is being streamlined to focus solely on the P.L. 94-171 Redistricting Data and the characteristics reported in that file. (Race, Age of 18+, Ethnicity, etc.)
  - The Census Bureau, using the 2010 Census as the data source, has been releasing interim output from the TDA as demonstration products
  - https://www.census.gov/programs-surveys/decennial-census/2020-census/planning-management/2020-census-data-products/2020-das-metrics.html

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To answer the question we get most often right off the bat, Yes the P.L. 94-171 Redistricting Data will have disclosure avoidance techniques applied, as has been done for the last several decades. The important difference is that this decade we are moving to something called formal privacy which injects noise into the data to protect respondents while still maintaining the data as fit for use by our data users. There is a lot of information about this on our website and I know the NCSL Redistricting listserv has sent message pointing that out and I believe maintains its own page about the subject. What I am going to point out today is the materials we are producing as our technique is refined for the public to use and evaluate. We have been producing demonstration data products created using the 2010 Census data as its source. This data has been made available publicly periodically so data users can apply their use cases to this data to se how the outcomes would have been affected by this new technique.

2020 Census
Disclosure Avoidance

- October 29, 2019 – 2010 Demonstration Data Product Baseline
  - Test running system at scale and progress to date
- July 14, 2020 – Release interim output showing improvements (metrics released earlier on 5/27/2020)
  - Released as Privacy Protected Microdata File (PPMF)
  - Tables created by IPUMS/NHGIS
    - https://www.nhgis.org/privacy-protected-demonstration-data#v20200527
  - Series of metrics added for review and comparison
- September 17, 2020 – Release interim output showing improvements
  - Released as Privacy Protected Microdata File (PPMF)
  - Tables expected to be created by IPUMS/NHGIS
  - Tailored specifically and only to the P.L. 94-171 Redistricting Data characteristics
  - Revised series of metrics coming soon for review and comparison
- TBD – a final PPMF is expected prior to publishing the official data

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We released the initial run as a full demonstration data product back in October of last year. This was to show that we could run this at scale and to demonstrate our progress to date.
We followed this with what we call a PPMF which looks like individual census records but is actually privacy protected records that have been processed through our protection system. Since it is difficult to work with a 300 million + record file, the folks at IPUMS/NHGIS converted this PPMF into tables that data users would recognize and would be easier for them to work with.
We have a newer version coming any day now that will show not only the progress to date but also the change to focus solely on the P.L. 94-171 Redistricting Data file for this version.
We do expect to produce at least one more PPMF prior to the Data Stewardship Executive Policy Committee making its final decision on where to set the Epsilon value which controls the trade off between accuracy and privacy.

Redistricting Data Program

Phase 3 – P.L. 94-171 Redistricting Data Geographic Products

2020 Census P.L. 94-171 Redistricting Data Geographic Products	
Product Type	Census Web Address
Shapefiles	https://www.census.gov/geographies/mapping-files/time-series/geo/tiger-line-file.html
Maps	https://www.census.gov/geographies/reference-maps.html
Block Assignment Files	https://www.census.gov/geographies/reference-files.html
Block to Block Relationship Files	https://www.census.gov/geographies/reference-files/time-series/geo/relationship-files.html

- Shapefiles – geographic information system geometry files
- Maps (PDF only) – County Block; State Legislative with Voting District; Tract; School District
- Block Assignment Files – tables identifying the blocks used to build different geographic entities
- Block to Block Relationship Files – Crosswalk of 2010 blocks to 2020 blocks

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Census 2020

Now that we have discussed collection, processing, and disclosure avoidance, I would like to briefly remind folks about the data products. We are still planning to produce the suite of products we identified in the 2018 End-to-End Test prototype products. This includes <see list> . The timing of this delivery is still somewhat in flux due to current events but we are very hopeful that we can get these geographic materials to the states by late February/Early March of 2021.

Redistricting Data Program

Phase 3 – P.L. 94-171 Redistricting Data Tabulation Product

2020 Census P.L. 94-171 Redistricting Data Tabulations
Table P1 – Race
Table P2 – Race for the Population 18 Years and Over
Table P3 – Hispanic or Latino, and not Hispanic or Latino by Race
Table P4 – Hispanic or Latino, and not Hispanic or Latino by Race for the Population 18 and Over
Table H1 – Occupancy Status (Housing)
New Table
Table P5 – Group Quarters Population by Group Quarters Type

- All tables produced at multiple geographies including census block
- Group Quarter types: Correctional Institutions for Adults, Juvenile Facilities, Nursing Facilities/Skilled Nursing, Other Institutional, College/University Student Housing, Military quarters, and other non-institutional
- Group quarters is total population only, no demographic breakdown

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Census 2020

Redistricting Data Program

Phase 3 – P.L. 94-171 Redistricting Data Products Delivery Timing

Phase 3 – Prototype Data

Activity	Date
Prototype geographic support products	February 2019 (Complete)
Prototype P.L. 94-171 Redistricting Data	March 2019 (Complete)

Phase 3 – Official Data

Activity	Original Planned Dates	New Planned Date
Geographic support products	Nov. 20, 2020 – Feb. 1, 2021	No later than April 1, 2021*
P.L. 94-171 Redistricting Data	Feb. 18, 2021 – March 31, 2021	No later than April 1, 2021*

* Statutory deadline, planned date still TBD

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Census 2020

Redistricting Data Program

Citizen Voting Age Population by Race and Ethnicity (CVAP)

- Annual Tabulation using the American Community Survey 5-year estimates for 2011 through 2020 publications
  - Typically released in the 1st week of February each year
- 2020 Census CVAP Special Tabulation
  - Calculated using administrative records and released by the P.L. 94-171 deadline

Content
Total:
Hispanic or Latino
Not Hispanic or Latino:
White alone
Black or African American alone
American Indian and Alaska Native alone
Asian alone
Native Hawaiian and Other Pacific Islander alone
Some Other Race alone*
Black or African American and White
American Indian and Alaska Native and White
Asian and White
American Indian and Alaska Native and Black or African American
Remainder of Two or More Race Responses

Geography
Nation
State
Congressional District
State Legislative District, Upper Chamber
State Legislative District, Lower Chamber
County
Minor Civil Division (for CT, MA, ME, MI, MN, NH, NJ, NY, PA, RI, VT, and WI)
Tract
Block Group
Block*

***only for the 2020 Census Special Tabulation**

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Redistricting Data Program

Citizen Voting Age Population by Race and Ethnicity (CVAP)

- Internal Expert Panel is developing the methodology and is expected to publish their final methodology report by October 31, 2020
- The current status of this project is being presented at the Census Scientific Advisory Committee (CSAC) meeting today, 9/18/2020, at 1:25pm. This meeting is being recorded and will be made available here:
  - CSAC main page: https://www.census.gov/about/cac/sac.html
  - CSAC specific meetings page: https://www.census.gov/about/cac/sac/meetings.html
- There are essentially four different techniques being considered
  - 3 techniques rely on a combination of business rules and modeling
  - 1 technique relies on a latent class model for the full population

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Census 2020

Thank You

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Web: www.census.gov/rdo

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Census 2020

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House Oversight and Reform Committee Holds Hearing on Census Count

plus.cq.com/doc/congressionaltranscripts-5969528

Jul. 29, 2020 Revised Final

House Oversight and Reform Committee Holds Hearing on Census Count

LIST OF PANEL MEMBERS AND WITNESSES

MALONEY:
The committee will come to order. Without objection the chair is authorized to declare recess of the committee at any time. I now recognize myself for an opening statement.

Thank you all for being here today. Our Constitution requires that every 10 years we count every person living in the United States of America. We use the discount to allocate more than $1 trillion in federal resources, to draw legislative maps, and to assign electoral college votes to states. It is no exaggeration to say that the census is a cornerstone of our democracy.

Last week, the president issued a memorandum directing the secretary of Commerce to provide him with and inform--with all of the information necessary to exclude undocumented immigrants from the census count for were apportionment purposes. Let me be clear, the president's direction is unconstitutional, it is illegal, and it disregards the precedent set by every other president beginning with President George Washington.

The Constitution requires the census to count quote the whole number of persons in each state end quote. Federal law requires the secretary of Commerce to report quote the total population end quote of each state to the president and it requires the president to transmit this information to Congress.

In the 230-year history of the Census, no president has ever tried to manipulate they census count in this way. In fact, just two years of the Census Bureau reaffirmed its commitment to do the exact opposite of what the president is now trying to do. The Bureau committed to counting every person regardless of partisanship or status under the rules of Congress set in the Census Act of 1790. The president's decision to release this illegal memo now appears designed to inflict maximum damage to the accuracy of the ongoing 2020 census.

In just two weeks, the Census Bureau will start visiting the homes of millions of people who have not yet responded to the census. The President's latest attack on immigrants could sow fear and confusion in communities across the country could lead many people do decide not to participate. This will hurt communities that are already undercounted, underrepresented, and underfunded.

Addressing the chaos caused by the president's memo will drain valuable resources from the Census Bureau which is already struggling to administer the 2020 census in the middle of an unprecedented pandemic, and it will further divide our country at a time when we need unity. Of course, this is not the first time that President Trump has attempted to politicize the census. For more than two years, he tried to add a citizenship question even though the Census Bureau's own studies showed it would depress response rates in many communities.

When this committee investigated Secretary Ross and other administration officials denied they were trying to exclude immigrants from congressional apportionment and instead claimed falsely that the Department of Justice needed citizenship data to enforce the Voting Rights Act.

The Supreme Court saw through their explanation calling it quote contrived end quote and blocking the addition of the citizenship question. And when Secretary Ross and Attorney General Barr refused to turn over documents about the real reason for the citizenship question, the House held them both in contempt.

Now the president is trying again to weaponize the census to hurt immigrants and help Republicans. As a nation we depend on the census to be nonpartisan, fair, and accurate. As I told Director Dillingham the last time he appeared before us, our Constitution requires it, our communities rely on it, and our democracy depends on it. We are here today at this emergency hearing because the Trump administration is threatening this cornerstone of our democracy.

We will hear from four former Census Bureau directors who oversaw the census during the both Republican and Democratic administrations. They will share their views on the president's unprecedented attempt to manipulate the census count and why it is important to count every person in the United States. Then we will hear directly from the current Census Bureau Director Dr. Dillingham. I expect Dr. Dillingham to give us an honest assessment of how the president's memo could impact the accuracy of the census and what the Bureau is doing to address this risk.

I thank all of our witnesses for participating today, and I look forward to your testimony. I now recognize the distinguished Ranking Member, Mr. Comer, for an opening statement.

COMER:
Chairman Maloney, I appreciate you calling this hearing today on the 2020 Census. Let me begin by saying unequivocally, the 2020 Census is counting every resident in the United States regardless of citizenship status. Any assertions to the contrary are scare tactics which have a consequence of reducing participation in the census.

The census is underway now. I want to encourage every American to complete their census form. Starting in August, census enumerators will be fanning out across the country to count not responding households. I encourage everyone to engage with the enumerator if they come to your door, but if you're concerned about an enumerator coming to your door, you can complete your 2020 census online now at mycensus2020 or my2020census.gov.

I truly wish the hearing today or oversight hearing of the 2020 census because COVID-19 has created a lot of operational challenges for the census. Unfortunately, this committee has conducted no oversight of these impacts. Once again, Democrats are focusing their efforts on political issues, not the basic good government oversight this committee is charged with conducting.

Last week, President Trump took a very important step to ensuring the sanctity of our nation's elections and equal representation under the Constitution. The president directed the secretary of Commerce to report an apportionment count for the House of Representatives, which excludes nonlegal residence in the United States including illegal immigrants.

All Americans should care about who is being included in the apportionment count; including illegal immigrants in the count for representation in Congress only dilutes the representation of all Americans who vote in elections and makes a mockery of our basic principle of one person one vote.

The president's action restores the concept of representational government envisioned by the Constitution. In a country so closely divided as the United States, illegal immigrants and noncitizens have a material effect on representation. Representation should matter to everyone; it's a simple question of fairness. Predictably the Democrats liberal interest groups have already filed lawsuits against the president. Like the sound and fury surrounding the citizenship question the legal questions about the president's action are likely to wind up at the Supreme Court.

This hearing today is the Democrats first shot across the bow of Chief Justice Roberts and the other Supreme Court justices. The intimidation of the Supreme Court begins today. I urge us all to focus on the task at hand, the completion of the 2020 census count now underway. With that, I yield back.

MALONEY:
Thank you. Now I would like to introduce our witnesses. Our first panel is composed of former Census Bureau directors. We are grateful to have their expertise. Our first witness today is Mr. Vincent Barabba who served as the census director from 1973 to 1976 and again from '79 to 1981.

Then, we will hear from Kenneth Prewitt who served as the census a director from 1998 to 2001. Next, we will hear and go to Robert M. Groves who served as the census director from 2009 to 2012. And finally, we will go to John H. Thompson who served as the census and director from 2013 to 2017.

The witnesses will be muted so we can swear them in--un-muted so we can swear them in. Witnesses, please raise your right hand. Do you swear or affirm that the testimony you are about to give us the truth, the whole truth, and nothing but the truth, so help you God?

UNKNOWN:
I do

UNKNOWN:
I do

MALONEY:
Let the record show that the witnesses answered in the affirmative. Thank you. Without objection, your written statements will be made part of the record. With that, Mr. Robin--Barabba, you are now recognized for your testimony.

BARABBA:
Thank you. (INAUDIBLE) formulated in 1928 stated that it if men defined situations as real, they are real in our consequences. In essence, (INAUDIBLE) serves as the potential that when incorrect situations are perceived by people as real, they are real in their consequences.

The real problem with the President's current action is that by reproducing his illegal desire of only counting citizens, this is that many approaches he's taken to ensure that he achieves his real objective. That is to make sure less people will be counted in states with large minority populations, which does not support President Trump or the positions he has taken. If this occurs, this those areas will have their representation in Congress and other legislative districts reduced as well and it will receive fewer government approved allocations based on the census count.

However, the incorrect perception of possible direct harm by filling out the form by non-citizens is not correct because it is against the law. Any census bureau employee (INAUDIBLE) to disclose or publish any census or survey information that identifies an individual or business. This is true even for interagency communications.

The FBI and other government entities do not have the legal right to access this information violating the confidentiality of a respondent is a federal crime with serious penalties, including a federal prison sentence of up to five years with a fine of up to $250,000 or both. In fact, when these protections have been challenged, title 13's confidentiality guarantee has been upheld in the courts.

I will now provide an example of how the Census Bureau and other agencies work together to follow title 13. It on August 13, 1980, late in--late that afternoon, four FBI agents arrived at the district office in Colorado Springs armed with a search warrant authorizing them to seize the census documents and include--including completed questionnaires in the course of their investigation of a case involving alleged questionnaire classification and payroll fraud.

I was immediately informed of the situation and contacted the director of the FBI. After a brief flurry of telephone calls to employees in Colorado, we agreed to a mutually satisfactory conclusion that could be reached while the disputed questionnaire remained in the custody of the Census Bureau. Ultimately, the documents were placed in a secure room protected by two locks with one key held by the FBI and the other by a local census official.

Under this arrangement, only sworn census employees were allowed to enter the room but an FBI agent had to be present when the door was opened. While the door was unlocked, an agent was stationed outside the room to monitor the activities of the census personnel. The Census Bureau brought in and experienced census bureau enumerators from outside the Denver area to re-interview the respondents in area for the where the alleged fraud had taken place. They prepare the original questionnaires with those from the re-canvas.

Census Bureau officials prepared a report that described all significant discrepancies uncovered but did not leave reveal any confidential information. Mrs. Chairwoman (INAUDIBLE) I served as Census Bureau director through employment by presidents of both political parties. In 1980, I had the honor of providing secretary of Commerce with the Census Bureau statement showing the population of the states and a number of representatives to which each state is entitled, which he then forward to the president.

I was also proud of the fact that our outreach program to low income and minority populations led to an estimated count of nearly 97 percent of our population. The 1980 census was also a clear demonstration with a nonpartisan manner by which a census should be conducted. The 1980 census was designed and planned during a Republican presidency and successfully implement as designed and planned during the Democratic presidency.

It will be up to Congress and the press to make sure that this information (INAUDIBLE) by the president be addressed forcefully and that is true motivation (INAUDIBLE) that census belongs to the people, not the president. The entire population of persons in the United States should participate willingly in the 2020 census (INAUDIBLE) moment to reaffirm our founders' intent that everyone be counted. Thank you.

MALONEY:
Thank you so much for your testimony and your service. We will now hear from Dr. John Eastman, Professor Henry Salvatori Professor of Law and Community Service Director Center for Constitutional Jurisprudence Dale E Fowler School of Law and Senior fellow Claremont Institute. Dr. Eastman

EASTMAN:
(INAUDIBLE)

MALONEY:
Should we go to another one?

UNKNOWN:
Yeah.

MALONEY:
We seem to have some technical problems. We're going to go to the next speaker after Dr. Eastman and come back to him because there seems to be a problem with connecting with him. Thank you. We will now turn to Dr. Prewitt. Mr. Prewitt, you are now recognized.

PREWITT:
Thank you very much, Madam Chairwoman. We know that this--this discussion will include concern about the--in putting the noncitizen, and or the illegals into the apportionment count. I just have to say three things about that.

First, we've never done it. The census has never done it. Second, they can't do it by asking questions. You're not going to knock on the door and say are you are you not. And third, the administrative records are inadequate to do it. So even if it was a good idea, we don't know--we don't yet know that we can do it, that the Census Bureau can do it.

And with that as my starting point, I want to go on and say some things about the larger census as a--as that ranking member invited us to do. We--we all know that we were about 62 percent with respect to nonresponse with respect to self-reporting, but that leaves, you know, more than a third of the population uncounted.

And I have to really stress this point. Nonresponsive follow-up, hard to count, very difficult since his territory as we all know. And we are not in control. The we is the Census Bureau, the we is the Congress, the we is the White House. COVID is in control of whether we will be

able to that as a Census Bureau, will be able to do this account successfully before the end of the year, which they are now on that--on that schedule.

And we know about 15 percent of the American population has already told us in polls that they do not intend to cooperate with the census. And so I'd like to make two, three quick points. How do I define a successful census? The bureau will know as no other unit of government can if the numbers will accurately reapportioned and fairly distribute federal funds for a decade.

It knows that the census account is the denominator of every vital statistics we rely on whether the number--whether it's the number of consumer products, whether it's differential rate of infection across the population subgroups on the pandemic, and so forth. Every number that we use for 10 years is anchored to the quality of the census.

Secondly, the bureau knows that these statistical facts can easily damage and the flawed numbers that will be produced will--will--that we'll inflict on society will create serious damage to the society. And it's not--it's not pretty; 10 years of homeless veterans because we mis-locate their--mis-locate their--sorry--mis-locate their hospitals, 10 years of tropical storm disaster relief that is too little too late because traffic congestion is underestimated.

Ten years of poor planning by local school districts because they have flawed estimates of how many one--first graders are going to show up, 10 years of missed Chamber of Commerce--misled Chamber of Commerce because predictions of population growth and characteristics are off base. We know that will be the consequences of a--of a census that does not count as best it can. Quite in--quite separate from who's in the apportionment count, we have to start with a good census.

The third thing I would say about this is the bureau will not want to inflict the damage that flawed numbers will produce. The Census Bureau is too honorable, too scientific, too proud of its professional standards, too faithful to its constitutional duties. The bureau will struggle with the enormous burden of whether to release substandard results. I urge the Congress to share the burden.

I would ask Congress to please appoint, using the National Academy of Sciences or some other apolitical trusted institution of its choosing, to produce predetermined quality metrics that can assess of the final 2020 numbers reasonably match what the bureau knows that they should be. And the bureau has very good estimates from ACS, from demographic analysis, very good estimates of how many people across the state all the way down to the census tract levels.

And so, if we can have this special group of experts to sort of create the metrics by which we will judge if we have an adequate census to do what it's supposed to do and, if not, what steps should the country take.

MALONEY:
Thank you. We're going to return to Dr. Eastman if we have solved the difficulties of reaching him. Dr. Eastman?

EASTMAN:
Let's try--let's try this again. Can you hear me now?

MALONEY:
Yes, we can.

EASTMAN:
Very good. Thank you. Chairman Maloney, Ranking Member Comer, and other members of the committee, thank you for inviting me to participate in this important hearing.

I actually think President Trump's directive is not only good policy, but perfectly constitutional. And I want to address real quickly something Mr. Prewitt said. I think there's a confusion here between the two purposes that we use the census for. One is for apportionment set out by Article 1, Section 2 of the Constitution. The other, exercising Congress' spending power or its commerce power, is to do a whole myriad of other things like allocate federal resources, determine where we're going to need schools and VA hospitals and what have you.

Presidents Trump's order addresses the apportionment part of that. It doesn't have anything to do with the broader purpose of the total count on the census. And I think the political theory underlying the reason we have an apportionment clause is extremely important, so let me begin with that.

We--we--we get our political theory from the Declaration of Independence. It sets out universal principles, all men are created equal, that we are endowed by our Creator with certain unalienable rights, but we apply those universal principles in a particular context. The Declaration starts off by talking about one people separating themselves from another. The theory of representative government is that it is based on the consent of the people to be governed, not on the consent of people elsewhere, but on the consent of the particular people that are setting up a government.

Now, those--those principles, the consent of the governed, the representative government theory, find their selves into the text of the Constitution. Right from the very beginning, it's as we the people of the United States. It doesn't say we the people of the world or we the

people of any foreign nationals who happen to be present when we take a census. It's we the people of the United States. That language is mimicked then in the apportionment clause.

Article 1, Section 2, Clause 1 says representatives are chosen by the people, that same people referring back to the people of the United States, now the people in there several states. And then in Clause 3, it says the people again, and they are chose--choose their representatives based on the total number of persons. That refers back to their representatives. That refers back to the people in the several states.

And proof of this is the clause excluding Indians not taxed. That was a clause. It was designed to recognize and to exempt from the census count those people who work in the states but not part of our body politic, who were not citizens. As the Supreme Court held in--in Elk versus Wick--Wilkins, Indians not taxed are excluded from the census for--because for the reason that they are not citizens.

In other words, the whole political theory of the Declaration codified into the Constitution is that we are counting people for purposes of apportionment in order to reflect accurately representative strength and divide equally and fairly the representation among the several states based on their numbers of people who are citizens, who are part of the body politic.

I'll give you an example. If the census in--if the 1984 Olympics was held in 1980 and it happened to coincide with Census Day, we wouldn't have added two or three congressional seats to California because there were a couple million people visiting Los Angeles for the Olympics. And this has always been our history. Diplomats, visitors are never been counted because they're not part of the body politic. They don't adhere to the necessity of--of--of representate--the theory of representative government.

The Supreme Court has upheld this as well. It's a recognized in Reynolds versus Sims, for example, which was the equal protection, one person, one vote case, that it's the equal number of citizens. They refer repeatedly this--the language of citizens rather than total population. Now, for most of our history, there wasn't much difference. The--the disparity between citizens and noncitizens was roughly similar one district to another, so we didn't have to get into this question.

But we now live in a circumstance where there are vast differences state-by-state between the number of citizens compared to the total population. And to continue to count total population for apportionment purposes is to give an un--an undue weight to people--to states that have large numbers of noncitizens living within their borders. That's not consistent with the--with the principles of representative government. It's unfair to those states that--they continue to have only citizens. And it's particularly unfair when the number of noncitizens includes large numbers of people who are not here legally at all. It creates a perverse incentive to encourage illegal immigration to undermine the weight of the votes of citizens elsewhere in the country.

Thank you, Madam Chairman. I look forward to your questions.

MALONEY:
Thank you. I--I--I now is--next is Mr. Groves. And I understand that--that you have a hard stop at 11:00. You will be excused with our thanks and you may have questions for the record. Mr. Groves, you are now recognized.

GROVES:
Thank you, Chairwoman Maloney and--and Ranking Member Comer. Since 1790, each U.S. decennial census has sought to enumerate all residents in the country. Some of the first words in the U.S. Constitution seem to illuminate the intent of the founding fathers on the score.

Before the decennial mandate is laid out in Article 1, Section 2, the prior section, Section 1, notes the qualifications of membership in the House of Representatives by "No person shall be a representative who shall not have attained it to the age of 25 years and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state in which he shall be chosen." So, I note the explicit designation of the word citizenship for qualifications of members of the House.

In the very next section, Section 2, outlining the decennial census, the word citizen is not used either in referring to the senses or to the apportionment of the House of Representatives. Instead, the phrase whole persons is used. This goal, a complete enumeration of all persons, residents, and the country, has been the basis of all Census sense that conducted by Thomas Jefferson in 1790.

It has been the basis of reapportionment decade after decade; indeed, a decennial census is the only event we have in this country in which all persons participate. I am not a lawyer and thus will not comment on the legal basis of the recent memorandum. I will instead comments on the critical needs of the Census Bureau going forward with an eye towards quality assurance and transparency. I have four points.

One, the Census Bureau technical staff must be free to complete the 2020 census at the maximum level of quality possible within the unprecedented constraints of the pandemic. As you know, the technical staff at the Census Bureau has requested in the delivery of various products. This request flows from the delay in the conduct of various stages of data collection. This delay, no doubt, has saved lives of enumerators whose public service will make these efforts successful. I applaud the technical staff of the Census Bureau, making this decision. The decision, however, forces a delay of the delivery of 2020 products. I support this delay and urge Congress to authorize it.

Number two, all of us need to convey the message again very clearly that the 2020 census must enumerate all persons resident in the U.S. regardless of the outcome of the administration's memorandum. The decennial census has the goal of enumerating all persons in the United States. We must double down on this message in the coming days.

Number three, the Census Bureau should release all quality indicators of the measurement of citizens required on the July 11, 2019, executive order. Rarely in the conduct of censuses throughout the world is the responsible agency asked to produce official estimates critical to the society without prior testing.

The attempt to assemble from administrative record systems and other sources counts of citizens in small geographical areas is unprecedented in the history of the Bureau. With unprecedented efforts comes the obligation to inform the country of the strengths and weaknesses of the product. I urge Congress to assurance that the valuations of the accuracy of such statistics be presented along with the estimates themselves.

Number four, the credibility of the 2020 census can be achieved only by wide dissemination of quality indicators (INAUDIBLE). I urge the Census Bureau given the unique nature of this data collection to publish intermediate indicators of quality of the 2020 census. These would include process indicators, comparisons with population estimates from demographic analysis and comparable tabular form, and initial field data from the post enumeration survey, for example, match rates of households. Credibility requires transparency. The sooner the country can see multiple indicators of the 2020 census quality, the sooner the use case for the census can be made.

In conclusion, I am pleased to submit this written testimony and look forward to testifying before the committee.

MALONEY:
Thank you. We will now conclude this panel with Mr. Thompson. Mr. Thompson, you are now recognized.

THOMPSON:
Good morning, Chairwoman Maloney, Ranking Member Comer, and members of the committee. Thank you for this opportunity to testify before your committee regarding the July 21, 2020 memorandum for the Secretary of commerce on excluding illegal aliens from the apportionment base following the 2020 census.

I am extremely concerned that this action will adversely affect the quality and accuracy of the 2020 census. The remainder of my testimony will focus on five areas that I believe are critical for your committee and the leadership at the Department of Commerce and the Census

Bureau to consider.

First, effects of the directive on the 2020 census response for the hard to count populations. I believe that the memorandum has a high potential to reduce the likelihood of census participation in hard to count populations, including non-citizens and immigrants. A significant component of the Census Bureau plan to get a complete count of these populations is getting out a message that the 2020 census is important to local communities and that respondent information is kept completely private and not shared with any outside entity, including law and immigration enforcement.

I am very concerned that the release of this memorandum will increase the fears of many in the hard to count community that their data will not be safe. The end result will most likely be increased nonparticipation and increased undercounts of these populations.

Two, effects of not accepting the Census Bureau recommendation to extend the 2020 census deadlines. The Census Bureau, through the Department of Commerce, has requested that Congress extend the deadlines for providing apportionment counts and redistricting data by four months. It is critical that these deadlines be extended.

The effective conduct of the operation to enumerate those households that do not sell respond, non-response follow-up, or NRFU is necessary to achieve a fair and accurate enumeration for all populations. I am concerned that not extending the deadlines will force the Census Bureau to make adjustments to the NRFU.

These adjustments will most likely include reducing the number of NRFU visits and increasing the use of statistical methods to impute responses into a much greater percentage of housing units than in previous censuses. The consequence of actions such as this would tend to underrepresent the hard to count populations and over represent other populations.

Three, the risk of introducing serious errors into the 2020 census apportionment counts before the quality and accuracy of the 2020 census is understood. For the 2020 census, little is known at this point regarding quality, accuracy, and, most importantly, the number of undocumented persons that will actually be enumerated. I am very concerned that a much lower number of undocumented persons will be counted in the 2020 census relative to previous censuses due to increased fear that their information will not be secure.

At the same time, a significant portion of legal residence could be overcounted. It will take very careful analysis to understand the properties of the 2020 census and to determine how many if any undocumented persons are included in the enumeration. This analysis will not be available when the apportionment counts are released; therefore, using the existing estimates of the undocumented population to reduce the 2020 census numbers would have unknown and possibly serious adverse effects on the accuracy of the resulting apportionment.

Four, there must be transparency in how the estimates of the undocumented population are constructed. The 2020 census is a foundation of our democracy, and there must be assurances that any actions that would affect the census are based on objective methodologies, a long-held principle of the Census Bureau is openness and transparency.

Five, the importance of not leaving, giving the appearance of political interference with the conduct and tabulation of the 2020 census. Perceptions that the results of the 2020 census have been manipulated for political purposes will greatly erode public and stakeholder confidence not only in the 2020 census but in our democracy.

When I was directing the 2000 census as a career executive under the leadership of Census Bureau Director Dr. Kenneth Prewitt, we went to great lengths to ensure all stakeholders that data-driven decisions were being made and that there was no consideration of politics in the conduct of the census. I would strongly urge the current Census Bureau and Department of Commerce senior officials to follow these principles for the 2020 census.

In conclusion, thank you for this opportunity, and I look forward to answering any questions that you may have.

MALONEY:
The chair now recognizes herself for five minutes for questions. I would like first to thank all of you for joining us today. It is powerful to hear from for former census directors who have been appointed by presidents of both parties. Collectively you have served Richard Nixon, Gerald Ford, Jimmy Carter, Bill Clinton, George W. Bush, Barack Obama, and Donald Trump.

On July 21, the president issued a memo directing the secretary of Commerce to provide him with the information necessary to exclude undocumented immigrants from the census count for apportionment purposes. Many people have opined already--

MALONEY:
--that the president's memorandum is unlawful and unconstitutional. I have studied it closely and believe it violates the clear language of the Constitution and existing federal laws. But I wanted to ask each of you the same question for a yes or no answer.

In your opinion and based on your knowledge and experience, does the president's 20--July 21 memo seeking to exclude undocumented immigrants from the apportionment base appear to violate existing federal law and historically enduring views of the Constitution, yes or no? Mr. Barabba.

BARABBA:
Yes.

MALONEY:
Dr. Eastman.

EASTMAN:
No.

MALONEY:
Dr. Prewitt.

PREWITT:
Yes.

MALONEY:
Mr. Groves.

GROVES:
Yes.

MALONEY:
Mr. Thompson

THOMPSON:
Yes.

MALONEY:
Second question, based on your knowledge and experience, does the Constitution require the census to count every person living in the United States at the time of the census, including undocumented immigrants, Mr. Barabba, yes or no?

BARABBA:
Yes.

MALONEY:

Dr. Eastman.

EASTMAN:
No.

MALONEY:
Dr. Prewitt.

PREWITT:
Yes.

MALONEY:
Mr. Groves.

GROVES:
Yes.

MALONEY:
Mr. Thompson

THOMPSON:
Yes.

MALONEY:
Third question. Based on your knowledge and experience, do you agree that that federal law requires the president to send Congress an apportionment count based on the census account of the total population of the U.S., including undocumented immigrants, Mr. Barabba? Yes or no?

BARABBA:
Yes. Yes.

MALONEY:
Dr. Eastman. Dr. Eastman.

EASTMAN:
No. No.

MALONEY:
Dr. Prewitt.

PREWITT:
Yes.

MALONEY:
Mr. Groves.

GROVES:
Yes.

MALONEY:
Mr. Thompson

THOMPSON:
Yes.

MALONEY:
And lastly, and is it correct that all previous censuses and apportionment counts in the history of the United States have included both citizens and noncitizen, including undocumented immigrants, Mr. Barabba, yes or no?

BARABBA:
Yes.

MALONEY:
Dr. Eastman, yes or no?

EASTMAN:

No.

MALONEY:
Mr. Prewitt.

PREWITT:
Yes.

MALONEY:
Mr. Groves.

GROVES:
Yes.

MALONEY:
Mr. Thompson

THOMPSON:
Yes.

MALONEY:
Thank you. I--I think that all of these answers speak for themselves. The president may not pick and choose who is included in the census account or the apportionment base. The Constitution, federal law, and the historic practice of the Census Bureau dating back more than two centuries as required the census account and the apportionment base to include every person in the United States, regardless of their immigration status. I now yield to the distinguished ranking member for five minutes for questions.

COMER:
Dr. Eastman, thank you for testifying today. And let me be crystal clear. I strongly support the president's order. I want to start with a few basic questions. What is the constitutional and legal justification for the president's apportionment decision, briefly?

EASTMAN:

Well, the Constitution says count all persons in several states. That refers to the people of the several states. That refers to the people of the United States. As the Indians not tax exclusion clause makes clear, it was designed to cover citizens. Those are the people that we were choosing representatives to represent. It doesn't include people who are here visiting and certainly not people who are here visiting unlawfully.

COMER:
Right. So why is it using total population not a good metric for an apportionment account?

EASTMAN:
Well, for many of our nations--much of our nation's history, total population was roughly approximate district by district to citizen population. That is no longer the case and the political theory and that tax and the reference to the people that is contained in the Constitution suggests that we now take account of the fact that we have great disparities district to district for apportionment purposes on the number of citizens versus the total population.

COMER:
Will you briefly explain the principle of one person, one vote?

EASTMAN:
Well, the idea of one person one vote set out by the Supreme Court in Reynolds vs. Sims is tied to the idea of representative government that we should each have an equal vote in whom I will represent--who were going to choose as our representative.

We're not talking about other people in the world having a say in who we choose as our representatives. It's one person, and that means one citizen, one vote because those are the people that are choosing who's going to represent them in this particular place in this particular government. It's not a--it's not about government, it's a government of the people of the United States.

COMER:
So for the issue at hand, can you explain how counting illegal immigrants for purposes of apportionment dilutes the political power of citizens and illegal immigrants in states with fewer illegal immigrants?

EASTMAN:

Take--take two states like California 2.5 million estimate illegal immigrants. That's roughly three or four additional congressional seats beyond what the citizen population will allow. And you are diluting the votes of citizens in other places that have not encouraged such illegal immigration into their states.

If our--if our representative government is going to be based on citizens, then--then diluting the vote of citizens to overweight the apportionment in the number of seats, and it's not just seats in Congress, it seats--it's votes in the electoral College for president as well, and this is nonpartisan. California and Florida and Texas would also lose seats if the president's order is upheld. That's, you know, some on the Democrat side, some on the Republican side.

This goes more to the basic notion of a prisoner of government and who it is our--our elected representatives are supposed to be representing. And it's citizens here. It's not people from elsewhere in the world.

COMER:
So doesn't counting illegal immigrants for purposes of the apportionment base distorted the principle of one person one vote?

EASTMAN:
It most certainly does, and it dilutes the votes of legitimate citizen voters in states that have low numbers of illegal immigrants or other foreign nationals present within their borders.

COMER:
All right, my last question. How does the president's memorandum on apportionment restore representation and apportionment in the House of Representatives?

EASTMAN:
Well, it did gets back into the apportionment base that I think our Constitution envisioned certainly the theory of our Declaration of Independence envisioned. And that is that one people there choosing our representatives, but we're going to apportion that people according to state and allot of the number of congressional states based on that, not however many people we can cram into the state leading into the census to roster up our numbers. It's citizens who are choosing representatives. Citizens those representatives are representing and therefore, the apportionment ought to be tied to citizenship.

COMER:

Well Dr. Eastman, you've done an excellent job explaining this issue, but I think an overwhelming majority of Americans support. I appreciate your testimony and forward to further questions. Madam Chair. I yielded balance of my time.

MALONEY:
Thank you. The chair now recognizes Representative Norton.

NORTON:
Thank you, Madam chair. And this is an important hearing and I appreciate this hearing. I'd like to approach this--my question from a constitutional basis as I practiced constitutional law before I was elected to Congress.

The Trump administration's attempt to exclude undocumented immigrants from the citizen count appears to me to be plainly unconstitutional. The language of the Constitution is pretty clear. Article 1 Section 2 says the apportionment of representative shall be based on "The actual enumeration of," and here--here are the words, "The whole number of persons." Persons, and I'm underlining that.

The 14th Amendment says representatives shall be apportioned, again, including, "Among the several states according to their respective numbers counting the number," here again is that word, "Of persons in each state." Persons. I don't see citizens and I don't see any other word such as voters.

So I really don't need to taught constitutional law the way I did. You don't need a low degree of any kind or dictionary to go through the exercise I have just gone through. All numbers persons in each state, every single person. Since most of you have been directors of that census bureau, for the record, I would like your answers to the following. Does--in your understanding, does the term whole number of persons in each state include undocumented immigrants living in the United States, Mr. Barabba?

BARABBA:
Yes.

NORTON:
Mr. Pruitt?

PREWITT:
Yes.

NORTON:
Mr. Groves.

GROVES:
Yes.

NORTON:
Mr. Thompson.

THOMPSON:
Yes.

NORTON:
I'd like to ask each of you based on your experience, your actual experience, a related question. During your tenure as director of the Census Bureau, did you have any doubt that the Constitution requires a census count to include undocumented immigrants living in the United States? Mr. Barabba?

BARABBA:
No, I did not have any doubts.

NORTON:
Mr. Prewitt?

PREWITT:
No.

NORTON:
Mr. Groves?

GROVES:
No doubts.

NORTON:
Mr. Thompson?

THOMPSON:
No doubts.

NORTON:
Let me direct you--if--if the Trump administration had any doubts, they might go to the census's own website. Here is a question from that website--bureau's website entitled "Fighting 2020 Census Rumors, setting the record straight." Question, are noncitizens counted in the census? Answer, yes, everyone counts.

The 2020 census count everyone living in the country, including noncitizens. I put this on the record because I've--anything this hearing--conclusions we come to should be based on just such documented evidence.

The administration might also have looked at the letter sent to Congress from the Justice Department in 1989 when George H.W. Bush was president and Attorney General Bill Barr was the head of the department's Office of Legal Counsel. That letter affirms the department's--the Justice Department's conclusion that both the enumeration clause and the 14th Amendment quote require the--and here I am quoting them, "the inhabitants of states who are illegal actions--aliens to be included in the census."

Mr. Thompson, as the most recent census director on this panel, could you briefly explain why you believe it is important that the census include everyone, every living person in the United States, not just citizens or voters?

THOMPSON:
Certainly. So, the Census Bureau is charged with a very difficult task, and that is counting everyone in the United States. The Census Bureau has no enforcement powers whatsoever. They're a statistical agency, so they wouldn't even have the ability to try to ascertain someone's legal status or not legal status. Now, I might add that if they tried to do that, then they would--they would produce counts that--that were seriously flawed.

NORTON:
Thank you very much. Thank you, Madam Chair--Chair. I yield back.

MALONEY:

The chair now recognize Representative Gosar.

GOSAR:
Thank you very much, Madam Chairman. Dr. Eastman, in your testimony and opinion piece you wrote in June of last year, you--you connected the citizenship question to the fundamental notion ingrained in our system of government, the consent of the governed. Representation is based on such consent, and this notion was confirmed in the 14th Amendment, which excluded Indians not taxed, because they were not part of the political body.

You conclude then that citizenship is at the core representation. However, in today's discussion, we are again addressing the question of whether we can allocate representation based on the known presence of millions of individuals who are not citizens. A question to you; do you feel that President Trump's memorandum calling for an apportion--apportionment count that tallies only the number of citizens and legal residents in a state is in line with the core founding tradition of the 14th Amendment?

EASTMAN:
I--I do. Not only is it in line with it, I think it's compelled to by it. The notion of consent of the governed requires that we--that we apportion our representatives based on who's going to be governed, not on people who are here illegally or people who are temporarily visiting, or Indians not taxed. I think the Supreme Court's decision in Elk versus Wilkins is very clear.

The reason that clause is there is--Indians not taxed(PH) are excluded from the count is because they are not citizens. Well, the Indians not taxed right now are illegal immigrants or foreign nationals who are visiting this country but who are not part of our body politic. The same principle applies.

GOSAR:
And that has a lot to do with application of our laws to the governed, as well as trying to make sure that--that we are the holding to--to the--to the country, would it not?

EASTMAN:
It--it--it does. Look, the--the very notion of consent of the governed is that a particular people decide on the kind of government they're going to have and who the representatives in that government are going to be to govern them in order to best secure the inalienable rights that they have from nature and nature's God. It's not designed to give other people a voice.

I mean, why have we spent the last three years concern about Russia's interference in our election if we think anybody from the world over ought to have a say in the choosing and the allotment of our representatives? The fact of the matter is it's the body politic, the particular people that choose our representatives to govern ourselves and to apply laws to other people while they are visiting here. But they're not the governing body. They're not the political regime.

GOSAR:
Dr. Eastman, you actually heard the discussion from the gentlewoman from the District of Columbia. You know, she says that the--specifically that citizens are--are not enumerated. Can you address that?

EASTMAN:
Sure. So, it says the--counting the number of--whole number of persons, but it--but it says their representatives. And the--the their refers back to the people in the states, in the several states. The people refers back to the very opening language of the Constitution, we the people of the United States allotted according to the people in the states. And it's those persons that we're going to count.

We have never in our history counted every single individual who happens to be within the state at the time of the census. We've not counted visitors. We've not counted Indians not taxed. We've not counted diplomats. The principal reason why we don't count such folks is they are not part of the people. They are not persons that form part of the people in the states that are the people of the United States.

You can't read that one word in isolation as she did. It's part of the larger language of Article 1, Section 2 as well is the preamble, and it's part of the principles that are set out in the Declaration of Independence tied back to the very notion of consent of the governed.

GOSAR:
Thank you. Finally, Madam Chairwoman, I would like to express my concern with the actions of this body over the past several years. Partisan leadership is forced this committee to consider the simple question of having a person identify themselves a citizen on--numerous times. However, we have only had a few hearings on the topic of issues like hard to count populations, an issue for my district and I'm sure districts of several other members of this committee.

This misdirection has forced this committee to deal with how we asked one question to non-Americans more so than how we ensure Americans in these hard to count populations can participate in the entire census, even though the majority constantly states its intentions to

count every person.

American voters and American tax dollars send us all to Washington, DC to provide for and oversee the census, yet partisan leadership has neglected this true intention, which concerns members like myself who are focused on ensuring their constituents get their proper representation and protection from their federal government.

Maybe we ought to entertain that, if we're going to give another stimulus, what we ought to do is ask that they fulfill filling out there census. If you want to get everybody spoke, may--maybe that's an incentive that we could go by. I yield back.

MALONEY:
The chair now recognizes Representative Lynch. We now recognize Representative Cooper.

COOPER:
Thank you so much, Chairwoman Maloney. And also I would like to honor Delegate Norton. Your line of questioning has exposed the fact that, for those not keeping score back home, that virtually every living director of the census support your view that the president has taken a unilateral and outrageous version of the 14th amendment, which is probably unconstitutional.

You would think that a country is old and as distinguished as America would be able to reputably count its own citizens and follow the president established by every living census director to count not only citizens but others such as undocumented people in each district. There are countless questions surrounding the census. An issue we're facing in my congressional district is this.

I am told that outreach specialists, partnership specialists will have their contracts terminated September 30, and that the census will continue until October 31. So, I would like to find out from--

COOPER:
--the previous census directors what effect this could have on the accuracy of the count when partnership specialists are terminated a month early, a month before the census has ended. I do not know the impact of this decision on the numerators themselves, but it would seem that partnership specialists wouldn't have been hired unless they added some value to the process so I would like to hear from Mr. Prewitt, Mr. Groves, Mr. Barabba and Mr. Thompson about the effect of this premature and early termination of the census specialist on the accuracy of the count.

BARABBA:

This is Mr. Barabba. Let me speak first. In fact yesterday I talked to the individual who is responsible for the area in which I live. She was very concerned that she would be--that her contract would be eliminated a month before the activity is completed.

She has reached out to many, many organizations throughout the area, and keeping in contact with them is important to the absolute completion of the census particularly in areas that we have in our district and in our area like the Salinas and other areas which have significant minority populations.

GROVES:
Let me--this is Bob Groves, let me just comment. If there is one piece of evidence that we have with great assurance, it is that local community leaders that have the trust of diverse communities in their areas are key to the original response, the soft response as well as the nonresponsive follow-up stage. We know this from several decades of work in a interference in their performance will affect the quality of the census, and we should avoid it whenever possible.

COOPER:
Is it going too far to say that--go ahead.

PREWITT:
Sorry just one more (INAUDIBLE). We have a vast pro bono labor force out there trying to help us do the census. This was launched in the 2000 census, it never existed before, and it is responsible for the fact that we have a self-response and a non-response of the people who don't respond. It is attributable to that crowd of people, and they are in the thousands, in the thousands. They--they are schoolteachers, they are union leaders, they are chambers of commerce leaders in the thousands to help us do this census, and they think their job is to count everyone.

COOPER:
What can communities do to prevent the termination of these partnership specialist or two if need be supplement or substitute the work of these specialist in that crucial month of October? Mr. Thompson--

BARABBA:
(INAUDIBLE) committees can do, but the Congress can do something, and that is to make sure that the period is extended.

THOMPSON:
So as my former colleagues have all said a really important component of getting a complete count is getting the message out on the local level, but the census is very important to your community and very importantly that the census is completely confidential which is not a message that can go out from Washington.

We started these programs in the 2000 census, and we saw some dramatic decreases in the under accounts of various hard to count populations. So for the month of October, it is critical that local communities, local leaders keep getting those messages out about why the census is important to their community and that it is completely confidential. The census doesn't share information with anyone.

COOPER:
I think the chair of. I see that my time has expired.

MALONEY:
The gentleman yields back. The chair now recognizes Congressman Jordan. Congresswoman Foxx?

FOXX:
Thank you, Madam Chair. Doctor Eastman, the president's memorandum, notes the interpretation of the 14th Amendment term quote persons in each state" is subject to judgment leaving up to each decennial census the Census Bureau releases a detailed rule on determining residency for each decennial census count. Do you agree that the standard for residency is subject to judgment?

EASTMAN:
I do, and we have routinely altered that. We have included people who are long-term residents in the state but not short-term residents. We have included people who are no longer residents in the state but are abroad because of work or military service or what have you and every--every census those--those parameter.

FOXX:
So, do you believe it is appropriate for residency criteria to change to exclude illegal aliens?

EASTMAN:

I do.

FOXX:
Mr. Thompson, when you were director you drafted the current residency rules for the 2020 census, is that correct?

THOMPSON:
Yes, it is, Congresswoman.

FOXX:
So it is fair to say that you support counting every person residing in the United States, legal or illegal, is that correct?

THOMPSON:
That is correct.

FOXX:
Okay. When you were director, did you support changing the rules for military residency?

THOMPSON:
I did.

FOXX:
And so let me understand this. There are many of Americans who reside overseas, including military personnel, yet they are enumerated as if they were residing in the United States, but they aren't residents because they are not present on April 1, 2020? So using your logic military personnel deployed abroad should be excluded. Is that correct?

THOMPSON:
No, ma'am. We--we did a lot of review of the previous census residence rules we put them in the Federal Register for comment and based on a lot of input we made the decision that we should count the overseas military in the United States.

FOXX:

Okay, well, that is absolutely the way it should be, in my opinion, but because we recognize these individuals are normally U.S. residents but were asked to serve abroad and will return when their short service is over. They are serving the country and deserve to be counted and represented, but their representation is still looted by illegal aliens being counted even though they have broken our laws to come here.

Mr. Thompson, another question for you. The 2020 census residency criteria changed how prison inmates are counted for the 2020 census. Prison inmates are enumerated at their prison, which is technically their residence on census day. Is this correct?

THOMPSON:
That is correct, and that is where they have been counted in most censuses.

FOXX:
Okay. Well, it is very controversial because some people believe that they should be counted at their residence pre-incarceration because that is their normal residence, not the prison. Some people argue you are diluting the representation of inmates by counting them at their prison site, so you believe though that prison inmates representation is diluted--make do you believe that it is still diluted because of how the census enumerates their location?

THOMPSON:
So the final decision on where to count the prisoners were made after I actually left government service, but I support the Census Bureau's decision to count the prisoners where they are incarcerated.

FOXX:
So you believe the fair representation of prison inmates why do you support the dilution of prison inmates and other citizens constitutional representation by supporting the counting of illegal aliens?

THOMPSON:
Throughout my experience at the Census Bureau, which included 27 years as a career employee and then four years as a political appointee as director, I operate under the guidance that the census was to count everyone in the United States regardless of status.

FOXX:
Thank you, Madam Chair. I yield back.

MALONEY:
Thank you. We now recognize Congressman Lynch.

LYNCH:
Hello there, can you hear me?

MALONEY:
We can hear you.

LYNCH:
Great. Well, thank you, Madam Chair for holding this very important and very timely hearing. And I want to thank all of our witnesses as well. I'd like to ask a question of Mr. Barabba, Mr. Groves, Mr. Thompson and Mr. Prewitt.

I noticed that back in April, you signed--you each signed a public letter supporting the bureau's request to delay this--this process and I think Mr. Prewitt, you were--you were quoted in one of the articles that I--I read. You said that the truth is that the only thing in charge of this census right now is the virus.

Not the Bureau, not the president. And the virus will be in charge until it isn't. Mr. Prewitt, would it be correct to say that they coronavirus presents an enormous challenge to the Census Bureau to conduct an accurate and timely account of the American people under these conditions?

PREWITT:
A huge challenge. Unprecedented.

LYNCH:
Yeah. Now, the reason that--I'm assuming that the reason that you requested the delay was to give the bureau more time. This is--this is the largest and most complex census ever conducted in this country and then--and then you add--and that's in normal times and then you add in the pandemic and the limitation of the enumerators and--and people being hunkered down. I guess I'm assuming that you also wrote that letter based on it being in the best interest of the country, is that correct?

PREWITT:
Yes, sir.

UNKNOWN:
Yes, sir.

UNKNOWN:
Yes, sir.

LYNCH:
Now, this most recent memorandum that the president submitted last week directing the Census Bureau to take a whole different approach to this census in the middle of the census, it seems to me that this new memorandum of questionable legality really will--will require the Bureau to dedicate considerable resources and a huge workaround in light of the new memorandum. Would--would that be a correct assumption here?

UNKNOWN:
Yes.

UNKNOWN:
It would.

UNKNOWN:
Yeah.

UNKNOWN:
Yes.

LYNCH:
And--and do so--so you've got this whole shift in resources, this redeployment, and a whole different program that's been put in as of last week directing that Census Bureau to change--change their plans. And yet--and yet, on Monday, the Census Bureau also posted on its website that despite this huge demand on resources that arose last week with the president's memorandum, the Census Bureau says that it is working towards this plan to complete the field data collection by October 31, 2020. Do you think it is feasible to dedicate all those resources to the object of the new memorandum and yet, not have the accuracy of the census impacted?

PREWITT:
Right now, that census I believe, sir, is at risk of being inadequate to do the task it is charged to do. A serious risk. And I would like to take as much of the burden off of them as we can. That's operational burden, timing burden and so forth.

I was extremely disappointed when it turned out that they were not going to get the four month extension going on into 2021, which we were counting on and they were planning around that and then suddenly, there's a reversal on that decision. And in my sense, the chances of having census accurate enough to use is--is unclear very, very much unclear whether we'll even have a census. That's why the debate about the illegals and undocumented is beside the point if not even going to have a census that we can take to the American people. And that's what I'm worried about.

LYNCH:
Thank you very much, Mr. Prewitt. Madam--Madam Chair, my time is expired, and I yield back. Thank you.

MALONEY:
Thank you. I now recognize Representative Palmer.

PALMER:
Thank you, Madam Chair. I have a couple of reports. One of which is from the Pew Research Center about the transient nature of people who are here and are here unauthorized here illegally. About 40 percent of the people who are here illegally are here--won't even be here for the next census. Given that, the transient status of millions of foreign residents in the U.S., doesn't it make it even more problematic to include unauthorized noncitizen, people who are here illegally and who are here temporarily to be counted for apportionment, Dr. Eastman?

EASTMAN:
I--yes, I--I agree, and I think it applies to legal temporary immigrants as well, people want temporary work visas or student visas.

PALMER:
Well, the point being--

EASTMAN:
--It's a very transient population. Yeah.

PALMER:
Yes, sir. To the point being is that these are not people who will be here to participate in our government in any form or fashion. I'd like to also point out that 60 percent of the unauthorized immigrants that people who are residing here illegally reside in just 20 metro areas that are self-declared sanctuary cities, counties, or states. By violating federal law, by establishing themselves as sanctuary sanctuaries for people who are here illegally, including some who've committed felonies, by the way, have these estates created an advantage for themselves that could cause harm to states that are declared centuries, Dr. Eastman?

EASTMAN:
Yes--yes, they do, depending on the distribution of the illegal immigrant population, states that are encouraging illegal immigration stand to gain a large number of seats in the House of Representatives as well as votes in the electoral college for president--

PALMER:
--Well, could that--

EASTMAN:
--To the detriment of other states.

PALMER:
Doesn't that create an incentive for certain states and in certain places to--to declare themselves sanctuaries, to give benefits, to give protection from prosecution for whatever crimes they might commit to increase the number of people in those areas, to give them this advantage? I mean, isn't that a rational thing to do if you're already acting in contradiction to federal law?

EASTMAN:
Well, it's--it's rational in the short term, Representative Palmer. And not so much in the long term. But--but you know, Alabama is likely to lose a seat in Congress and a--and an alert electoral vote for president as a result of--of this kind of encouragement for illegal immigration to reside in certain states like California.

PALMER:
Speaking of rational, and I try to be rational. I try to be linear in my thinking, so I start and follow evidence where it might lead. Your points early--early on about the right to self-government resides with the citizens, not with noncitizen, whether they are here legally or illegally, and--and to make this point, we don't allow foreign citizens to work residing in the United States, whether they're here legally or illegally to run for office, do we?

EASTMAN:
No, we don't.

PALMER:
Okay. We don't allow people who are here from foreign countries or they are here legally or illegally to make campaign contributions to U.S. candidates, do we?

EASTMAN:
No, we do not.

PALMER:
And presumably, we don't allow people who are here from foreign countries, whether they are here legally or illegally to vote in our elections, do we?

EASTMAN:
We're--it's illegal for them to vote, although we got evidence that large numbers have voted.

PALMER:
That's why I say presumably. So let me ask each of the other panelists, are those laws fair? Mr. Prewitt--Dr. Prewitt, are those laws fair? Should we allow foreign citizens to run for office to make financial contributions to candidates or to vote in our elections? Yes or no.

PREWITT:
We just--I'm sorry--

PALMER:
--No, no, that's a yes or no--

PREWITT:
--You're asking me a question--

PALMER:
--Do we--should we allow foreign citizens to run for office? Should we allow foreign citizens to make campaign contributions? Should we allow them to vote in elections, whether they're here legally or illegally? That's a yes or no. Your silence is--

PREWITT:
--That's what the law is now, and I agree with the law.

PALMER:
Okay, that--that's a great little answer. Mr. Thompson, yes or no?

THOMPSON:
I agree with the laws of the United States.

PALMER:
That's a--that's a--you agree that we shouldn't allow that. Dr. Eastman, I think I know your answer, but give me a quick answer. Yes or no.

EASTMAN:
Yes, absolutely.

PALMER:
All right. If that's the case, why in the world would we think it's--it should be legal to allow people who are here illegally or legally be counted for apportionment to influence our government when close to 40 percent of them won't even be here for the next census?

PALMER:
Can you answer that? It doesn't make sense, does it?

EASTMAN:
Yeah, I don't--it doesn't make sense, and I don't think it's consistent with the--the theory and the text of the Constitution either.

PALMER:
I thank the gentleman. I yield back. Madam Chairman, I would like to enter these just like these documents into the official record.

MALONEY:
May I see what the documents are?

PALMER:
Yes, ma'am. They're documents from the Pew Research Center, and one of them is from the Migration Population Institute located here in Washington, DC.

MALONEY:
Okay, without objection.

PALMER:
I--I thank the--the chairwoman and I yield back.

MALONEY:
I--I now recognize Representative Connolly.

CONNOLLY:
Thank you, Madam Chairman, and thank you for your long leadership on trying to preserve an accurate census and a fair and transparent process associated with it. Your leadership has meant a great deal and has served our country well. Thank you.

I'm must say, listening to this discussion, Dr. Eastman would be apparently very happy with the decision of Roger Taney and the Supreme Court that ruled on Dred Scott, because of that decision they decided that no African-American, free or slave, was a citizen of the United States deserving of any of the privileges of white people.

That was actually the language of the ruling. And therefore, no blacks would've been counted in the census. And we would've had millions of Americans declared noncitizens, under Dr. Eastman's logic, not counted in a census.

And we would've had no picture of America, especially south--the southern part of America in terms of the actual demographics, just how powerful the numbers were of African-Americans who, in the Constitution, were singled out to be counted as three-fifths of a

person for the purpose of the census, which, by the way, inflated the numbers of Southern representation in the Congress at the time.

You know, immigrants throughout American history have been subject to this kind of smear and innuendo we've been listening to. You know, they're all criminals. They're all trying to cheat. States are using them to inflate their numbers. You know, there were movements of the 19th century, the Know Nothing Party, to ban them, to deny them the vote. Irish immigrants, there was a big movement in New York in the mid-19th century to deny Irish immigrants the right to vote because they were illiterate, they were ignorant, they worshiped a foreign religion, they were really Americans.

This kind of nativism, this kind of bigotry frankly has no place in the carrying out of the census. The language of the Constitution--and for a crowd that talks about originalism, well, the language is clear. It says persons. It doesn't say citizens. It says persons. It wants to get a feel how many people are here at a given time, how many people are residing in the United States of America, not what their future intentions are, not what their statuses, are they residing here for the purpose of understanding the population of the United States at any given time.

And--and that's how the census has been carried out. Let me ask Mr. Prewitt, and--and all of--all of the former directors could answer this as well, have we ever adopted, to your knowledge, in the carrying out of the census in modern times a selective process of not enumerating certain individuals because of their status?

PREWITT:
No, sir.

BARABBA:
Not to my knowledge.

CONNOLLY:
Mr. Groves? Mr. Groves? Mr. Thompson?

THOMPSON:
No.

CONNOLLY:

And why do you think we need to have account of the people--the persons residing in the United States? Why is that important? Why isn't Dr. Eastman right? Let's only count citizens, full-blooded Americans citizens and nobody else.

PREWITT:
My quick answer on that is they--or the--they're if they put gasoline in their car. They're paying property taxes if they live someplace, that is they're functioning as people in the country. And--and more--more than that, that you have a really difficult--difficult situation to uncount them.

I--I don't think the other members of the committee have paid enough attention to my first point. We do not know, the Census Bureau does not know, how to do what the president is asking them to do, and it's going to hurt the census and therefore we are at risk of not having a census in--in 2020.

CONNOLLY:
And--and Mr. Thompson, is it--is of the case that, for example, throughout American history this is what we've done? We counted immigrants whether they were citizens are not in the 19th century, the turn of the 20th century, as well as currently. Isn't that the case?

THOMPSON:
That is the case.

CONNOLLY:
Yeah. So, this--what Dr. Eastman is propounding sounds reasonable, except it would fly in the--the face of over 200 years of practice in American history and, in my view, would flaunt the actual words of the Constitution of the United States. Thank you. I yield back.

MALONEY:
Thank you. The chair now recognizes Representative Roy.

ROY:
Madam Chairwoman, before I start, may I ask which of the experts remain available for response?

MALONEY:

I--I believe--I believe Mr. Graves had an appointment at 11:00 and had to leave, but the rest are there.

ROY:
So, Mr. Barabba, Prewitt, and Thompson--

MALONEY:
--Yes--

ROY:
--Are all available?

MALONEY:
Yes.

ROY:
Okay, thank you. Sorry. Mr. Eastman, let me ask you just a quick question about the law. If I recall correctly, there was a case in which Justice Thomas in 2001 in dissent clarified that there is a split in the circuits and a split in the law, Ninth Circuit versus the fourth and the fifth, as to what the court's position would be on the question at hand, on apportionment and what we're talking about. Is that true? And--and would you expound on that very briefly because I need to move on?

EASTMAN:
Yeah. So, it was a case out of Hawaii that was dealt with. They wanted to apportion locally based on citizen population rather than total population. And the court upheld that, and--and there was language in it that strongly suggested such was compelled by the notion of representative government. Judge Skadinsky (SP) on the Ninth Circuit specifically said that even though the decision doesn't absolutely require that technically, the logic of it compels it. And I think that's right.

If I may, can I go back? Representative Connolly, I know you're protected by the speech and debate clause, but that doesn't mean I should not respond to the slanderous statement you made. I do not defend Judge Taney's decision in Dred Scott.

In fact, I am a vigorous defender of the dissenting opinions in that. It was an absolutely wrong decision. African-Americans were treated as citizens in this country, and Taney was wrong. I will not let you get away with the slander just because you're protected by the

speech and debate clause.

ROY:
Well, Professor, I was going to give you an opportunity to respond. I'm glad you did. I was going to ask you that question. I thought it was irresponsible of my colleagues ask a question along those lines, and I'm glad that you responded. It was--it was not appropriate to direct that towards you on a very debatable question, a very real question.

And at a bare minimum, we can all agree that there is a split in the jurisprudence or a difference of opinion in the jurisprudence on whether or not apportionment should be accounted for in the way we're discussing and--and that this is a live question. And that citizenship, in fact, matters.

The citizenship must matter if we're to be a nation of laws and if we're going to have citizens vote, citizens running for office, that we should have a robust debate and discussion and that, frankly, this body, this Congress ought to act.

My colleagues on the other side of the aisle spent last year fighting every ounce of effort on the part of this administration or this body and Republicans in this body to try to ask a question, a simple question, on the--on the census as to whether or not your citizen or not. The vast majority of Americans recognize that that is an important question to ask.

But I would just say again to the professor we agree, at a bare minimum, there's a split in the jurisprudence on this question. Is that correct?

EASTMAN:
That's correct.

ROY:
Thank you. A--a question here for Mr. Barabba, Prewitt, or Thompson, and I'm going to go through a few things because I have limited time here, and then I just want to get your yes or no on whether I'm characterizing this appropriately.

My understanding of the way the census counts is that we have something called count imputation and that we have something called characteristic imputation. And that in count imputation we have status count imputation, we have occupancy count imputation, and we have household size count imputation. What does this mean for the average listener?

It means that we make stuff up. It means that we have situations where we literally have an address. We can't find the house and we impute to that address the characteristic--or I should say the count of a house nearby. It means that we go through on occupancy and say,

well, we find the house and there's somebody there but we can't find them, so we just say, well, you know what?

The next door neighbor, there's five white people in the house, so we're just going to put five white people in this house. Or that we have household size imputation that says, well, we don't know how many or numbers in it. Well, we don't know if it's one or two or three, but we're just going to guess that it's 5 or 10 based on who's next door, and that in fact, we have characteristic imputation where we go into race and characteristics and that this is a reality of what our Census Bureau does in order to achieve numbers.

Now that is what is actually going on. Now there's a whole other thing where we have the community survey, the ACS, and I would ask Mr. Eastman if you would jump in here real quick. Is that not correct that the ACS is used and that the court acknowledges that it is appropriate for it to use those estimates and sampling for purposes of the application of the Voting Rights Act?

EASTMAN:
Yes, that is correct.

ROY:
And so my question here would be would it not, therefore, of course, be appropriate to use if you are a state for redistricting purposes, not apportionment let me just ask this question, for redistricting purposes, the same data if you are going to use it for the voting rights act?

EASTMAN:
Yes, absolutely, and it is more current because it is taken every year instead of just the decennial census.

ROY:
And you should use the ACS in this case if we are going to be doing apportionment, you can use the ACS for apportionment?

EASTMAN:
I believe we could, certainly to coincide with the census.

ROY:

So my question to the representative--the former director of the Census Bureau am I correct that the Census Bureau does, in fact, have to fill holes and make assumptions on data when they go house to house, when they get into imputation is a way that the Census Bureau does that, just a yes or no and then I will finish my questions Madam Chair.

Mr. Thompson?

THOMPSON:
Thank you for on muting me. The Census Bureau has used a technique called count imputation because if they don't do anything, that means they are assuming everything is vacant or nonexistent, which isn't the case either.

ROY:
Mr. Prewitt?

PREWITT:
Yes, it is a long-standing practice. It is used as rare as possible. You would much rather get a direct response, but we don't always get direct responses, and we don't say oh well that's too bad we will just have to go--these are well established, technical, statistical processes that have given us a more complete census than we would otherwise have.

ROY:
Thank you, sir, and then Mr. Barabba, and then I am done, Madam Chairwoman.

BARABBA:
I concur with my colleagues' comments.

ROY:
Thank you all.

MALONEY:
Thank you. We now recognize Congressman Raskin.

RASKIN:

Madam Chair, thank you very much. Thanks for calling this super important hearing and it's really wonderful to hear all of the prior census directors who converge around a very simple conclusion which is that the president's proposal is a radical break from history and a radical break from the text of the Constitution, a radical break from the structure and the spirit and the meaning of the Constitution and so basically every methodology we have for interpreting what the Constitution means supports the proposition that we have been doing it right for more than two centuries that is we have been counting everybody.

That is the way we have done that, there is no reason to overthrow that right now and what we are getting really from the administration is a whole series of attacks on the election, attack on male in balloting, president threatening not to observe the final results of the election if he doesn't like it and so on. This is all part of kind of thin anticipatory temper tantrum by the president.

I wanted to correct a couple of things that were floating out--out there are specifically about voting and citizenship, and there seem to be this false equation between voting and citizenship. The Supreme Court has been very clear that they don't imply one another.

They are obviously large categories of people who are citizens who can't vote starting with children and historically the vast majority of citizens couldn't vote because women couldn't vote as well as children as well as people who weren't landowners or property owners and conversely there were lots of people who could vote who were not citizens for the vast majority of American and even today there are lots of municipalities and localities which allow people to vote without regard to citizenship in local elections but the way that it existed through the 18th and 19th and really up to the early 20th century.

Was that what mattered was race qualifications, gender qualifications, property and wealth qualifications for voting and if you were a Christian white male property owner it didn't make any difference what your quote citizenship was, and that was a confusing concept in a way for more than a century whether that was determined that the state level or the federal level.

We didn't have these kind of rigid ideas about citizenship that are being propounded right now. So that was a conservative position having to do with land ownership and property ownership and race and gender for a very long time. It wasn't until we started getting immigrants coming in from southern Europe and other places that that turned around.

You should go back and check out the history leading up to the Civil War and the admission of Kansas and Nebraska and a number of the other states they are because it was the Republican Party which was the great champion of alien suffrage in America and the advocate of the idea that if you would be willing to move out to the Midwestern and Western states, you should be allowed to vote before you became a citizen.

That was Lincoln's position, that was the position of the Republican Party. It was the South's position that there were all of these radical immigrants coming over from Europe bringing anti-slavery ideas that they should--that--that it was their position that they shouldn't be included for that reason.

In fact, if you look at article one of the Confederate Constitution of the United States, it says that you must be a citizen of the Confederacy in order to vote, something that we don't have in the U.S. Constitution which is why noncitizens could vote for most of our history and lots of cities and indeed in a corporations I wanted position on the other side is that--is that you need to be a citizen of the United States to be a member of a corporate board of directors and to vote in a corporation in America or to own stock in America. I mean, that would be a really startling position, but it seems to flow from what they are saying.

Let me just ask I--I got curious about this whole question of Indians not taxed that was repeated so joyfully by one of the witnesses and I wonder Mr. Prewitt if I come to you what is the situation today Indians not taxed, certainly there are children who are native Americans who were not taxed but also with adults who are not paying taxes and are they counted today as part of the census despite the constitutional text?

PREWITT:
Yes, they are.

RASKIN:
Okay, that--that--that is interesting. Let me ask another question of you, Mr. Prewitt. If we were actually to go ahead and adopt the president's proposal and now we see why of course they were pushing for their citizenship question which was struck down by the Supreme Court as lawless and a violation of the whole administrative procedures but now we know why they were doing it but if we were to go ahead with this how would they actually since we don't know who is a citizen and who is not a citizen how would they go ahead and try to make that work?

PREWITT:
And my judgment there is no way. This is what worries me about this initiative. The expert on administrative records at the Census Bureau for many, many years, and I will now quote her, she is now with Georgetown University. To produce a good number that is a good number separating out the documented from the undocumented you'd need to be able to draw a clear line between the two categories sharp definition doesn't exist in the administrative records available to the Census Bureau's.

This is an article in science magazine just published yesterday, and so we are all anxious about this initiative not because of the arguments that are being made about so forth and so on, it is what is it going to do to the census itself in 2020 and look, if we don't come up closer to 100 percent that (INAUDIBLE) then we are in trouble.

RASKIN:
So, Madam Chair, just to conclude it is not only unrooted in the text of the Constitution and impractical, but it is a danger to having the real census counted and completed. Thank you very much for your indulgence Madam Chair. I yield back to you.

MALONEY:
Congressman Hice? Congressman Hice? He is online. You need to unmute yourself, Congressman Hice.

HICE:
Okay, all right.

MALONEY:
Okay, great.

HICE:
Thank you, Madam Chair. Listen, I want to thank all of our witnesses for being here today, unfortunately, I think it is largely a waste of your time as yet again it is for hours. I mean, we continue not doing our job of oversight and, in this case specifically, as it relates to the census. We--we--here we are four months into the census, and this is the first time we've had a hearing about it.

We've only 120 days into this we are just now getting around to it, and as Mr. Prewitt shared a little earlier we may not even have a census this--this go around because of the pandemic and other issues and get the irresponsibility of this committee to do proper oversight this is only the third committee hearing, full committee hearing of the year from my account and this is just unacceptable.

Had my colleagues been willing to show up for work as we have done in the Republican Party perhaps we would be able to continue our--our oversight and to somehow think now that we are engaged in an emergency over this, and even in this emergency hearing we are still not

providing oversight as to what is happening with the census is just unthinkable to me and highly irresponsible, and I would ask the chair if we could get back into the order of what this committee is supposed to be involved with.

But as it relates to right now, to again somehow think that it is unreasonable or unconstitutional for us as a nation to have the number of citizens who are in this country as well as the total number of people in this--in this country is just unthinkable to me. To think this is somehow a radical break for us to know the number of citizens as well as noncitizen is in itself an absurd way of thinking about all of this to me.

But here, nonetheless, we are. Dr. Eastman, I appreciate the testimony that you've given any answers that you've given. I know this has already been covered, but I think it's worth reiterating again. Is the president within his authority to direct a memorandum to the Census Bureau?

EASTMAN:
I--I believe he is and I think the supreme court's decision in the Franklin vs. Massachusetts (INAUDIBLE)

HICE:
And likewise, is within his authority to ask that Bureau to send him an apportionment count that includes citizens and legal residents, is that correct?

EASTMAN:
That's correct.

HICE:
Okay. And just reiterate again why this is so important that we have a count of citizens, not just illegals as well. I mean, we need to know--I'm fine if you want to know the total number here, but the critical aspect is knowing the citizens. Again, reemphasize why that is the case.

EASTMAN:
The importance of knowing the citizens and apportioning according to the citizen distribution is because it's the citizens that control the government. It's not foreigners that control our government. That's one of the most basic premises of the consent of the governed, principles set out in the Declaration of Independence.

HICE:

Yeah, absolutely. I mean, I don't see what's so complicated about this. It's illegal for a--a non-citizen to vote. It's illegal for them to be involved in our political process. And yet now, for all practical purposes, we have a political class, a political party that is determined to give citizens of foreign countries the right to vote in our federal elections, to be involved in impacting our federal elections.

This whole thing to me got to be deeply troubling. And at worst, it--it should be seen as election interference for us to enable or fight on behalf of individuals who work illegally in this country to impact the--the voting power of the citizens of this country is (INAUDIBLE).

And quite frankly, you look back, I don't know, Dr. Eastman, if you caught any of the DC statehood debate that we had around here, but it's the same thing then as it is now. It's all about gaining and strengthening political power for the Democratic Party and it shrugs off old norms, it shrugs off common sense, it shrugs off the law in itself.

And I would just thank you again for your testimony here today and I would implore my colleagues on the other side to end these showboat hearings and let's get back to the work of good census oversight. And with that, Madam Chair, I yield back.

MALONEY:
Well, I thank the gentleman for his testimony and I'd just like to respond to his attack. I--I read the president's census memo carefully and I believe that it is blatantly unconstitutional and that complying with his memo would violate federal law. That is why we called this important hearing. And I'd like to say--

HICE:
--And the chairwoman--

MALONEY:
--You don't have to take--

HICE:
--Is certainly entitled to her and--

MALONEY:
--Sir--sir--may--I did not--I did not interrupt you. May I complete? You do not have to take my word for it. All four of--of four former census directors that served both Republican and Democratic presidents said they also believed that the president's memo appears to violate

the Constitution and existing law. So this is serious and I now recognize Congressman Rouda.

ROUDA:
Thank you, Madam Chair. It must be exhausting for Republicans when the president tweets out lies and you are forced to defend it. It must be exhausting to be a Republican when the president of the United States holds a press conference and sells snake oil salesman cures for the coronavirus. And it must be extremely exhausting to come in here and defend the president of the United States when he takes unconstitutional actions such as he has done here.

Candidly, I feel sorry for you. I feel sorry members of the House of Representatives of the United States of America are afraid to speak their mind, to speak the opinions that they hold, to speak the truth that they know in their hearts, in their mind and defend this president at all costs, defending the indefensible. And it seems that the primary argument that has been stated as Representative Raskin pointed out at least a half dozen times in this hearing is that Indians not taxed were not counted.

The utter stupidity in that statement lies in the fact that undocumented immigrants last year according to the Internal Revenue Service paid $9 billion in payroll taxes. According to the Internal Revenue Service, undocumented immigrants paid $12 billion in Social Security benefits, more than they received. And according to the Institute of taxation and economic policy, undocumented immigrants paid $12 billion in state and local coffers.

Yet, here we are. Here we sit today because of this memorandum by this president telling us clearly what's most important to this president. Yet, we sit here today 140,000 of our fellow Americans are dead. Tens of thousands more Americans will die in the coming months because of the utter lack of leadership by this president.

The economic collapse of our country is unfolding before our eyes because a president is unwilling to do what is necessary as the leader of the United States to ensure that we take the actions we need to take to protect Americans. And it tens of millions of Americans are out of work, struggling to figure out how to pay rent, pay the mortgage, pay medical bills, and put food on the table for their families.

Yet, here we are today because of this president showing us and the minions to follow him what is important to them. Not as a Democrat, not as a former Republican, but as an American, we are better than this. I yield back.

MALONEY:
Thank you. I now work recognize Representative Green.

GREEN:
Thank you, Chairwoman and Ranking Member and thanks to our witnesses. The right to vote is sacred. As Americans, we are blessed to live in a country that respects the time honored tradition of one person, one vote. Wars have been fought. Marches have been led. Blood, sweat, and tears have been shed defending and advancing this fundamental right.

Unfortunately, Democrats are attacking this very right and are trying to disenfranchise American citizens in order to gain more power. Some states, such as California, have already flirted with openly allowing illegal immigrants to vote in state and local elections. Currently in California, you can register to vote online. They require is you check a box certifying that you are a U.S. citizen and you either provide a Social Security number or a California driver's license. But remember, driver's license, which they also grant to illegal immigrants.

Disturbingly, the LA Times reported that over 1 million illegal immigrants had a driver's license in California, and that was 2018. The fact is today's Democratic Party leadership, they don't care about one person one vote. They care about obtaining power at any cost, even if they have to attack the very foundation of our Republican--American citizenship and the right to vote.

Now, Democrats are continuing their offensive on the Constitution by attacking the 2020 census. They've managed to politicize every step in the census process, even criticizing President Trump for trying to include a citizenship question. Moreover, Democrats are ignoring history under the rule of law. The citizenship question has been included on most censuses from 1820 to 1950 and as recently as 2000.

Additionally, the Supreme Court ruled in 2019 the questions' inclusive--inclusion is perfectly legal. Despite this, the Democrat shenanigans managed to get the question removed by default since it was too late at the question before the service or printed. The citizenship question, when used to determine apportionment, is a simple matter of fairness and common sense. American citizens have certain rights that noncitizens do not have, the most fundamental of which is the right to choose our leaders.

Democrats are eager to cry foreign interference when it comes to the Russian hoax, but if we count illegal immigrants in apportionment, particularly those new to our country, how is that not foreign interference, I guess all Russia has to do is send a few thousand people across our soar--our poorest southern border into California and they get an extra vote in Congress.

How is continuing illegal immigrants--or counting illegal immigrants in the census or in the apportionment process not an assault on the fundamental rights of every American citizen? I'd like to ask my Democratic colleagues if an illegal immigrant can vote, then what's the point in citizenship? Why not have France just vote in our elections? What's the point of our legal immigration system?

There's no escaping the fact that including illegal immigrants in the apportionment process dilutes the vote of every single American citizen. Not only is it unfair, it creates an incentive for states to accept more illegal immigration. Authors Hans Von Spasky (SP) and Mike Gonzalez have written ill--including illegal immigrants in the apportionment process "perversely incentivizes states to encourage more illegal immigration in violation of U.S. laws and the well-being of American citizens, all in order to gain more Congressional representation. Simply put, those here legally should have no say in electing America's leaders."

Make no mistake. The Democrats are simply grabbing power at the expense of the American people again. The Democrats have actually made the point of the unfairness of counting illegal immigrants for apportionment in this committee today. Many of the Democrat members have asked in survey fashion a series of questions of each of our witnesses. The answer yes, no, yes, yes each time. The problem is this. It's a biased sample. They allowed us one witness and they provided three witnesses who share their opinion.

It's unfair. It's biased. And it's exactly what we'll get if we count illegal immigrants in apportionment. It will misrepresent the votes of Americans in states that abide by our laws. The assertion that the opinion of the census directors is somehow reflective of the people of America is absurd. They are three voices out of 330 million people. Their opinion counts 3 out of 330 million.

Rather than helping to get the Census Bureau an accurate count during a very difficult time with the pandemic, Democrats are further throwing a wrench in the process by coupling statutory relief with the census poison pill provisions. It's shameful. But it all goes to show you the truth. Democrats are more about power than they are about the integrity of our elections for the fundamental right of every American citizen. Thank you, Chairman, and I yield.

MALONEY:
I--I--I thank the gentleman for his testimony. And I--I do want to point out that the Census Bureau is not asking people about the citizenship status on the 2020 census, which the Trump administration wanted to do. They tried to do that, but this was struck down by the Supreme Court of the United States of America so the citizenship question was removed.

I now recognize Debbie Wasserman Schultz, Representative Schultz from the great state of Florida.

WASSERMAN SCHULTZ:

Thank you, Madam Chair. I'm going to present some inconvenient facts that really fly in the face of the ridiculous argument that was just made by the--the gentleman who previously--who previously spoke, and that is that in the section from census.gov labeled the importance of apportionment, it reads Article 1, Section 2 of the U.S. Constitution mandates that an apportionment of representatives among the states must be carried out every 10 years.

Therefore, apportionment is the original legal purpose of the decennial census as intended by our nation's founders.

Apportionment is the process of dividing the 435 memberships of seats in the U.S. House of Representatives among the 50 states based on the state population counts that results from each decennial census. The apportionment results will be the first data published from the 2020 census, and those results will determine the amount of political representation each state will have in Congress for the next 10 years.

Not only does the not--does the Constitution not qualify what type of person or category of individual will be counted for apportionment, the Trump administration's own Census Bureau specifically leaves out any reference to categorizing the type of individual that we are counting and whether or not they will count towards apportionment.

The founding fathers intended that everyone living in the United States other than originally counting slaves, tragically, as three-fifths of a person, should be counted for the decennial census specifically for apportionment. That's in the Constitution too.

So, what's going on here is that the U.S. Supreme Court scuttled the administration's bigoted plans to try to intimidate people who are not citizens from answering the census and thus being able to be counted and counted for apportionment purposes, and instead are trying to back door the--the citizenship question by using an executive order to not count those who are not citizens in apportionment. It's not constitutional. It's not legal and is transparent in its really venomous political intent.

My question is that we have a number of--a number of experts here, and I want to just go through a couple of key facts. This committee's investigation showed that the likely reason for the citizenship question was electoral politics. I'd like to--to ask Mr. Barabba, do you agree that the policies proposed by President Trump's memo last week to exclude undocumented immigrants from the apportionment count are consistent with the real objective for the proposed citizenship question? That was for Mr. Barabba.

BARABBA:
Oh.

WASSERMAN SCHULTZ:

Did you hear the question?

BARABBA:
Okay. I did not hear my name. I'm sorry.

WASSERMAN SCHULTZ:
That's okay.

BARABBA:
Would you repeat the question, please?

WASSERMAN SCHULTZ:
Sure. Madam Chair, if I can have a few additional seconds to make sure I don't lose my time? Do you agree that the policies proposed by President Trump's memo last week to exclude undocumented immigrants from the apportionment count are consistent with what the real objective was in originally proposing the citizenship question?

BARABBA:
I--I believe what he's trying to do is to have an effect on the outcome of the--of the apportionment process to the state.

WASSERMAN SCHULTZ:
Could you be a little more specific?

BARABBA:
If you count fewer people, indeed, as I pointed out in my testimony for low income, they're more likely people who do not vote for the president because of his positions.

WASSERMAN SCHULTZ:
Mr. Prewitt, can you explain why fears in the immigrant community about the census would depress response rates and ultimately lead to a less accurate census count?

PREWITT:

Yes, because they're afraid that the answers will be used against them, as the--it was unfortunately produced in the 1941 period with Japanese American 60 years ago. We're still talking about that. They cast a very long shadow over the census. And what we're going through now will cast another very long shadow. If they are afraid that it will be used against them as a group, then they have a reason to sort of dodge it and not respond to it and hide out.

WASSERMAN SCHULTZ:
Thank you. Mr. Thompson, after the issuance of this recent memorandum, it--it really is even harder to escape the conclusion that the Trump administration is attempting to manipulate the census count for political purposes. If this behavior is normalized, what impact do you think this will have for the future of our democracy and ensuring an accurate count in the decennial census?

THOMPSON:
So, that--that's an excellent, excellent question, congresswoman. It--it is incredibly important that the census be viewed as a nonpolitical objective enterprise, because it is the foundation--one of the cornerstones of our democracy. And perceptions that it's been politicized, as Dr. Prewitt said, will have a long, long lifespan and it will make it very difficult to take that only the census, but censuses in the future.

WASSERMAN SCHULTZ:
Thank you, Madam Chair. I yield back the balance of my time.

MALONEY:
Thank you. We now recognize Representative Higgins by remote. He's online. Representative Higgins?

HIGGINS:
(OFF-MIC) Madam Chair.

MALONEY:
Thank you.

HIGGINS:
Thank you, Madam Chair. This--this type of anti-American rhetoric--

HIGGINS:
--I'm hearing from my colleagues across the aisle today is exactly why regular American patriots don't like politicians and don't trust the government. What--what are the democrats trying to hide right now?

This is the number one thing. It's the major point that--that is incredibly clear. Across America, from sea to shining sea, by hard working American citizens, voting rights in America and congressional representation in America belong to American citizens, period. Our nation's fabric has changed through the generations.

The census is conducted primarily for a portion in every ten years. This is a--this is a challenge that has evolved and changed over the course of time and what we now face is--is the very clear fact that illegal residents of our country or illegal occupiers of our country have significantly affected representation. What are the democrats hiding? Illegals interfere with our republic when it comes to congressional apportionment and voting.

President Trump's new policy would restore congressional representation to its rightful owners, the citizens of America. What are the democrats hiding? What--why would we not want to know how many citizens versus non-citizens are in our country?

I'll tell you why. America, and I hope you're paying attention. Estimates range from 12 million to 25 million illegal aliens in this country at 700,000 constituents for congressional district. That's 17 to 35 congressional districts that can be swayed by illegal aliens within our country.

The 115 Congress majority, republic of majority, was 47. The (INAUDIBLE) 16th congress, the Democrats hold a 34 vote majority. The reality is that illegal aliens present in our country, if counted for apportionment, actually do shift the balance of one man, one vote away from densities of population of American citizens towards densities of population of illegal immigrants.

And, my colleagues across the aisle don't want America to know that. But, I do, because we prefer to speak the truth and I--and I--and I take offense to some of the language that's been used towards myself and my colleagues by the gentleman prior. You don't know our hearts, sir, good sir. You calling us minions and other things. You're wrong for that and you know it. America is watching and they know it.

Mr. Eastman, you--you are a constitutional scholar. Are you not, good sir? Mr. Eastman, please unmute yourself.

EASTMAN:
(INAUDIBLE)

HIGGINS:
My question was are you a constitutional scholar, sir? Madam Chair, I'd like this time observed(PH).

EASTMAN:
Let's try again. Can you hear me now?

HIGGINS:
Yes sir, Mr. Eastman. My--my question was are you a constitutional scholar, sir?

EASTMAN:
Yes I am, sir.

HIGGINS:
Please unmute yourself, sir.

EASTMAN:
It's unmuted. I'm sorry, I don't know what the problem is. Yes, I am.

HIGGINS:
Back on track here. Welcome to 21st technology that doesn't work for remote committee hearings. I urge my colleagues to return to regular order.

Mr. Eastman, are you familiar with the--with the--with the President's new policy that we're discussing today? Can it or can it not be challenged in court as constitutional or unconstitutional?

EASTMAN:
According to (INAUDIBLE)

HIGGINS:
Your--your audio is not functioning, sir.

EASTMAN:

--(INAUDIBLE) let's try this. Is that better?

HIGGINS:
Yes, sir. That's better. Madam Chair, I'd like this time observed for later.

EASTMAN:
Okay. Yes.

HIGGINS:
Mr. Eastman, my--my question to you is very simple. Are you familiar with President Trump's policy regarding--regarding the Census that we're discussing today? Can this policy be challenged constitutionally in court or can it not? Is that not our process?

EASTMAN:
Well, it's already been challenged in four different cases in court. I--I believe when it gets to the Supreme Court, based on the Franklin versus Massachusetts case, the Trump policy will be upheld. But, it will certainly be (INAUDIBLE)--

HIGGINS:
--And, in the interest of time, if the--if the--if President Trump's policy is overturned by the Supreme Court, which is our judicial procedure, I would encourage my colleagues to wrap their passion up in a judicial challenge properly. If the president's policy is overturned by the Supreme Court, then that's it, isn't it?

EASTMAN:
Well, that's--yes, that's it and Congress would certainly have a say with the constitutional clarifying amendment. But, I believe the Constitution allows for the policy already.

HIGGINS:
Very well. So, prior to Supreme Court rulings that--that--that have established by--by majority rule in the Supreme Court, that an agency's action is final when an agency completes its decision making process, specifically as it regards to the census that the president is not--is not required to transmit the secretary's report directly to Congress. Rather, he uses the data from the census in making his statement. Are you familiar with that ruling as written by Justice O'Connor?

EASTMAN:
Yes I am. That's the Franklin versus (INAUDIBLE) to which I've been referring.

HIGGINS:
Yes, sir, it--it certainly is. So, Madam Chair, I thank you for your indulgence. We had some technical difficulties from the gentleman. I just want to clarify that what's before us today is the balance of power of the representative republic of American citizens that we are supposed to serve. And, if you--if any of my colleagues or fellow Americans across the country have a problem with the president's decision, then by all means, follow the constitutional process by which you will challenge that as to Article III in the judicial process.

Madam Chair, I yield.

MALONEY:
Thank you. I now recognize Congressman Sarbanes from Maryland. Congressman Sarbanes.

SARBANES:
Thanks very much, Madam Chair. Can you hear me?

MALONEY:
Yes, we can.

SARBANES:
Okay. Well, appreciate the hearing. You know, fundamentally, you--you can't run a country if you don't know how many people are in your country, and that's the purpose of the census, plain and simple. It's not a democratic power grab.

This is a patriotic exercise that we engage in every ten years to know who is in our country, how many people, so we know how to provide services and resources and function as a country. That's what this is about. This is about being able to function properly and efficiently as a country so we know where to build the roads and the hospitals and the schools.

I want to know how many people live in my district. Whatever district I'm representing as a member of Congress, I need to know how many people there are living in that district so I know what the schools should be, how many resources should come behind community health clinics, what--what's the capacity of the hospitals that we need and our other healthcare providers.

That's the purpose of this and if we don't take the Census seriously, we're not going to be able to function as a country in an effective way. So, that's what this is about. This isn't about political power grabs. This is about doing what makes common sense and what our Constitution calls upon us to do every ten years.

Now, I--I don't want to belabor what the president has done because it's very clear, based on the testimony and I think an easy reading of the Constitution, that what the president has proposed most recently is not only unconstitutional, it's completely unworkable. I'd like the former directors, if they would, to--to give me your perspective on this very delicate line that we're walking right now.

On the one hand, we know that the census needs to be completed within a certain period of time so that the data all works and the further--further we get away from April 1st, the more potentially compromised that can be. On the other hand, we don't want to rush the census--

SARBANES:
--in a way that would undermine its accuracy. And I fear that the president is seeking to do that now. From what I understand, he's trying to sort of telescope the process here. So could you speak, and any of you are invited to--to weigh in, of the former directors, tell me what your greatest concerns are right now about our ability to conduct the census in an efficient way to gather up the data to be confident in it and how do we navigate this--this window that we have to pull that off? And I'll--I'll turn it back to the--to the directors.

THOMPSON:
Well, I can--I can start. The--the clearer people who are experts at making the census requested a four-month extension of the deadlines in their title. They know what they're doing. They know what it's going to take to get the census done. Not extending those deadlines is going to put tremendous pressure on the Census Bureau. It's not clear what kind of quality counts they can produce if they don't get the extension. So it could be a really big problem.

SARBANES:
Mr. Prewitt.

PREWITT:
Yeah, I would just add to that, as I tried to say in my opening testimony, I really do think right now we ought to be appointing an independent, apolitical group of statisticians and otherwise informed people, National Academy of science can certainly do this and look at

metrics. What were they telling us that we have a census that is inadequate for the purpose of reapportionment, is inadequate for the purposes of spending over $1 trillion, and it's inadequate as a base number for all of our other surveys, for 10 years.

I think we are at risk of getting to the country a set of numbers which will make what our previous--what you said at the very beginning, you want to know how many coming to school, how many in the hospitals. What's the traffic load? What about emergency preparation? All of those depend upon numbers and I am very worried that we may not have those numbers at a level at which we are able to give them to the--to the president at the end of this calendar year. So the extra four months is really important.

SARBANES:
Thanks very much, Madam Chair. I appreciate the opportunity and I think what we're hearing is the politics need to be kept away from this space. The president is trying to politicize it. We need to keep it in a safe zone and get this right and do it properly for the benefit of the country. I yield back.

BARABBA:
Chairwoman, could I make a comment, please?

MALONEY:
Thank you. Who--who is wanting to make a comment?

BARABBA:
Yeah, I just want add to what my colleagues have said that the manner in which the president is positioning this question on citizenship will be more--is designed to be alarming to noncitizen to be counted and it's this approach that is going to make it difficult for the census to do its job, which is to count everyone, every person in this country.

MALONEY:
Thank you. I now recognize Representative Robin Kelly from remote. Kelly.

KELLY:
Thank you, Madam Chair.

MALONEY:
Thank you.

KELLY:
A couple of points I wanted to make first that I've been on oversight for over seven years and most of that time I was in the minority and I never remember the minority having more than one witness. I just wanted to make that--make that point. And I thought I heard one of my colleagues say that to have the undocumented count because that will help us in with our century cities. Well, Chicago is a sanctuary city and New York is a sanctuary city and we already know that Illinois will lose one congressional seat.

So counting the undocumented is not helping us over another state that you make represent that doesn't want to take out the undocumented. But I wanted to ask Mr. Groves if undocumented immigrants do not respond to the census either because they are afraid of being identified or are motivated because of this memo what effect do you predict this will have on the distribution of federal funds and it would affect some communities more than others?

PREWITT:
I--if I'm I needed, I will--Dr. Groves has left.

KELLY:
Oh, I'm sorry. That's right. I've been waiting so long.

PREWITT:
I'm sorry. No, no, I'll give you a quick response. Look, right now with respect to that 62 percent of the public that has sent in a form, that's a highly variable number state-by-state that goes up as high as 72 percent and goes down as low as 52 percent.

That's a 20 percent difference between those two states. And if that carries forward for the rest of the census, that means were going to have states that are counted close to 100 percent and states are counted at 80 percent. And that is not a functional census.

That by definition--hugely disproportionate the way that federal funds get spent because the federal funds is a fixed number and is proportionate to size. So if somebody is 100 is 80, the one that's 100 is actually going to get 20 more because is going to be spent somewhere. So it's a very serious issue.

KELLY:

And also the other thing is when I think about one of the counties I represent is Cook County and even if someone is undocumented, they--they need help or care the county or the city, you know, they still help. They just don't, you know, leave people to die or to be homeless and that kind of thing. They--they'd still feel that responsibility and none of that is free, you know, it cost money.

PREWITT:
Yes.

KELLY:
So that's why it's so important. Madam Chair, I yield back early.

MALONEY:
Thank you. The gentlelady yields back, and I now represent--Representative Grothman is now recognized.

GROTHMAN:
Okay, thank you very much and thank you for having this hearing. Always enjoyable. I think there's some confusion. So the first question I have is for Dr. Eastman. The president's memo, as I understand it, doesn't include distribution of federal funds. It's only for the purposes of apportionment, am I wrong in that?

EASTMAN:
No, you're absolutely right correct on that. The two are distinct and their acts actually the constitutional authority is different for each of the two.

GROTHMAN:
Okay. So this idea that if we--we--we don't count people who are here illegally is going to result in, say, less federal aid to the city of Chicago, that's not accurate, right?

EASTMAN:
That's not accurate. The count will be there. The question is what are the numbers we use for apportionment purposes, not for all the other myriad uses for defenses.

GROTHMAN:

Okay, good. Now, I wanted to ask you about other people who are, you know, I happen to live in Wisconsin. There are people who could be in Wisconsin for a variety of reasons.

There could be people who were born there and will die there and live there their whole life. There can be people there who are diplomats from our consulate in Chicago or driving around seeing what's going on up there. You could have tourists who plan on leaving, you could have people who spend seven months of the year in Florida and five months of the year in Wisconsin. You could have somebody coming over from Iowa who is taking care of an aging relative and expects to return home.

Could you comment on these different situations? Are all of these people supposed to be counted for apportionment purposes, none of these counted for apportionment purposes? If we go through them--a diplomat, they're not counted, are they, even though there in Wisconsin?

EASTMAN:
No, diplomats are counted even though they are persons in the state. If you want to take the--the technical reading and offered, visitors are not counted. Temporary people passing through are not counted. And I think that Indians not taxed are not counted. We haven't had that category since citizenship was offered in the 1920s broadly to native Americans. But for the first 100 century (PH) and include our nation's history, they want counted.

It's because what--as the Supreme Court said, what we are ending for here is being represented. Who's in charge? Who are the sovereign people that are choosing the representatives and allocating the distribution of seats in Congress and electoral votes based on that.

GROTHMAN:
Okay, and I'll give you the specific example. Let's say I'm in Wisconsin. Let's say a woman who moves into Wisconsin to take care of her aging mother and expects to return home from Iowa, has no intention of staying in Wisconsin, maybe her mother is even in home hospice. Should she be counted as a Wisconsin resident?

EASTMAN:
I don't believe she should be, and I don't think the Census Bureau does. They asked where her normal place of abode is.

GROTHMAN:

Okay. If I'm in this country illegally, how under any circumstances--what conclusions would you reach to say that a person who is here illegally intends to stay permanently? I would say I would think if I was called in a country illegally for whatever reason I would expect to return home. Isn't it kind of insulting to somebody to say if they're here illegally we're going to make the assumption they're there permanently?

EASTMAN:
Well, I--I--I think so, and--and, you know, you can read this then into the phrase in the state. The--the other argument has been, well, anybody that's residing in the state; well, they've added the word residing to there. So, why don't we also add the word more consistent with the theory, lawfully residing there? That gets more at the question of who's being represented, those who are here lawfully.

GROTHMAN:
Well--well, right. I'm going to go back to the two situations. If you have someone in Wisconsin taking care of an aging relative until they pass away, you know, we consider they're a permanent resident another place, right?

I think normally if you have a college student who is in Wisconsin for nine months and then returns to Iowa, that--Iowa is considered their place. They only--they don't intend to stay in Wisconsin full-time.

By what logic could you say if someone, say, is overstaying a visa and--you know, but plans on returning home, we assume returning home, how--what--what type of legal logic could you have to say that we expect that person to stay in Wisconsin permanently? I don't understand that. Can you imagine a legal theory that we're going to assume somebody who comes here illegally is going to be considered a permanent resident?

EASTMAN:
Well, there--there--there's one theory that's been floated called virtual representation. Even though they're not part of the citizenry of that state or that community, they are nevertheless there, and so therefore the people would treat them as if there being representative even though they have no say in the government. I think that is--

GROTHMAN:
--Well--well--well, why don't we--

EASTMAN:

--Fundamentally incompatible--

GROTHMAN:
--Assume they're going to leave though? That's what I don't understand.

EASTMAN:
Yeah, I don't--I don't--Congressman, I agree with you. I don't understand it either. But I'm--I'm trying to tease out the theory on the other side to try and make some sense of it, and I can't. It is so fundamentally incompatible with the notion of consent of the governed that is the cornerstone of our system of representative government.

GROTHMAN:
Well, I--I--I just will say, on behalf of the illegal citizens in my state, I think it's insulting to imply that in the future they're never going to obey the law. Thank you.

MALONEY:
Congresswoman Lawrence is recognized.

LAWRENCE:
Thank you, Madam Chair. I would like to bring the focus back to what the census is established, and that is to count every person. I was a mayor, and I know that the amount of people who were driving over my roads go into the population, goes into the formula of how much I come to the federal government, say I need X amount of bill dollars, I need X amount of dollars. I need to know how many children are going to our schools so that we can anticipate the amount of brick-and-mortar or the amount of taxation for educating the children in our community.

It's so sad that this current administration uses every single angle to politicize it and have it to be a Democrat or a Republican issue. The census has nothing to do with your political affiliation. It has everything to do with the numeration of the people who live in this country so that we can appropriately allocate the funds throughout our country.

I know in my district there's a very rich and, thank God, amazing diversity of people, strong representation from the Middle East and Bangladesh, other countries. We have Jewish. We have African. We have India. So, when--when you knock on the door of a home and you say are you legal or not legal, the trust because of this administration's just--just absolute aggressive immigration, demoralizing the value of people in our country, it creates fear whether you want to admit it or not.

Mr. Thompson, are you still here? Is Mr. Thompson still here?

THOMPSON:
Yes, I'm--I'm here.

LAWRENCE:
Okay. Is it true that the immigrant communities have historically been undercounted in the census? And can you explain why this is problematic?

THOMPSON:
That's a--that's an excellent question, congresswoman. So, the Census Bureau has always been measuring a differential undercount, and that is for the white non-Hispanic population, they have been measuring slight over counts. For other populations, African-Americans, Hispanics, they've been measuring undercounts. American Indians, they been measuring undercounts. And they call it the differential undercount.

So, the implications of that are--filter through all the important uses of the census, including apportionment, including redistricting, and including the allocation of $1.5 trillion in federal funds every year. If there's an undercount in a community, then that community doesn't get its fair share of--of any of those resources.

LAWRENCE:
So, when a--when a community does not get the proper allocation of funds, when we start talking about poverty, when we start talking about generational misrepresentation, it is all tied to the census and how we count the citizens and the people of this--of this country. Is that correct?

THOMPSON:
Yes, ma'am.

LAWRENCE:
Do you agree that President Trump's executive order is likely to make the problem worse by discouraging legal immigrants from completing the census?

THOMPSON:

Yes. I included in my testimony my concerns that a memorandum was going to increase fears among the hard to count populations, which would include immigrants, not citizens, that their data would not be safe, and therefore their nonparticipation.

LAWRENCE:
Madam Chair, I just want to be clear on the record that the census is not a Democrat or Republican issue. It's an issue about how we will fund our country. I sit on appropriations, and I say often if you want to know where a person's heart is, if you want to know what your values are, follow the money. And if we systematically eliminate and discourage participation, then our values will be very clear that, if you are minority, if you are an immigrant, you have no value. Thank you so much. I yield back.

MALONEY:
Thank you. Thank you to the gentlelady for her--her powerful statement. Congresswoman Miller is now recognized.

MILLER:
Thank you, Chairman Maloney, Ranking Member Comer, and to all of you witnesses who are here today.

As we will discuss further in the next panel with Dr.--Director Dillingham apportionment is drastically different than taking the census. It is essential that the census count every person living in the United States, as this data is used to appropriate federal resources to the communities in need. Another use for this data is to fulfill the constitutional duty of apportionment.

Apportionment is the essential process that Congress takes to make sure that the members of Congress are distributed fairly and proportionally across the United States. Allowing some states with a high number of undocumented immigrants to support the will of American citizens by denying other states their fair representation cannot be allowed.

While many across the aisle actively champion illegal immigration and deny the government's duty to protect our southern border, to turn around and try to distort the president's actions to protect American democracy into a constitutional crisis is an absolute farce.

This hearing is just a continuation of the lack of leadership that America is so tired of seeing out of Washington. I support President Trump's memorandum of apportionment and reiterate the importance of making sure American's voices are heard here in Congress and at the ballot box.

Dr. Eastman, how would counting residents living in the United States illegally undermine the representation of legal American citizens?

EASTMAN:
Well, it would create an apportionment that shifts numbers of representatives in the House of Representatives and also the electoral votes for president from places where there are not large numbers of illegal immigrants to places where there are, therefore diluting the vote and political power and sovereignty of the people in the states that--that do not have large numbers of illegal immigrants and benefiting those that have violated our law.

MILLER:
So how (INAUDIBLE) or smaller rural states which already have very few members of Congress negatively impacted by the larger states who are bolstering their census counts with undocumented immigrants?

EASTMAN:
We have got a number of states that will lose or not gain a--a seat in Congress as a result of counting the large number of the legal immigrants that have consolidated in particular states in the three or four states, for example. It--it would shift away from the rural states, and it would debase the votes of American citizens in large portions of the country.

MILLER:
So basically in a congressional district where half the population is comprised of undocumented immigrants, is that fair representation to a district that is comprised entirely of American citizens? Doesn't that dilute the representation that citizens have in Congress?

EASTMAN:
It--it does so in two ways. It gives that state with illegal immigrants and additional seating Congress that creates--that enhances their political power and it also takes each voter in that district and essentially makes their vote worth twice as much as the votes in a district where there are no illegal immigrants.

MILLER:
So historically, why has it been the standard to use total population for apportionment instead of the number of citizens, and does this actually use subvert the democratic will of American voters?

EASTMAN:
Well, historically we have used total population because there was not a differential between total population and citizen population and so total population was a very good proxy for--for the political representation but we now have a vast disparity between citizen and noncitizen areas of the country, and that is skewing the political authority of the people that are supposed to be choosing the representatives to government.

MILLER:
Thank you. I yield back my time.

MALONEY:
Thank you. I now recognize the vice-chair of the committee, Congressman Gomez, for five minutes. Thank you for coming.

GOMEZ:
Thank you, Madam Chair. I just want to remind people I am actually very happy that President Trump and the administration revealed its true colors. For the long time if we remember back when they were trying to add the citizens it question to the census it was always about enforcing the voting rights act, and they repeated it and repeated it and repeated it, but even your Republican Chair Trey Gowdy didn't even believe that was the case.

He even made the argument that their lodging didn't make sense because they have been enforcing the Voting Rights Act the Justice Department since its existence without having that information on these citizenship on the census, so we always knew what this was about. It was about (INAUDIBLE), it was about the apportionment expert trying to create a scenario that they could make an argument why citizen--undocumented immigrants and not all people should be counted in apportionment.

That was what it was always about, so it just reveals their true colors that they put forward this executive order and this memo--memo of understanding and the reason why it was always about that because this administration and Trump have always attempted to use the census as a political weapon to marginalized communities throughout the country and I believe that this is only the next step because I believe the true direction of this administration wants to go and some individuals on the right of the political spectrum is to undermine the 14th Amendment itself, the idea that in the person, all persons born or naturalized in the United States are subject to the jurisdiction of the United States and are citizens of the United States.

That is where ultimately they want to go. They as I'm talking about the Trump administration, I'm talking about the people who are on the right who don't see people who are born here as valid citizens of this country. So this is just the next step you know what President Trump has done in these memos, but I believe that it would be found unconstitutional.

I believe that some of the recent rulings by the Supreme Court indicate that this court is not a Republican court or a Democratic court, it is the Supreme Court of the United States of America and I look forward for this case to go forward, but the present memo does I believe violate the Constitution. It also violates federal status--statutes as enacted by Congress.

Title 13 states that after the census is complete, the secretary of Commerce shall send the president and I quote a tabulation of total population by states which then the president must transmit to the Congress a statement showing the whole number of persons, it doesn't say anything else, it says of persons in each state.

I would like to go down the line and ask each of you a question. In your experience as director of the census bureau, did you ever understand federal law to allow the secretary of Commerce to exclude undocumented immigrants from the census count he or she is required to send to the president? Mr. Barabba?

BARABBA:
No. The answer is no.

GOMEZ:
Mr. Prewitt?

PREWITT:
No.

GOMEZ:
Mr. Thompson?

THOMPSON:
No.

GOMEZ:

Those are some simple questions when it comes to this issue that it has never been allowed, and no one has ever requested it, but this administration is trying to once again use the census for political ends and to marginalized and undocumented community and undermine our democracy.

We have a choice to make. The country is getting more diverse no matter if we throw up roadblocks, no matter what we do the country is changing, but it's not about how we shouldn't allow those changes to determine our character, it is how we handle those changes that will determine the character and the values of this country. I am proud to be an American, and a lot of the people who are here undocumented or otherwise are also proud to be in this country, and we will fight for our place in this country every step of the way until the day that we are no longer on this earth. With that, I yield back.

MALONEY:
Thank you, Mr. Gomez. The chair now recognizes Congressman Keller.

KELLER:
Thank you, Madam Chair. Thank you, Ranking Member Comer. Last week the President issued a memorandum directing the Department of Commerce to provide him with an apportionment count, which only includes those in this country legally. Since we all know that an apportionment count, a census count, and a redistricting are different things I am concerned that the title of this hearing conflates all of these into one group creating the assumption that these terms are all the same thing makes the accusation that the President's actions are unconstitutional which they are not.

Doctor Eastman, can you explain how an apportionment count is different from a census count and redistricting?

EASTMAN:
Sure. The census count total count that is addressed things like federal spending and how many schools we need and how much space we made on the highway those are exercise pursuant to congresses power under the commerce clause and under the spending clause, and we get a total count, it doesn't matter on what basis you are here, but apportionment is supposed to be tied to people who are choosing representatives, and we can have an apportionment count of the persons in the state for that purpose that is different from the total population count that would include visitors, it would include people on temporary basis, it would include all of those other things, and we can have two different counts.

The President's memo is directed to the apportionment count, what numbers of persons are we going to use for distributing our political power in this country based on the population of citizens of we the people.

KELLER:
Thank you. This committee has spent endless hours holding hearings, conducting investigations, issuing subpoenas, and holding administration officials in contempt of Congress all due to an issue with the citizens it question on the census. While this effort eventually--was eventually abandoned, a citizen said question should not be controversial, and neither should be using an apportionment count of only those who reside in our country legally. If someone is here illegally, they should not be represented in the United States Congress.

Doctor Eastman, why did the Supreme Court rule that a citizenship question being asked on the census questionnaire is, in fact, constitutional?

EASTMAN:
Well, because first of all history we have asked that question on almost every census in our entire history. The only reason it blocked it from the current census is because the Supreme Court found that the department had not properly gone through the requirements of the administrative procedures act, but it went out of its way to say asking him about citizenship is perfectly constitutional.

KELLER:
Okay. Just one thing. I know there has been a lot of discussion on why we need to make sure that the representation is correct, but I know some of the people on the left want to do away with the electoral college. By--by counting people who are not U.S. citizens here legally is that a way to make the electoral college less relevant or over time irrelevant by shifting representation away from American citizens?

EASTMAN:
It does. It has the same effect of diluting the votes of citizens that the apportionment of the House of Representatives has because the electoral college votes are based on the total number of seats one has in the House of Representatives plus the two senators.

KELLER:

So--so if I couldn't get an amendment through, I couldn't get a national popular vote and I wanted to do away with electoral--electoral college, I would--I would want to count people for representation purposes who are--who are in our country illegally?

EASTMAN:
You--you certainly would enter the impact of--that citizens have on the outcome of elections. And that undermines the very notion of the consent of the governed.

KELLER:
And the thing--the point I guess I wanted to make, by the way the Trump administration wants to make sure that we know the difference between when we're talking apportionment and census and redistricting. We want to take care of everybody that is here--here in our country, but we also want to make sure that the government is selected by American citizens and not people who are not citizens of this country. Is that correct?

EASTMAN:
That's correct. And I don't think it's partisan. Look, I mean, if you look at the numbers, Texas is going to lose seats as a result of this as well as California. It's hard to say that that's a partisan outcome. It's--it's a good governance outcome.

KELLER:
It's an outcome that means we are--we are exceptional because we're Americans and we should have government that is decided by American citizens and not people that are national foreign nationals in our country illegally. Thank you, Madam chair, and I yield back.

MALONEY:
I thank the gentleman and I think all of the panelists for their testimony and remind them that they--very--there will be additional questions that may come to them and I would be grateful for their swift response.

We will now go to the second panel. But first, I'd like to respond to Mr. Hice's request that we have--he mentioned we needed a hearing on the hard to count communities and stated that we had only had not enough hearings on--on the census.

I'd like to place in the record that since I've been here, there have been five hearings on the census, including one on the hard to count communities in the 2020 census, which was January 9, 2020.

We were also privileged to have Director Steven Dillingham here on February 12 and appreciate him coming back very much and we also had one on beyond the citizenship question, repairing the damage and preparing the count for we the people in 2020 and we also had one on getting the--the count counted to the importance of the census for both states and local communities and on March 14 we had Commerce Secretary Wilbur Ross.

So I would like to place in the record these hearings that we had, five, and I mentioned to ranking member, if you'd like to have another hearing on hard to count communities as Mr. Hice mentioned, would be glad to accommodate having another.

And I'd also like to place in the record that listing of 12 full committee hearings that we had on different subjects. But obviously, five with both the through committee and subcommittees has been a priority. As it should be for this--for this country. I'd like to place this in the record. Thank you.

So the first panel is dismissed with our great thanks. Thank you for your time, thank you for your service, thank you for coming back to testify with us from across the country. We are very, very grateful. Thank you.

And we are also grateful that we are joined by Mr. Steven Dillingham, the current director of the census bureau. We thank you very much for your time, for your service, and for agreeing to be here. We are very appreciative. If the witnesses would please rise and raise your right hand, do you swear or affirm that the testimony you are about to give is the truth, the whole truth, and nothing but the truth so help you God?

DILLINGHAM:
(OFF-MIC)

MALONEY:
Thank you. Let the record show that the witness answered in the affirmative. We thank you. Without objection, your written statement will be made part of the record. And with that, Mr. Dillingham, you are recognized for your testimony. Again, thank you for your service. And I just wanted to add the--the coronavirus has changed everything and I--it has really changed how we've been able to conduct the census. And I appreciate your service during this very, very difficult time. Thank you for being here.

DILLINGHAM:
Chairwoman and Ranking Member, I don't know if you noticed, but I had my own specially designed mask and I provided one to you in the working member. So I hope you find it useful. It's at least for getting the message out. Thank you so much.

Chairwoman Maloney, Ranking Member Comer, and members of the committee, I am honored to be with you today. I'd like to congratulate Ranking Member Comer on his recent appointment. I appreciate the support of Congress and this committee's commitment to a successful 2020 census.

The nonpartisan U.S. Census Bureau is the nation's leading federal statistical agency. Its career and non-career staff work together to advance its mission always in accordance with governing laws and court rulings. The Census Bureau does not set policy, nor does it control the use of its data products. The Census Bureau adheres to the highest standards of scientific integrity and transparency and the principles and practices of federal statistical agencies.

Meeting challenges posed by the unprecedented brutal pandemic remains at top priority. The Census Bureau's dedicated workforce has worked hard and professionally to keep the 2020 census on track. This morning I am pleased to highlight some recent developments.

On July 21, the president issued a presidential memorandum that has been the topic certainly of the first panel. In response to the memorandum, Secretary Ross called upon that Census Bureau to examine the directive and commence efforts to develop methodologies for producing a special tabulation for apportionment. A group of expert possible methodologies. Operations are not affected by the memorandum.

We remain committed to accounting t every person in the right place and only once. To help the Census Bureau meet challenges posed by the pandemic, the White House office of management and budget submitted request to supplement our hiring, pay incentives, outreach and replenish our contingency funding to provide the necessary flexibility.

Despite the pandemic, the 2020 census self-response has been a tremendous success. We are now almost 63 percent with more than 92 million households counted. About 80 percent have chosen to respond using the Internet.

Our response system has not had a single minute of downtime since we first invited people to respond online beginning in March. We successfully set up--we sent up and we say up to five mailings because if you do answer it self-response, you're not receiving hopefully after a period of time not receiving additional mailings.

But we successfully sent up to five mailings in an additional mailing to areas with the post office boxes. Our sixth mailing has begun and it should reach 34 million non-responding households. In September, we will be sending--we will be sending a seventh mailing, including questionnaires to the lowest responding tracks and hard to count areas.

Our update leave is--which is our operation to hand deliver packets to housing units, well it is certainly generally complete, it certainly 99 point--the last I looked it was I think it was about 99.9 percent. It was--it's basically complete except for some very small communities. Our counting college students continues to progress.

We have a special operation to ensure complete and accurate count of college students. College students must be counted with a live or stay most of the time as of April 1. Congress is considering legislation which was passed by the House to alleviate confusion among college administrators.

The largest component of our field operation non responsive follow-up is underway and expanding rapidly. We have begun a soft launch in selected areas where we could do so safely and effectively. The first six areas since this office has began work on July 16, six more began on July 23.

Tomorrow, 35 others will begin work and 40 more will start on August 6. They will be announced today. The remainder will begin this work on August 11 and will be covering the entire nation. Today, we are announcing that as part of our non-response follow-up operation, we will contact some households by phone.

Health and safety of Census Bureau staff and the public remains our priority. The provision of personal protective equipment, trainings, and adherence to social distancing reflect our commitment to health and safety of the public and our employees. We require census employees interacting with the public to wear a face mask regardless of location. We daily monitor health conditions nationally and at the state and local levels.

Our hiring of census takers and staff continues. We now have 3 million applicants available as temporary census workers. We continue receiving about 1500 new applicants each day. Our 248 area census offices are completing the hiring process for about 0.5 million temporary census workers. More than 900,000 job offers have been accepted.

Our partnerships are unprecedented, exceeding our most ambitious goals. With almost 400,000 partners, we are expanding our outreach to hard to count populations. Despite having to delay the mobile questionnaire assistance efforts due to the pandemic, partnership staff have identified assistance sites where people go when they leave home such as grocery stores, such as pharmacies and other places in compliance with local, state, and federal safety guidelines.

We have seen great examples in New York City, and I know that you have participated, Madam Chairwoman, in Kentucky as well and probably in all member districts. The 2020 census communications campaign continues to expand its reach. We increased the communications contract budget from $500 million to $700 million, and increased our media buys, which are in pro--progress now. We were on many types of advertising in low response rate areas, including those with hard to count audiences.

As voices in your communities, thank you for sharing our message that participating in the 2020 census is easy, safe, and important. We appreciate your strong support for 2020 census and our operations. Our committed employees and volunteers remain on mission and are

accomplishing tremendous results.

Our offices have lead other federal agencies in reopening in a rapid, phase, and safe manner. I could not be prouder of our talented and dedicated career and temporary workforce, soon to become the nation's largest.

We are grateful that almost every House and Senate office is active as a 2020 census congressional partner. We look forward to our continued work together, and thank each of you for your support. Together, we are reminding everyone that the 2020 census belongs to our nation at large and will help shape a better future for all who live here.

Thank you so much. I look forward to your questions.

MALONEY:
Thank you. And--and the chair now recognizes herself for questions. And--and I appreciate your testimony that the census belongs to the people and it's part of our--our future. I--I do want to report that in New York the census has been nonpartisan, professional.

They have responded to every request from the mayor to attend various meetings from the community. They have been at the community boards, the block associations. They work weekends handing out information in the parks and have responded to every request my office is made for them to join us in getting the word out to the public in a nonpartisan, professional way. And I want to thank you for that.

DILLINGHAM:
Madam Chairwoman, I want to thank you, that--I had some particulars with regard to your efforts in the food distribution areas of New York City, and appreciate you as well as your colleagues all across the country.

MALONEY:
It's very, very important. But I must tell you, Director Dillingham, I am very, very concerned about the president's memo. And I have read the president's memo very carefully, and I believe that it is blatantly unconstitutional and that complying with this memo would violate federal law. And I strongly urge you not to violate federal law.

But you don't have to take my word for it. We had quite a lengthy hearing today, and all four of your professional nonpartisan predecessors testified on the previous panel that they believe the president's memo appears to violate the Constitution and existing law. So, I would like to ask you, do you agree with your predecessors that the memo appears to violate the Constitution and existing federal law?

DILLINGHAM:
Madam Chairwoman, I--I was able to catch parts of--of that hearing. I--I know just perhaps the letter parts. And I--I was amazed at what a healthy discussion and debate and--and a very livid one at times with regard to policy and history as well as long. They're in a different position than I'm in. I respect them greatly and we have many things in common, certainly the completeness and accuracy of the 2020 sentence--census.

We have other things in common, and that is the--the respect for the bureau--the Census Bureau, as well as the principles that govern it, the relevance, the credibility, the integrity, the independence, etc. So, we have much in common. But I am not in a position where I can express my opinions with regard to the policy, with regard--and wouldn't even wise with the history, and certainly not within the legal analysis, which is now a subject of litigation.

So, as I did last year, I have to back off. I cannot answer or even give my personal views, because my job as the Census Bureau director will be to execute the 2020 census. And we do abide by court decisions and controlling law, so we will have to wait and see how that legal debate comes out, and we will do our job. But that is our focus. Our mission right now is a complete and accurate count that will include everyone living in this country.

MALONEY:
Well, in your job executing the 2020 census, did you or anyone else in your knowledge from the Census Bureau contribute to the president's July 21st memo or provide input on it before it was released?

DILLINGHAM:
Madam Chairwoman, I certainly did not. And I'm not aware of others in the Census Bureau that did.

MALONEY:
I--I understand there are roughly five political appointees. Did any of them participate in this memo?

DILLINGHAM:
Madam Chairwoman, I think, including myself, we have six now, that's out of more than 6000 employees.

MALONEY:

Okay.

DILLINGHAM:
But--but to my knowledge, they did not. And--and I would not have reason to think so. We do have--I'm sure as you have pointed out, we had two new ones. So, I--I can't speak for--for actions that occurred prior to them joining the Census Bureau.

MALONEY:
Well, let's move on to the nuts and bolts of the memo. It appears that the president is asking the Commerce Department for information that would allow him to exclude undocumented immigrants from the apportionment base. As we all know, the Census Bureau will not be asking people about the citizenship status on the 2020 census. The Trump administration tried that. The Supreme Court struck down.

So, my question is, Director Dillingham, how will the Census Bureau and Department of Commerce be determining the number of undocumented immigrants in each state?

DILLINGHAM:
Madam Chairwoman, I can tell you that, as you referred to, the presidential memorandum has some specific that it. And prior to that, we did have an executive order last year that also directed us to look at our administrative data.

The Census Bureau has a long history of collecting administrative data that is very valuable and very many different ways. So, this particular presidential memorandum, and it resulted in the secretary of commerce giving us the directive and guidance proceed with the requirements of the presidential memorandum. And it calls upon us to look at our administrative data and any data that we have in trying to determine the number, which is a statistic on undocumented persons in the country, and for the use of applying it to the apportionment count.

So, what we're doing, we have experts at the Census Bureau that are now beginning the process of looking at methodologies. And we have collected data from many agencies, federal agencies--many of the memoranda were already in existence, but some additional federal agencies to see what we can gain from that administrative data and what the methodology might be in developing a count of undocumented persons.

And it's--that process is just beginning. The presidential memorandum just came out last week.

MALONEY:

Well, Dr. Dillingham, your testimony says the bureau, and I quote, "has begun to examine and report on methodologies" to let the president exclude undocumented immigrants. So, my question is what steps has the bureau taken--

MALONEY:
And will you share in the reports with this Oversight Committee that has jurisdiction for the census in its operations?

DILLINGHAM:
Madam Chairman, as you are aware, we are very transparent organization, and maybe the precision of that statement was maybe a little bit misleading at this time. We have convened a group. The group was selected by our career deputy at the Census Bureau, and they have been tasked with this. There have been no reports, there are no draft reports, but they have previous experience in this area, so they are generally aware of methodologies that have been considered to be applied to administrative data and so for them this is a new tasking to look at, but they are just beginning their work.

MALONEY:
Okay, thank you. And I think it's obvious that the President is going to try to use some external information that does not come from the census count to exclude undocumented immigrants so my question Dr.--Director Dillingham cam is, isn't it true that the Bureau cannot provide the President with actual responses from every person in the U.S. confirming their immigration status?

DILLINGHAM:
Well, we are to look at the administrative data that we have, which we have been collecting, and to determine to what extent it might identify and how it would identify and how the data is to be matched, etc.

We have just--we have just recently there is still some data that hasn't been finalized, but we have received most of the data from the other federal agencies, and we are receiving data as well pursuant to the executive order last year from some state agencies so that process is again it is underway. There have been no reports that there have been no analysis that I have seen, and they are moving rapidly as possible to look at the data, look at the methodologies, and really to find options to see how that would be done.

MALONEY:

Thank you and Dr. Dillingham if the Census Bureau and the Commerce Department are going to be relying on external data that they have cobbled together to estimate the number of undocumented immigrants then I believe that they clearly will be violating the Constitution which requires and I quote actual enumeration" so I am concerned about that, and you testified in February before this committee, and I quote we must work together to foster public trust, and I agree, and it seems to me that following the words of the Constitution--

UNKNOWN:
Madam Chair?

MALONEY:
--federal law and 230 years of precedent are essential parts of that public trust, and we owe it to our children and to future generations to pass an objective nonpartisan and fair census, and I hope we can work together to reassure the public that the government will follow the Constitution and I yield to you for your comments and then to my distinguished Ranking Member for his questions.

DILLINGHAM:
Madam Chairwoman you are exactly right that everyone regardless of how they feel about the development of a new option with the apportionment data everyone is committed and the presidential memorandum provides that we will count everyone and so we will develop the number, the total count and we wanted as accurate and complete as possible. The issue, as you described as one, is there going to be a new tabulation for purposes of apportionment.

MALONEY:
I yield to my distinguished colleague.

COMER:
Thank you. Director Dillingham, thank you for being here today and let me begin by thanking you for being here. I think you arrive probably three hours ago. I apologize that you aren't on the first panel. It is unprecedented and somewhat disrespectful that they had of such an important government agency would be put on the second panel, but nevertheless you have a great attitude and appreciate you being here and look forward to some--some good questions.

Let me begin by saying the online response this year has been remarkable. Your enumerators are now in the field practicing social distancing and utilizing PPE. I think it is important to note that you're putting the care of your workers and the public at the forefront, and I am told the census is well-positioned to deliver a timely and accurate count.

Turning to the president's memorandum on apportionment from a fundamental fairness perspective, it's the right thing to do. We cannot allow individuals unlawfully present in the United States to dilute the votes of citizens and lawful immigrants who waited their turn to come to this country to engage in our democracy, and I am confident a majority of Americans share that opinion.

With respect to the consensus, it's more complex than a simple headcount. Let's touch on tourist visas, for example. If a tourist overstays they are visa, and they just don't leave are they considered a resident?

DILLINGHAM:
Well, we have a historically developed set of criteria for residency that we apply and as you have described if it's a simple tourist to is not usually residing where they are found in this country, no we would not--we would not want to count in the response from those individuals. It should be, and it is explained on the form their usual residences the keywording.

COMER:
So for purposes of apportionment if a person who stayed longer than 60 days over which I am under the impression that is the legal definition of a United States resident by the way the census rules are this person who overstayed their visa they--they are not lawfully present and therefore it is fair to say that they wouldn't deserve to have representation in Congress is that correct?

DILLINGHAM:
Well again, we apply the criteria of usual residency, and it will differ by times and circumstances, but that is the criteria we use for delivering a complete and accurate count.

COMER:
So what--back to the earlier question that Chairwoman Maloney ask what databases does the presidents memorandum propose we use to determine who will be included in the apportionment part? And who should not?

DILLINGHAM:
The presidential memorandum does not really specify, but in the executive order of last year is specified a number of agencies. I have the listing here, but we have some I think it is 16 or 17 agreements in place, some were already in place before that happened, but it is a wide variety of federal agencies, and in addition to that the executive order ask us to begin collecting state data where possible, and there are many uses of the data generally, but some of the data uses include matching to make sure you have the right individuals, so you were not double counting, duplicating, etc.

So we have some 16 or 17 agreements in place where the data has come to the Census Bureau or is in the process for a couple of them still coming, and then we have some state data that we have available, and so we will be looking at the data very, very carefully and the Census Bureau administrative data is not new, and some nations actually do their census based on administrative data and one of the things as well under the executive order is for us to be thinking about the next census and so there are a lot of people that actually disagree on this question that are very interested in the utility and as the chairwoman pointed out the accuracy of administrative data because it could have many benefits in the future as it does now.

COMER:
So you are confident that we can get an accurate count of legal citizens for the purpose of congressional apportionment?

DILLINGHAM:
I am confident that we are going to analyze the data that we have and look at the methodologies that might be employed for that purpose.

COMER:
Well, I am confident that you can get the accurate count, and I know a majority of Americans expect that because what America is seeing now, especially from my colleagues on the other side of the aisle is a Congress that continues to spend at an unprecedented rate deficit spending.

They are seeing mayors in certain cities of the United States turn a blind eye to vandalism and violence, and they expect to be represented fairly and accurately in the United States house of representatives, and this is very important, I don't think anyone here questions the importance of the census.

One thing that many of my colleagues on the other side of the aisle have tried to imply and imply falsely is that citizens would not be counted. The census is going to count everyone, correct?

DILLINGHAM:
That is correct.

COMER:
We are not leaving anyone out.

DILLINGHAM:
That is correct (INAUDIBLE)--

COMER:
But what the president--exactly--

DILLINGHAM:
Those two that you mentioned perhaps--

COMER:
Exactly. What the president's memorandum states and what the Census Bureau is going to implement is the fact that law-abiding citizens, legal citizens of the United States, should not be at a disadvantage with respect to congressional apportionment and I think that the memorandum is constitutional.

I think it's the right thing to do. If anyone out here questions how this is going to impact funding, it's not going to impact funding because we are counting everyone. The memorandum is solely clearly focused on congressional apportionment, and we are talking about as many as 24 seats in the U.S. House of Representatives.

It is a significant number of representatives in the United States House of Representatives, so I appreciate what you are doing. We feel at least in my district that this is the right thing to do. I think the majority of Americans feel it's the right thing to do, and we look forward to hearing further reports on the implementation. You are doing a great job getting people counted, and we look forward to the data that will be used to determine the correct apportionment as we move forward. Madam Chair, I yield back.

DILLINGHAM:
Ranking Member could I offer one point? The terminologies here very, but again the presidential memorandum in case I misspoke is focused on the undocumented who lack legal status differentiating on citizenship.

MALONEY:
Thank you very much. The gentleman yields back, and I recognize my colleague, who is chair of one of the subcommittees Jamie Raskin, and I want to thank him for his leadership on the senses. He has had several hearings in his subcommittee and field hearings on the importance of counting the hard to count and the importance of the census on local and state delivery of services, so I want to thank you for your leadership on the census. Thank you for joining us today.

RASKIN:
I would just return the compliment Madam Chair. You have really been an outspoken man just an unabashed champion of the census at every turn in this Congress and so thank you for your leadership, and I remember we have had several hearings on this sent one of them was in New York City before the nightmare of the COVID-19 crisis took over.

So Mr. Dillingham, Dr. Dillingham, welcome. A few simple questions. Is the word persons synonymous with the word citizen in the Constitution according to your interpretation?

DILLINGHAM:
Congressman I--I want to thank you and all you are doing for the 2020 census, and I understand you also wear a hat as a constitutional scholars so as I--as I explained to the chairwoman earlier that it was a very--

DILLINGHAM:
--(INAUDIBLE) display of democracy here today with the differing opinions both as to history and policy and legal analysis. And I understand that several lawsuits have been filed that will be looking at these definitions. So I have to back off from offering any legal analysis or opinion of myself because my job is to administer the 2020 census.

RASKIN:
Okay. Just my own little insight on it is that when the founders of the Constitution wanted to use the word citizen, they used the word citizen like in Article 3 Section 2 establishing diversity jurisdiction in federal courts were a citizen from one state could sue a citizen from another state.

But here in Article 1 Section 2, the founders said that the apportionment of representatives must be based on "The actual enumeration of the number of free persons." Of free persons. So I mean, can we agree that if the president's new interpretation is pasted onto the census this will be a radical departure from everything that we've done for more than two centuries?

DILLINGHAM:
This legal--presidential memorandum has--has nothing to do with our operation right now with the census. We're counting everyone. It has to do with a tabulation that has been requested on apportionment.

RASKIN:
Right. And--but for more than two centuries, that senses has counted all persons, right? And the administration's attempt to try to impose that citizenship question even was invalidated by a Supreme Court that Donald Trump helped to construct himself, but that Supreme Court said that this was a lawless effort by the administration, right? So--so, okay, so you--in other words, you're just going to remain agnostic on the constitutional question here, yeah.

DILLINGHAM:
I think I have a professional obligation. It's the prudent thing to do.

RASKIN:
Okay. Would you pronounce at least in this one has the text of the Constitution changed in the last two years?

DILLINGHAM:
Not that I'm aware of.

RASKIN:
Okay. And how long have you been with the census?

DILLINGHAM:
Just over a year and a half at this point.

RASKIN:
Okay, but it's your understanding that noncitizen have always been counted in the census according to the constitutional text?

DILLINGHAM:
It is my understanding that the presidential memorandum is requesting for a change in the tabulation and calculation for apportionment purposes.

RASKIN:
Okay. Let me switch over to talk about COVID-19. Are we taking care of our people sufficiently? Are we--are you training your census count takers in all of the proper COVID-19 precautions?

DILLINGHAM:
We are certainly trying to. I think we all are, but we're--we're very vigilant on that. We're continuing to do assessments each and every day seven days a week certainly with the data from the CDC from Health and Human Services, the state data, the local government data. We actually have a fusion center that is monitoring developments seven days a week.

We have purchased the Personal Protective Equipment. We have plans for obtaining more. We have a process by which everyone wears their mask. So yes, we are doing everything we very, very diligent and wanted to make sure that those practices are not only in the training, but we want to monitor. And so yes, I think we are doing an excellent job.

RASKIN:
Okay, I--the reason I ask is that I've heard from a field enumerator in training who has quit or is planning to quit because of COVID-19. And this person told my staff that, despite, you know, your--your formal expressed commitment to taking care of everybody, they are not getting any real training on how to minimize COVID exposure in their work. So they're given the Purell and a cloth mask, but no real instructions on how to conduct themselves to limit exposure. And so it would be great if you could get back to us.

DILLINGHAM:
Sure.

RASKIN:
Please do get back to us if you would with really what your plan is to fully educate the whole staff and to make sure that this is something we are on top of because enumerators can obviously become super spreaders if they are not following the right precautions.

DILLINGHAM:
Congressman, we certainly will and I will so that we do have challenges because a lot of our training is virtual training. But we are also improving that training and I will say when we're hiring, you know, 500,000, half-million employees, I can't say there's never slippage, but we are doing what we can and will continue to enhance if we identify any needs.

RASKIN:
Do you have a publication like COVID-19 rules for the road for specific instructions?

DILLINGHAM:
I don't have the training curriculum with me, but we can get you that.

RASKIN:
Okay, if you would share that with us--

DILLINGHAM:
--Certainly--

RASKIN:
--Just so we get that out there. Wants to make sure, one, that all of our enumerators are properly taken care of and two, the public knows that so that no one is afraid to interact with that.

DILLINGHAM:
Absolutely. And I might point out also as I mentioned in the opening statement that, you know, we're in the early stages of launching the enumeration now. So we're learning at this stage. And on August 11, we will be basically enumerating nationally. So we have a phase to this answer that we can learn and it is a very dynamic environment with the virus and so we're learning as we go and doing what we can to make sure everyone is protected.

RASKIN:
Well, I appreciate that and you can become a model to the rest of the government and the rest of the country. I yield back, Madam Chair.

MALONEY:

Thank you. The gentleman's time has expired. I now represent by video Congressman Gosar. Can you hear us, Congressman Gosar? You are now--

GOSAR:
--I can hear you. Can you hear me?

MALONEY:
--Okay. Yes we can. Thank you. You're now recognized.

GOSAR:
Thanks, Madam Chairwoman. Director Dillingham, we've heard of that fear mongering for months from my friends on the left and liberal media accomplices--accomplices of the allegations that--that responses to the 2020 decennial will fail behind previous decennial's. Could you elaborate despite the fear of being spread to those on the left by the current self-response rate is in fact on par or slightly ahead of previous decennial's at the same period of time?

DILLINGHAM:
Let--let me say that as we pointed out, the--the Internet option that we have documented this year, there was a lot of concerns last year and ensuring that all the protections were in place, the technologies were in place and we are very, to some extent a little bit surprised how people prefer the Internet option. And in this environment, it's by far the safest option and the most efficient option.

So 80 percent of our self-responses are coming in via the Internet. We still have the telephone option and--and at different times and right now, for various reasons, that's picking up a little.

But frequently, people will use the telephone option to just ask questions about how they can do the Internet option. So we have that. And of course, they can do the traditional paper option. So having those three options for self-response as well as expanding our mailings, our extensive outreach activities are making a difference. And so we're very pleased to be where we are.

GOSAR:
Can you hear me?

RASKIN:

Yes.

GOSAR:
Can you hear me?

RASKIN:
Yes, we've got you. Yes, you can proceed.

GOSAR:
Can you hear me?

RASKIN:
Yes.

GOSAR:
Oh, okay. I'm sorry. Now, we've heard for months from my liberal--liberal friends on the left that the integrity of the Bureau's network and backup system were inadequate to handle the online response.

Did they--they drum up this fear, but before they even send the census started, kind of like what we've been seeing today. Has the bureaus system ever crashed, as predicted by our liberal friends?

DILLINGHAM:
No, it has not. It has been tremendously successful. And as I said, we have not had a--

RASKIN:
--Mr. Gosar, I think you need to mute one of your devices. I think you're getting feedback. I think you might have this on two different devices. There we go.

DILLINGHAM:
We--we have had tremendous success with the three options and the favored option for self-response is the Internet.

GOSAR:

Director Dillingham, the majority likes to say that this administration does not want to count everyone and does not want to reach hard to count communities. As anyone in the Trump administration, including Secretary Ross, ever suggested you do less than your highest level of effort to count everyone, including reaching the origin to counter communities?

DILLINGHAM:
The--the latter part of that question is absolutely accurate. We're devoting tremendous effort all throughout the Census Bureau with seasoned professionals to make sure that we reach everyone and particularly the courage to count areas.

RASKIN:
Mr. Gosar, have we lost you? Mr. Gosar? Okay, why don't we proceed at this point then with Ms. Tlaib, and we--we'll come back to Mr. Gosar when we get him back up. Ms. Tlaib, you're recognized now for five minutes.

TLAIB:
Thank you, Chairman. Dr. Dillingham--

DILLINGHAM:
--Yes--

TLAIB:
--During our oversight hearing when you last testified on February 12th, I--I asked you about the administration's failure to include a racial or ethnic category for individuals who identify under MENA, which is the Middle Eastern or North African category. Following that meeting, I sent you a letter along with our Oversight Chairwoman Maloney, inquiring why this decision was made. And I have to say, I was pretty, you know, underwhelmed with the explanation.

Since then, I worked with Committee on Appropriations to ensure that this issue is a priority in the 2030 Census. And currently the Subcommittee on Commerce, Justice, and Science, their report does say and I quote, "The committee directs the Census Bureau to conduct a feasibility study on including a race category for individuals identified as MENA, which was not ultimately included in the 2020 Census questionnaire."

So Dr. Dillingham, will you commit on record to do as the committee directs, and conduct this study to include race category for individuals who identify as MENA?

DILLINGHAM:

No, Congresswoman, I--I do remember your request. My understanding was we did at least partially reply, and there may have been some other information that it may be in process--

TLAIB:
--The last time I--no, I'm asking you, we put this in the committee--

DILLINGHAM:
--I--so, yes, with regard--with regard to Congress, and I--I think you had indicated it was appropriators, asking us--we are certainly very interested in looking at that topic, and we're very much beginning the process of looking at the 2030--

TLAIB:
--Yeah, but the--yeah. Okay. Yeah. So, I just want you to know, Dr.--

DILLINGHAM:
--Yes.

TLAIB:
No, I hear you, because the '20--so the previous administration already decided to do it, you all just ignored it. So we're just--are we--so just to be clear, like, right now we are saying the committee also expects the questions, the--the MENA category to be on the 2030, will you support--support any committee that directs them--?

DILLINGHAM:
--I--I will support the research--yes, I will support the research into your issue. And--and I do think that one of the improvements that was done is in fact the write-in. But I understand that you wanted more than that, and we will look into it, yes, ma'am.

TLAIB:
Also, will you commit on record to do as the committee directs and conduct this study to include--I'm sorry, the committee report also put in there that the committee also expects that the questions on sexual orientation and gender identity will also be examined for possible inclusion in the 2030 Census. Will you commit on record to do as the committee directs and examine for the possible inclusion question on sexual orientation and gender identity?

DILLINGHAM:
Madam--Congresswoman, we--we--we will look at that. That--that has been a topic that has, you know, been examined and continues to be examined, and we do have questions in some of our surveys that, in fact, get to the heart of those questions. I think that there is a need to make sure that questions of that type would work with the Census, but we will certainly study that.

TLAIB:
I appreciate that.

DILLINGHAM:
Thank you.

TLAIB:
Thank you, and I kind of want to switch--switch subjects now. On April 13th, 2020, Secretary Ross personally called leaders in Congress to tell them the administration needed additional time to deliver redistricting data because of delays due to the coronavirus pandemic. In order to honor that request, on March 7, 2020, members of the Oversight Committee introduced the Fair and Accurate Census Act, which modifies the 2020 delivery deadlines (INAUDIBLE) the administration had requested well into 2021.

And also the Census official leading few operations that in many, quote, "We have passed the point where we could even meet the current legislative requirement of December 31st; we can't do that anymore." Dr. Dillingham, briefly, do you agree with the assessments my--that has been put forth by your colleague, Mr. Olson? Why and why not?

DILLINGHAM:
Congresswoman, if you could repeat the latter part of your question. But--but---

TLAIB:
--So--yeah, Tim Olson said we have passed the point where we could even meet the current legislative requirement of December 31st; we can't do that anymore." Do you agree with Mr. Olson?

DILLINGHAM:

Congresswoman, I can assure you that we do--are doing continuous assessments, and there had been--

TLAIB:
--So you don't agree with them?

DILLINGHAM:
I can't--I can't agree with--we've got many more assessments ahead of us, here. And we're proceeding with--

TLAIB:
--Okay, well--

DILLINGHAM:
--As soon as possible to conduct a Census.

TLAIB:
You know, he--he runs the field operations, Mr. Dillingham.

DILLINGHAM:
He does.

TLAIB:
Yeah, he's telling you, this--this is bad. Like we're not being able to meet the deadlines. This is--I don't know, it's common knowledge. I mean, if they're the ones on the ground with the direct contact with the people and our residents, I think you should listen to him.

DILLINGHAM:
Congresswoman, I--I also--I always listen to him, and he is a very important and knowledgeable member of the team--

TLAIB:
--But you're just okay--yeah. Well, despite the operational delays, the White House is now stating that corona relief funds will allow the Trump administration to rush a reapportionment count before December, before President Trump could leave the White

House. So it now appears that the administration is trying to finish before December 31st.

You know what this is really about, and I got to tell you, I just need to you to choose your country, first, and making sure that--because for me, it's not about reapportionment, it's also about class sizes, healthcare, services for our residents. And I don't--you know, the constant politicizing of our Census has been disgusting and really undeserving. Our residents don't deserve this right now--

PALMER:
--Madam Chairman--

TLAIB:
--They want to be counted. They want to be able to afford--

PALMER:
--Madam Chairman. She--she's over time--

TLAIB:
--And you have people on the field telling you--

PALMER:
--Madam Chairman--

TLAIB:
--Yeah, well, I yield. Thank you very much.

PALMER:
Madam Chairman.

SARBANES:
This is Congressman Sarbanes, I think I've taken over the chairing of the committee, if I'm mistaken--

PALMER:
--Who--

SARBANES:
--And would yield to Mr. Palmer, next, for his questions--

PALMER:
--Okay, thank you. Just wanted to make sure--she was over time. Thank you.

SARBANES:
Mr. Palmer, you're recognized.

PALMER:
I thank the Chairman. Director Dillingham, for the record--and you can speak slowly so that all my colleagues understand it, but does the Census intend to count everyone?

DILLINGHAM:
Congressman, it certainly does.

PALMER:
Okay. So for the record, we're counting everyone.

DILLINGHAM:
We're counting everyone who lives in this country, and it's their usual residence, that is correct.

PALMER:
Thank--I thank the gentleman, and I think that's the proper approach for the Census Bureau, and I don't think we should make it about anything else, but counting people who are in the country.

Now, let me ask you this. We've got the issue of undocumented people living here, and as I've raised this point earlier in the first panel, a substantial number of those are transitory individuals, who--about 18 to 20 percent of whom will not be here for the next Census. So one of the issues that I--I wanted to ask you about, is how does the Census Bureau count undocumented immigrants or people who live in--in that transitory situation, where they're--they're only here for a few years and then they're gone? Do you--

DILLINGHAM:
--Well--

PALMER:
--Do you deal with that at all?

DILLINGHAM:
Congressman, we--we--if--if someone's living here for a years, in all likelihood they're going to be counted if they're usually residing here. Now, that doesn't mean they have legal status. So, one of the reasons we're going--the President, I assume, who directed us to look at the administrative data, are for issues similar to that. What--what is the status of some of the people who are usually residing in the country, and is it an undocumented status, or is it an illegal status? And that's one of the things for the Presidential memorandum.

PALMER:
So, let me be clear. So, when there's someone here who's only going to be here, say, another year or two, they'll be counted in this Census? Even though--because you don't know when they're leaving, that's---they'll be counted?

DILLINGHAM:
That's correct.

PALMER:
Now, this--I want to ask another question, and I'll come back to that, but do you include short-term visitors. I mean, people here are on student visas, who might be here for a year getting a master's or two years getting a PhD, or maybe in four years for an undergraduate degree. Do those--are those people counted in--

DILLINGHAM:
Congressman, usually a year makes a big difference. So, it--it--if they're usually residing here, and of April 1st they're residing here and they're usual residence, we do count them.

PALMER:

Okay. Well that raises--and I think reinforces the point that I--I tried to make earlier about, we should count everybody, but we shouldn't count everybody for apportionment, because you just testified that you count people who are here on student visas for--for the census.

But I don't think--well, I won't say that I don't think anybody would reasonably argue that those people should be counted for apportionment because I think there are a number of people in the--that are here now would say they should be.

But I think that raises this very serious issue for counting people who are--you won't even be here maybe for the next election, but they'd be accounted for apportionment. And it would have a profound impact on representation in Congress for a number of states that--and I--I raised this point as well in the previous panel about states that are--declare themselves sanctuaries. There--there are 20 metro areas, 60 percent of--of the unauthorized immigrants live in--in 60 cities--I mean in 20 metro areas that--that have declared themselves sanctuaries, which creates this--I think an incredible incentive for people to come there because they're going to be protected from--from federal law enforcement, even those who committed felonies.

I mean, this doesn't make any sense to me, but I do appreciate the fact, for the record, that you're counting everybody. I just think that--that--that I--I feel like, and I think a lot of my colleagues agree, that we shouldn't be counting people who are here temporarily or unlawfully for apportionment purposes. I thank the gentleman and I yield back.

DILLINGHAM:
Thank you.

MALONEY:
Thank the--the gentleman yields back. The chair now recognizes Debbie Wasserman Schultz from remote. Congresswoman Schultz?

WASSERMAN SCHULTZ:
Thank you, Madam Chair.

MALONEY:
Okay, great.

WASSERMAN SCHULTZ:

Director Dillingham, just a couple of weeks after the Supreme Court struck down the citizenship question, the administration issued an executive order that instructed the Commerce Department to obtain an estimate of the number of citizens and noncitizens by other means.

And Attorney General Barr was very clear about the purpose of doing that. He said, and I quote, "There is a current dispute over whether illegal aliens can be included for apportionment purposes. Depending on the resolution of the dispute, this data may possibly prove relevant."

You appeared before and oversight subcommittee just a few days later and were asked directly by Representative Pressley if you could confirm the citizenship data collected on--under the president's 2019 executive order would not be used in apportionment accounts, and you responded, "The--we produce--I--and appointment accounts. Let me get back to you on that--

DILLINGHAM:
--Yes, ma'am--

WASSERMAN SCHULTZ:
--Unquote.

DILLINGHAM:
Yeah.

WASSERMAN SCHULTZ:
When you testified in July 24th, 2019, where you already aware of the president's plans to exclude undocumented immigrants from the apportionment counts?

DILLINGHAM:
No, Congresswoman, I was not.

WASSERMAN SCHULTZ:
When did you first become aware that the president, the commerce secretary, or anyone else in the administration was planning to exclude undocumented immigrants from the apportionment counts?

DILLINGHAM:
Well, I was only formally aware upon issuance of the presidential memorandum, but there was--

WASSERMAN SCHULTZ:
--I know. When did you first become--

DILLINGHAM:
--I wasn't--there was a press story a couple of days earlier.

WASSERMAN SCHULTZ:
Reclaiming my time, reclaiming my time, when did you first become--not formally, but when did you first become aware that the president, the commerce secretary, or anyone else in the administration was planning to exclude undocumented immigrants from the apportionment counts?

DILLINGHAM:
I--I heard--there was a story in the local press here in the DC area, perhaps a Capitol Hill newspaper, or as I recall someone reported a story that such a directive may be coming down. And it was on a--as I recall, it seem like it was a--late on a Friday and I was waiting to--to learn more, and then a few days later the directive was issued.

WASSERMAN SCHULTZ:
You're the director of the census. You learned about the president's intent to issue an executive order from the--to exclude undocumented immigrants from apportionment counts in a newspaper article?

DILLINGHAM:
Actually, when I saw that--the formal--

WASSERMAN SCHULTZ:
(INAUDIBLE)

DILLINGHAM:
--The formal decision when it was posted on--on the Web.

WASSERMAN SCHULTZ:
So, no one gave you a heads up? You had no discussions prior to formal notification or seeing a newspaper article? You had no discussions with anyone at all prior to either seeing a newspaper story or a formal--a formal production of the executive order?

DILLINGHAM:
That is absolutely correct.

WASSERMAN SCHULTZ:
And you're under oath. You're under oath. So, you have no--

DILLINGHAM:
--Absolutely. The--absolutely, and I will swear to it all day long under oath.

WASSERMAN SCHULTZ:
Okay, just making sure that we're clear.

DILLINGHAM:
You have to--

WASSERMAN SCHULTZ:
--That is unbelievable to me, that you're the director of the census and you didn't hear anything about this before the formal execution of the EO or a newspaper article.

DILLINGHAM:
That is correct.

WASSERMAN SCHULTZ:
And--and that's because the decision to exclude undocumented immigrants from apportionment counts is clearly unconstitutional. As a federal officer, I'm--I'm sure you to an oath. You certainly took one here today, but you took an oath to uphold and defend the Constitution.

Do you not have the obligation as the census director to know how the data your agency collects will be used? And how do you reconcile that this memorandum--let me finish my question, please. How do you reconcile the recent memorandum with the oath that you swore to uphold?

DILLINGHAM:
Congresswoman, let me explain that the Census Bureau produces statistics and data. We have no control over its uses.

WASSERMAN SCHULTZ:
It certainly is your responsibility to know that the data that you collect is used according to the Constitution, isn't it?

DILLINGHAM:
I--I--I an aware of the provision for apportionment in the Constitution, yes. Yes, Congresswoman.

WASSERMAN SCHULTZ:
And--and your obligation under your oath is to make sure that you are--the data that you are collecting is--is--that you're aware of how it will be used. How do you reconcile the recent memorandum with the oath you swore to uphold, or are you just a data receptacle?

DILLINGHAM:
Congresswoman, like any federal statistical agency, we produce the best, most comprehensive, complete and accurate data possibly--possible. And we have received this request in a presidential memorandum to look at our data.

WASSERMAN SCHULTZ:
Right. I understand that. Reclaiming my time, I understand that you have received that request.

DILLINGHAM:
Yes.

WASSERMAN SCHULTZ:
You're responsible for the decennial census--

DILLINGHAM:
--That is correct--

WASSERMAN SCHULTZ:
--And the use of the data according to the Constitution. This Executive Order is not compliant with that. And I think anyone looking at the pattern of the administration's actions can see that this memorandum is an attempt to do an end run around the ruling of the Supreme Court and the requirements of the Constitution. And I only hope that someone leading the Census Bureau, and if not you, then someone else, will stand up and follow the law, not follow a lawless president. Thank you. I yield back the balance of my time.

DILLINGHAM:
Thank you, Congresswoman.

MALONEY:
The gentlelady yields back. Next is (INAUDIBLE) Grothman.

GROTHMAN:
Thank you; always enjoyable. I'm going to follow up on what the--some of the questions the gentleman from Alabama asked. If I'm in the military and I am from Wisconsin and I am stationed a variety of places over a period of years, never in this country, stationed in Germany, stationed in Korea, but I just decide to keep Wisconsin is my permanent address, I may pay taxes in Wisconsin, I may vote in Wisconsin even though I'm not there, where should they count that person for the purpose of the census? Or, since they're never sleeping in the United States, should they not count them at all?

DILLINGHAM:
We have special provisions for counting the military. And there--there's special criteria that certainly our--our leadership has been implementing for a period of years that--how they count people from either place of deployment or their legal residence. We can get back to you with the exact criteria--

GROTHMAN:
--Is that statute--

DILLINGHAM:
--But we do count the military.

GROTHMAN:
Is that statutory, or is that just a rule?

DILLINGHAM:
I will--I will get back to you if there's a statutory basis for it. But it is one of--it is our criteria.

GROTHMAN:
It's kind of relevant as to whether it's statutory or a rule, isn't it--

DILLINGHAM:
--It is. I mean--

GROTHMAN:
--Very, very relevant--

DILLINGHAM:
--We have a practice, accepted practice.

GROTHMAN:
Yeah, I--I'd like to know that.

DILLINGHAM:
Okay

GROTHMAN:
Second question is for students are concerned, if somebody lives in Wisconsin but goes to school in Ohio, you know, returns over summer break, returns over--you know, probably given how much people go to school nowadays, it might be at the time spent at both places. And that person therefore, I think, probably should file taxes in Wisconsin and vote in Wisconsin. But you're saying that person should be considered a resident of Ohio?

DILLINGHAM:
Well, we--the enumeration criteria does not match the tax requirements. In what we do with college students is where they usually reside, and we look at April 1st. so, basically to simplify, we generally count particularly full-time college students where they're residing. And if they're on a college campus outside of their state, that is where we count them so that at--at University of Wisconsin you'll have a lot of students from Ohio that would be counted there. It's really to capture the count for that locality.

GROTHMAN:
Okay. I--I'd say it's about 50/50. And let's say they're on--on spring break on April first. That doesn't matter though if they're home with their parents for a week on April first.

DILLINGHAM:
The April first is--is particularly with the pandemic is not quite as determinative as to where--what their usual residence is--

GROTHMAN:
--Okay so you're saying--

DILLINGHAM:
--Yep--

GROTHMAN:
--Okay. Interesting. And with regard to diplomats if somebody is from France, has been living in an apartment in--in Virginia for six months. You count that person for the census--or for six years even. You count that person as a--a Virginia resident for purposes of the census.

DILLINGHAM:
It--it--it's based on their usual residence. I think there are some exceptions for consulates and--and--and embassies that people are actually living in an embassy. But we--we do count pe--again, people where they usually reside.

GROTHMAN:

Okay. So if a--a student comes here from France and is here for three months and then leaves for three months and comes here for three months where--where are they counted?

DILLINGHAM:
Well the--that might be a tough question as to where they usually reside. But I will--

GROTHMAN:
--Usually reside means where they physically are.

DILLINGHAM:
Where they usually physically are--

GROTHMAN:
--Well I--I talked to people a while ago on the last panel. I think I have this right. And I gave an example in which some woman from Iowa--an Iowa resident all the way, car registered in Iowa, votes in Iowa, pays tax in Iowa. They come to Wisconsin because mom is in home hospice and they want to take care of their mom at the end of their life. They're--intend to return to Iowa. At what point for the purpose of the census is that person gonna be counted in Wisconsin instead of Iowa.

DILLINGHAM:
Well it's probably going to be where they claim that they usually reside--

GROTHMAN:
--We don't even know yet. Alright. They're just kinda hanging--they don't know yet. They're hanging out in Wisconsin with mom. Two months in, four months--

DILLINGHAM:
--No--

GROTHMAN:
--When they're there for six months will (INAUDIBLE)--

DILLINGHAM:
--Yeah, if--if it's hard for--to determine--you--

GROTHMAN:
--It's not hard for--it's not hard for the--the Wisconsin Department of Revenue to determine. It's not--it's not difficult for people who vote to determine where they should be. Just a minute we're wait here for a second.

MALONEY:
Can someone mute their--there's a distrup--disruption. Is--can someone mute their--their--their devices please? Please mute your devices. Please mute your devices please. Okay. I'm sorry. I--

GROTHMAN:
--Well you--your--

MALONEY:
--You'll get extra time, Mr. Grothman. I'm sorry.

GROTHMAN:
You did a good job there. You have a career in law enforcement waiting for you if you ever move on from here.

Yeah--yeah--in that situation at what point does that person say I'm counted in Iowa instead of Wisconsin or Wisconsin instead of Iowa--

DILLINGHAM:
--It will be an individual factual circumstance. I--I might add generally that might help with this is that when people--particularly students--move for example to Madison, Wisconsin--they're from out of--Madison, Wisconsin when they're from out of state, generally there's sort of tradeoffs.

So if they come from another state that they're not counted where they're perhaps paying taxes, or their parents live they would be count--and vice versa.

So that's sort of the reasons I think behind the criteria--

GROTHMAN:

--Okay. I'll give you a final question because people are asking about this--this race stuff. Obviously--you know--with intermarriage--so many people in this country are interracial. Who determines what so called race you are?

DILLINGHAM:
The respondent determines and can write in--

GROTHMAN:
--Whether you're one-eighth something, whether you're--

DILLINGHAM:
--The respondent determines--

GROTHMAN:
--It has nothing to do--it's entirely subjective. Unlike where I live.

DILLINGHAM:
That is correct.

GROTHMAN:
I can be one--one-sixteenth Mexican. I'm Mexican. I'm Mexican.

DILLINGHAM:
That--that is correct.

GROTHMAN:
Okay. Thanks.

MALONEY:
I--I want to thank the gentleman for his line of questions. It was interesting. I'd like to add to it Americans living abroad who were assigned to--or American citizens, but they are working abroad or maybe just vacationing abroad for several years. Where--where are they counted?

DILLINGHAM:

Actually they are not counted. If they are not u--if they are not usually residing in the U.S.. And one of the reason--there's been much research and there's been prior case law on that as I understand it.

But at the same time we have people from those countries that may be living here with the same circumstance. So, we only count those residing in the country. And if they're--if they're abroad for years of study or--or--or whatever purpose that--we don't count them.

MALONEY:
Thank you. Congressman Sarbanes is recognized.

SARBANES:
Thank you. Thank you Madam Chair. Thank you Dr. Dillingham. I wanted to talk to you about the timelines that you're working under. Could you review for me the--am I understanding it correctly that the field operation that was originally scheduled to finish I guess maybe the end of July was pushed to October as a result of these dynamics that you're--you've referred to.

DILLINGHAM:
Congressman we did have a shift in schedule because of the pandemic. So in--in late March we had to really call--call a halt to our operations that required human interactions for reasons of safety just like the rest of the country. The governments and the businesses, we basically had to suspend our operations.

And at a point in time we--we had to start to begin our assessment process. Well when do we think with the current knowledge we can restart and in--and complete the process. And as you are well aware nationally and certainly with the President's task force they begin to lay out criteria and guidance for what we call reopening and resuming our operations.

And we're really in the forefront of the federal agencies in getting back to business and opening our 248 offices all across the nation. But we have to do it safely and we have to do it--and also we will have to enumerate safely--

SARBANES:
--And was there--and was there a--also request by the administration? I think it came to Congress to push back by two or three months the tabulations related to the apportionment and--and that process from what it would normally be.

DILLINGHAM:

Congressman, those--there--my understanding is there were discussions but that wasn't at my level. And so that is my understanding that there have been some discussions and consideration of that. And it's been also reported in the news. But that's--that's not something I personally participate in--

SARBANES:
--It's also true--and then is it also true that very recently the administration appears to have reversed direction on that and is now suggesting that they want the census to be wrapped up quickly so that that tabulation that I just referred to could actually happen before the end of the year. Are you aware of that?

DILLINGHAM:
I'm not aware of--of all--all the many reasons except to say that the Census Bureau and others really want us to proceed as rapidly as possible and to get this--get a complete and accurate count as soon as possible.

SARBANES:
Mm-hm. Do you worry about the--the census being compromised if there's pressure to finish it too quickly? And what would that date be in your mind?

DILLINGHAM:
I--I don't have a date in--

SARBANES:
--What do you need? How much time do you need to give us the assurance that the census can be conducted in a way that yields a robust result?

DILLINGHAM:
Well-well congressman we certainly want a complete and accurate census. So that will be certainly a consideration as to when we consider the job as done.

SARBANES:
Mm-hm. Well--look--I mean--I think--my--my anxiety here is that the--the--the administration originally seemed to be reasonably accommodating the pressure of the pandemic on your efforts by requesting some extension of time with respect to how the--the results are tabulated for certain purposes.

That was in line with your own judgment that you needed to push the field operations back by two or three months. So that was consistent. But now we're--

SARBANES:
--hearing that they're looking for money to push the process forward, in what I'm concerned would be a very premature way and would actually undercut your ability to get this done properly. So you're sort of being whipsawed right now between these two different impulses. And I'm alarmed at that, and I think it could undermine the senses. So we're going to keep a very close eye on this and try to protect the independence of this process from the--the sort of politics that--that are leaning in on you right now.

And with that, I'll yield back.

MALONEY:
I want to thank the gentleman for raising that important point. The census professionals have told me that they need at least ten weeks to do a professional count, and they are starting on August 11th. And there's been some rumors of trying to complete it by December 31st.

The professionals that I've talked to in the Census Bureau say that that's impossible, that they need to have the full ten weeks to get the--they expect to knock on the doors at least six times to get an accurate count. And--and we are supporting, really Secretary Ross's suggestion and request to--to extend the time for the census. So there are others that say that for political reasons, the president wants to have this earlier so that he can make determinations about what information is sent to the states. And I--I think that's clearly unconstitutional and wrong.

I want to thank you, Mr. Sarbanes, for helping me out earlier and--and becoming the chair. Thank you for your--for your work and for your questions.

I now recognize Congressman Higgins.

HIGGINS:
Thank you, Madam Chairwoman.

Dr. Dillingham, are you present today voluntarily or by subpoena, good sir?

DILLINGHAM:
I'm sorry. I'm going to have to ask you to repeat that question.

MALONEY:
He--he asked if you were here voluntarily or by subpoena.

DILLINGHAM:
No, I'm here voluntarily.

HIGGINS:
I--I can repeat my questions, Madam Chair. Thank you.

MALONEY:
Okay.

HIGGINS:
Are you here voluntarily or by subpoena, good sir?

DILLINGHAM:
I'm here voluntarily. Voluntarily, that--that is correct.

HIGGINS:
Yeah, I think it's important that America recognizes that you're voluntarily appearing at a hearing that's titled Counting Every Person Safeguarding the 2020 Census Against the Trump Administration's Unconstitutional Attacks. Are you--are you a gentleman of--of integrity and good faith, sir?

DILLINGHAM:
Certainly, I--I strive to be. I think I am. I 've--I've had the distinction of being confirmed by the U.S. Senate unanimously on two occasions, the first time in 1990 by the committee that was chaired by then-Senator Biden, and then most recently by Senator Ron Johnson. I have served six administrations, so I have considerable experience. And I think they determined that I met the qualifications by statute as well as their criteria for being unbiased, objective, and professional.

HIGGINS:

Yeah. Thank you for you--for your service and that clarification. You're a gentleman of distinguished accomplishment, and we very much appreciate your participation in the effort to secure an accurate and very thorough census.

You are this administration's director for the U.S. Census Bureau, U.S. Department of Commerce. Is that correct?

DILLINGHAM:
That is correct.

HIGGINS:
So you are--you are the--the--you're the main guy representing the--the quote-unquote, "Trump administration," as--as you set before, this panel--this--this committee today.

DILLINGHAM:
Congressman, I will say that my statute, my selection was to--to be nonpartisan. And the agency is nonpartisan and a pretty independent statistical agency.

HIGGINS:
As it should be.

DILLINGHAM:
Yes.

HIGGINS:
Which you represent that the administration's best efforts to secure an accurate census. Is that correct?

DILLINGHAM:
For an accurate census? Absolutely, Congressman.

HIGGINS:
And you intend to do just that, sir? You--you stated--you quoted that the--the president's directive, which stated in part to provide information permitting the president to the extent practicable to exercise the president's discretion to carry out the policy of the exclusion of

illegal aliens from the apportionment base to the extent feasible and to the maximum extent of the president's discretion under the law.

And that's--that's a quote from the president's directive. You stated that--that this does not change the Census Bureau's plans for field data collection across the nation. Do you stand by that--that statement, sir?

DILLINGHAM:
Congressman, I do, that our operations will continue as planned. And in the--in context of this presidential memorandum, it--it does not impact. It really is a request for a special tabulation for apportionment purposes, which is apart from getting a complete and accurate count of people living in our nation.

HIGGINS:
Exactly, and I very much appreciate you appearing before the committee today and in service to our nation, doing your very best to lead a--a large team of dedicated Americans to determine a precise count for our--our census.

And your appearance before the committee today, despite the fact that--that was a premeditated effort to identify that President Trump's administration and the census efforts to--to be (INAUDIBLE) as unconstitutional. I applaud your courage for appearing today minus the subpoena.

My final question to you, sir. You stated in your written--in your written testimony that the Census Bureau is working to complete data collection as soon as possible and it strives to comply with the law and statutory deadlines. Does that--does that quantify your efforts, sir?

DILLINGHAM:
You--you are exactly right. That's what we're trying to do. And--and the final question was we--we are proceeding in that direction. If that answers your question, sir. I--I'm a little bit--I have a hearing problem. I--I did volunteer for a tour of service in Iraq and sometimes the acoustics here are--are challenging.

HIGGINS:
That makes two of us. That makes two of us.

Sir, thank you for appearing before today. Madam Chair. I yield.

MALONEY:

Thank you.

DILLINGHAM:
Thank you, Congressman.

MALONEY:
Thank you.

And we now recognize Congressman Welch.

WELCH:
Thank you very much, Madam Chair, for this hearing.

And Dr. Dillingham, thank you for appearing voluntarily.

A couple of things, one, just an observation. I know you can't speak about the administration position on many of these issues. You've got to just do the job as best you can. But I note the irony that the position of the administration essentially is that undocumented immigrants are not, quote, "persons." They're not persons.

And in that respect, that analysis shares--its shares the finding of the United States Supreme Court in Dred Scott, which was the most ignominious decision of the Supreme Court in our history, which said that African Americans were not persons. So I think that--I'm just saying that because I think you should understand--all should understand why we're appalled by that administration position.

What I'd like to ask you about specifically, Doctor, is the challenge of getting an accurate count in rural areas. And Vermont is quite rural. And our response rate is, I think 47th in person and 40th on the Internet. And we have challenges with access to broadband in many parts of our state.

And we also have migrant workers who are helping us in our agricultural sector. And I understand that your Census Bureau Center for Economic Studies predicted a 2.3 percent drop in self responses and an 8 percent drop in responses in households with non-citizens, including--that includes illegal--non-citizens.

My question to start is, have the census self-response rates lagged in rural areas? And what among--that's number one. And how are you going to address that?

DILLINGHAM:
Sure.

Congressman, we--we track the areas all across the country and we do it by census tracks. And--and anyone in the country can go to our website and they can see how their jurisdiction, their track, their community is doing with self-response rates. I don't have the--the figures here before me, but we--we are well aware that in some rural communities you have special challenges and we have very special procedures that we do.

I discussed earlier, it may be in my prepared statement, about our update leave. And--and we also have various ways that we're--increased mailings that we are doing in--in the--the low response areas. And we have a variety of things that we will be enlisting in the weeks ahead. And--and beginning August the 11th, we should be in all communities.

And I--I hope that we have already made progress in most of the rural communities. But we will do everything we can according to our--our--our best abilities and--and informed by the knowledge of the past and the previous decennial census and current data.

WELCH:
Well, just to interrupt you--

DILLINGHAM:
--Yes--

WELCH:
--What are some of the specific things? It's hard. I mean, it's hard to get access to people who are quite skeptical, even suspicious of government. And--

DILLINGHAM:
--Sure--

WELCH:
--Anyone coming from the Census Bureau is perceived by many to be a government person.

DILLINGHAM:
Sure.

WELCH:
So, what are the specific things you're doing, particularly among the immigrant community, to find them and--and--and count them?

DILLINGHAM:
Certainly. One of the--the--the most important thing, when we have our communications campaign and we have very targeted communications even on local radio and whatever communications those communities--that--that will resonate with them and they will get the information. In addition to that, we of course have a partnership specialist usually selected from those areas that have knowledge of those areas.

We're also, very importantly, using our partners. With 400,000 organizations, the largest ever, those organizations literally reach into every community in this country. Now, I will say that during the pandemic--

WELCH:
--I only have a few minutes. I only have a few--I only have a few seconds.

DILLINGHAM:
I'm sorry.

WELCH:
Just--if you're unsuccessful in getting a full count, how does that undercount adversely affect communities for states like Vermont?

DILLINGHAM:
Well, if you have an undercount--you know, the census data is--is some of the most used data, if not the most used data, at least indirectly, in the country. So, it's used for certainly the allocation of resources, federal, state, and local. It's used for planning. It's used for research. It's used for decision-making. So, there is a malt--and it's used in the private sector. So, it is very useful. And our theme that--in the message we send is help shape your future, answer the 2020 census. And so, we are trying to communicate--

WELCH:
--All right--

DILLINGHAM:
--That message, and our partnerships are doing a lot in that effort in that we will have, you know, a half million people for--where we haven't received the responses--

WELCH:
--Right--

DILLINGHAM:
--Knocking on the doors. But we have more than that in our partnerships.

WELCH:
Thank you.

DILLINGHAM:
Yes. Thank you.

WELCH:
And I yield back. Thank you, Madam Chair.

MALONEY:
We thank you. And we now recognize Congressman Roy, I believe by WebEx. Congressman Roy?

ROY:
Yes, ma'am. Thank you, Chairwoman, appreciate it. Dr. Dillingham, thank you for your stamina here. I think this hearing has been going for a little while. I was present for the first panel. Now I'm dialing in for the second one, but appreciate your presence in your service to our country.

I had a--just a couple of questions. You know, I asked some questions to some of your predecessors earlier. I just want to make sure I understand this correctly. With--am I right in my understanding that--and--and kind of leading off of Mr. Welch's questions, that when you don't actually come in contact with a person, you don't get a response, go to house, don't find it, that there are systems in place in the Census Bureau--for better or worse, right?

We can debate the efficacy--where you have imputation, essentially where you go through count imputation, whether that status count imputation for--you know, you--literally you can't find the address where the house, or occupancy imputation where you find the house but you can't find the person, or, you know, household size imputation where you don't have any people are there, and that it--that it is practice to impute the--the numbers or, you know,

the--what you find at one house in a neighborhood to the house you don't mind, or to the individuals you don't find, and that there's a second category of characteristic imputation, where you're imputing the characteristics of people in the neighborhood.

Say there are five white folks in a house over here, we're going to--we're going to say that there are five white folks in this house by imputation. Am I roughly right--I mean, just a short yes or no and a brief explanation if you need it. Am I roughly right that that is something that you carry out and engage in for a not statistically insignificant number of the people you're "counting?"

DILLINGHAM:
Congressman, I would have to qualify my answer to that. We do use and imputation process when we've exhausted all efforts in counting the individuals at that residence, as--as you pointed out. So, there is a process. The numbers are low and we hope they remain extremely low. But there are times when we have reason to believe, evidence, that someone is living in that household but we are unable to communicate with them, that in fact we do have an imputation accepted method that has been accepted by the courts.

ROY:
Dr.--Dr.--yeah, I'm sorry to interrupt because we have limited time. I--I hate this. I'd rather have just a nice long conversation.

DILLINGHAM:
Sure.

ROY:
But do we have a rough estimate of how many that we're talking about here? Are we talking about hundreds of thousands? Are we talking about millions? And we're talking about counting the uncountable, right? That's a phrase I've heard used in the senses world, community, and so forth. What--what are we talking about here on the rough numbers?

DILLINGHAM:
Well, I--I can get you more precise numbers, but we're not talking millions. We--we are talking about those where we've exhausted our efforts and we have reason to believe people are living in that household. And then--and--and in those instances, there is an imputation option.

ROY:
Okay. I would appreciate a response to that about how many numbers, and broken down, to the extent possible--

DILLINGHAM:
--Sure--

ROY:
--Between count imputation and characteristic imputation and, you know, the various methods--

DILLINGHAM:
--Sure--

ROY:
--You all use to fill in those holes. Another question is--is in my--Dr. John Abboud is he--am I correct that that is the individual overseeing the special tabulation for redistricting?

DILLINGHAM:
I'm not sure if he has direct management of that, but he's over our research and methodology section that contributes to that process.

ROY:
Did Mr. Abboud testify against the efforts by the administration to count or to ask the question of citizenship on the census last year when it was in litigation?

DILLINGHAM:
I--I am aware that he was a witness in that case, yes.

ROY:
And he testified against inclusion of that question?

DILLINGHAM:

I--I--I have not reviewed his testimony, but I--I think it was considered by many to be that it raised questions.

ROY:
Okay. I just think it's--merits noting that if--if he's got an intimate involvement in how we're overseeing the tabulation for redistricting and he was testifying against inclusion of the question, which is an administrative decision, it I think it bears some questioning as to how this process is being carried out.

And I don't how much time I have left, probably not a lot. I'll go and end with that. I would appreciate your response to that question generally, and--and I--and I do appreciate your taking time and being here. Thank you.

DILLINGHAM:
Thank you, Congressman.

MALONEY:
Thank you. I now recognize the vice chair of the committee, Congressman Gomez, from--by remote.

GOMEZ:
Thank you, Madam Chair. Mr. Dillingham, thank you for being here with us.

DILLINGHAM:
Thank you.

GOMEZ:
There's a lot of uncertainty, but one thing is definitely clear. That is if the Census Bureau is not allowed to continue its count through October and--and has time to produce the data, and they--as you requested, there is going to be a significant undercount when it comes to the population of the United States. So, I'm going to ask you a series of questions that I--I need answers to.

Mr.--Dr. Dillingham, it is my understanding that OMB sent language to the appropriators requesting an additional $448 million in funding, but not writing your request to extend the statutory deadline for the data. Did you see the OMB language before was that?

DILLINGHAM:
No--no, I did not, but I am aware. We've put in a request for a--

GOMEZ:
--All right. Thank--

DILLINGHAM:
--A billion dollars, and I got approximately half of that in--in the Senate bill, I guess.

GOMEZ:
Okay, good to know. So, you didn't see it, so therefore you did not approve it, correct?

DILLINGHAM:
Let me--let me ask you one again. Will you describe what it is? I--I--I am aware that we were requesting additional funds as part of the appropriations process. It would--I wasn't involved--

GOMEZ:
--Correct, and then also--

DILLINGHAM:
--In the discussions, negotiations--

GOMEZ:
--Your request--hold on. Your request was also to extend the statutory deadlines for the data, and the Senate without including that language. So, you're saying that you never saw the language before it was sent, so I will take it as--

DILLINGHAM:
--I--I will--

GOMEZ:
--As the record--

DILLINGHAM:
--Let me--let me--let me--

GOMEZ:
--I have to go to the next question,

DILLINGHAM:
Sure.

GOMEZ:
Have you discussed with Leader McConnell--

DILLINGHAM:
--Let--let me correct--

GOMEZ:
--The need for extension?

DILLINGHAM:
Let me correct. There have been discussions about the schedule and our--and our ability to continually assess it. There have--so I'm aware of that topic.

GOMEZ:
Yeah, but you--you did not see the language before it was sent, as you stated. Have you discussed with Leader McConnell the need for the extension?

DILLINGHAM:
Have I--have I discussed with who? Excuse me?

GOMEZ:
Leader Mitch McConnell in the Senate, the need for--

DILLINGHAM:

--Oh, I--I have--

GOMEZ:
--The extension--

DILLINGHAM:
--I--I have not discussed with House or Senate leadership any specifics about that.

GOMEZ:
In this new plan is it the--the idea of career census officials that are pulling back the enumeration date like not granting the extension to do the numer--in person enumeration through October and to ask for--originally requested for a four month extension to get the data to Congress by April 2021. Is the new deadlines and new plans, is that the idea of career census officials?

DILLINGHAM:
I can certainly say that in discussions we have made assessments along the way and they have bus--discussed with--with the House and Senate staffs who--who we have briefed on a weekly basis. And I'm sure probably the--I am not privy to those discussions but I'm sure the topic of extension time and a shift in schedule were discussed.

GOMEZ:
Is the--the new schedule one prepared by career census officials?

DILLINGHAM:
I--I--I will say that we make assessments and--in certainly our career officials are in--involved in that with those recommendations. Ab--Absolutely. The--we--we listen to our career people as to where we--we have--their assessment as to where we are.

GOMEZ:
So are you still sticking to the--the Bureau's request for Congress to--for a four month extension to April 2021 out of the December 31st statutory deadline for delivering the President the populations total required to reapportion the House of Representatives?

DILLINGHAM:

Con--Congressman to be clear--someone asked me earlier am I aware that discussions ha--have been held between the administration and Congress--

GOMEZ:
--Okay. Let me--le me ask you again. Is (INAUDIBLE)--

DILLINGHAM:
--I am, but I'm not party to those--

GOMEZ:
--I yie--I--reclaim my time.

DILLINGHAM:
Yes, Congressman.

GOMEZ:
Do you support your original request--the Bureau's which you're in charge of--

DILLINGHAM:
--Yes, correct--

GOMEZ:
--Request to Congress to extend the delivery of the data to April 2021.

DILLINGHAM:
Congressman, all requests I--as my understanding go through the Office of Management and Budget--

GOMEZ:
--Okay. I'm--I'm asking you do you still stand by the original request--

DILLINGHAM:
--We--we do not directly--

GOMEZ:
--I yield ba--I reclaim my time. Do you re--do you still by--stand by that extension deadline request that you made--the Bureau made?

DILLINGHAM:
We have for planning purposes made assessments and continue to do so.

GOMEZ:
Yes, sir. The--I'm looking for yes or no. It seems like there's a--there's an obvious pattern that you are not in control of the Census Bureau and that the political appointees of this Administration are. You know your name will go down in history if this is the worst census ever conducted by the United States government.

You're not gonna run away and just bo--and say that this was only because of the Trump administration later on. You will be responsible. Your name will be associated with it. So we're gonna keep pushing until we have accountability and a complete and accurate count of every person in the United States. With that I yield back.

DILLINGHAM:
That is our mission, congressman. And let me say that I am not involved directly with the Hill negotiations on--on these--on revising the schedule.

MALONEY:
I thank the gentleman for his question and his passion. And now I recognize Congresswoman Miller.

MILLER:
(INAUDIBLE). And thank you Ranking Member Comer. And Dr. Dillingham I want to personally thank you for what you're undertaking to do that's a Herculean effort to complete the census this year in the midst of a pandemic. I wish you all the best of luck and Congress stands ready to support you any way we can. In any essential information or mandate once this is completed.

My district is a representation of how difficult the census can be to compete. Four of my 18 counties in my district have 100 percent of their population living in hard to count neighborhoods.

I spent last year making sure that I visited each one of these counties and I can tell you from firsthand experience how rural my community in West Virginia is. And this has only been exacerbated by the Coronavirus and the pandemic but actually in a way it helped us with this, because we were very slow to get the pandemic and we haven't had it to the proportion that has gone on in the country.

It's critical that we count each of our constituents and then once we have that count that we are apportioning Congressional seats to each of the states fairly. As an American citizen, the representation you have in the federal government should always be fair and accurate. Counting people living in the United States illegally in apportionment is an attack on our democratic institutions and seeks to take away the vote--the voice of the American people.

I strongly support President Trump's actions to protect the sanctity of our con--constitutionally mandated process for apportionment and protecting the voice and the representation of the American people in Congress. Is the first 2020 census counting of all the people in the United States regardless of legal residency status? Yes or no.

DILLINGHAM:
Congresswoman I--I don't want to get into the details of people that may be not establishing residency, maybe temporary. We--there was another discussion with a congressman. But your question I think goes to the heart also of the last question and comment.

We are absolutely dedicated to a complete and accurate count of the people residing in the United States. And I do think that we are poised--we were poised I think not not have one of the worst but in fact to have the very best census ever. And that remains our goal.

So we have not only embraced all sorts of innovations, all sorts of technologies, but our goal is to have the very best count possible, a complete and accurate count of everyone.

MILLER:
Thank you. Does the apportionment process play any role in how the census is conducted or is Congressional apportionment only tabulated once the census count has been concluded?

DILLINGHAM:
We do the complete census count of everyone and then we are looking particularly as pointed out at other data sources to determine whether we can identify a group that the President has recommended to subtract from the apportionment count. It's a tabulation. So we will have a complete and accurate count. But we also working to determine the data and methodologies that might supply that additional information.

Again, we're a statistical agency and a data producing agency. Not a policy agency.

MILLER:
And that is how you will be able to implement the apportionment memorandum, correct?

DILLINGHAM:
That is the way we are proceeding. You are correct, Congresswoman.

MILLER:
Alright. Thank you. I yield back my time.

MALONEY:
Congressman Lynch is recognized via remote. Congressman Lynch--

LYNCH:
--Thank you Madam Chair.

MALONEY:
Okay.

LYNCH:
Yeah, can you hear me? Can you hear me?

DILLINGHAM:
Yes I can--

MALONEY:
--Yes we can. Yes we can.

LYNCH:
Okay. Alright. Thank you. Dr. Dillingham back in June--so--so I represent along with Congresswoman Pressley I represent the Boston area--

DILLINGHAM:
--Sure.

LYNCH:
And we've got hundreds of thousands of students that normally attend school within my district and Ms. Pressley's district as well. And so Boston is traditionally one of the more difficult (INAUDIBLE) cities to count, I think partly because of the influx of students.

You sent a letter back in June to the college presidents asking them for their cooperation in--in tendering the roles--the--the role of students--the list of students that are--are attending and their addresses as of April of 2020. I--I just would like to get some--some update on--on how that's going.

I'm a bit concerned because we--we're experiencing right now an undercount in the process. I've been working with our fantastic Secretary of State Bill Galvin who--this is his third census. He's been around a while like me. He does a great job on this, but we got running behind our historic count levels compared to previous census operations.

And I'm just wondering how we are making out on the student assessment in terms of tracking them--you know--a lot of the students are learning remotely so they may not be in their intended location. Some of them their schools have closed down. They're--they're not even in the same city. How are we dealing with that?

DILLINGHAM:
Co--Congressman that's an excellent question. Let--let me say this. I--I thought I might have the facts and figures with me. I--I can't put my hands on them. But we are making progress. But as I said in my opening statement, we--we want to do that as accurately, as efficiently and as soon as possible.

So even though we're making progress, there's still some confusion among the colleges and universities because there are some special provisions for protecting student information.

So there is a--a grouping of--of--of colleges or some colleges. And I understand. I think you have the most colleges per geographical area in the country. And we want, we want to get that information, at least in roster form, and it will save millions of dollars. We can get it accurately and efficiently, particularly the students that are living off campus.

The House passed a bill with a provision in it, and I'll bring that to your attention. But that's--that's--we're making progress. I--I seem--I seem to recall that maybe 60 percent of the colleges, but I--I--I will check the record on that. And we want all the colleges and we will.

And the concern is that perhaps that we wouldn't protect the information. We protect the data better than anyone in the country that I'm aware of. We understand colleges do a lot, but I think we protect it as well, if not better. And we have federal law on our side, and we

have all the safeguards for that information. We want it, and we'd like to get it efficiently. We appreciate your interest and other members of Congress.

LYNCH:
Well, Dr. Dillingham, if I could just ask you, you know, we can't solve everything on--on this call.

DILLINGHAM:
Sure.

LYNCH:
But if I could get the commitment that my colleagues from the Boston--from the Massachusetts delegation that are interested in this and we've got a ton of--time of colleges and universities. Myself and Ms. Pressley and--and Secretary, (INAUDIBLE), if we could talk with you and your office--

DILLINGHAM:
Absolutely.

LYNCH:
--just to get an assessment on that, because time is short, as you know.

DILLINGHAM:
Absolutely.

LYNCH:
So that as possible?

DILLINGHAM:
You'll get get some assessment this week.

LYNCH:
Okay.

DILLINGHAM:
Yes, congressman.

LYNCH:
All right.

DILLINGHAM:
Thank you.

LYNCH:
All right. Thank you so much.

And I--I'll yield back the balance of my time. Thank you, Madam Chair.

MALONEY:
Thank you very much.

And I now recognize Congresswoman Porter.

PORTER:
Thank you very much.

Mr. Dillingham, is the Census Bureau using state administrative records to conduct the 2020 census operations?

DILLINGHAM:
We do use administrative data for some of our purposes of--of trying to discover whether there's duplication in the management of the census. I can't tell you exactly which data sets.

PORTER:
Super.

Is the Census Bureau using these records, or going to be using these records to determine the citizenship status of individuals?

DILLINGHAM:

We do have administrative records that will be used for us to looking at the numbers of--of citizens and non-citizens. That is correct.

PORTER:
Okay.

Under the Privacy Act, there should be a System of Records Notice. It's called an SORN, explaining what these administrative records will be used for. Have you published an SORN, a System of Record Notice?

DILLINGHAM:
It is my understanding we have--we have complied with all the regulatory needs, but I will double check. We can get back to you on specifics.

PORTER:
Okay.

So you don't--do you know if that SORN explains what the records will be used for as required by the Office of Management and Budget?

DILLINGHAM:
Are you talking about our administrative records?

PORTER:
Yes.

DILLINGHAM:
Are we--are we sharing that information with the Office of Management Budget?

PORTER:
Yes.

DILLINGHAM:
We--we actually have to have their permission to do that.

PORTER:

Great.

Does that--that statement that you gave to the Office of Management and Budget and that System of Records Notice, does it say anything? Does it disclose to the American public that you'll be using administrative records to determine if someone is a citizen?

DILLINGHAM:
Well, we--the--the executive order is quite transparent and--and points that out, and it's actually the agencies, too, that will be providing us data. So--

PORTER:
But respectfully, sir--respectively, sir, the--the--you have an obligation to comply with the Privacy Act and to file that System of Records Notice and to require the statement of purpose with the Office of Management and Budget. And so I am asking you, do those statements, which you are responsible for, advise the American public, as required in Congress, as required in OMB, as required, that the administrative records will be used to determine citizenship steps?

DILLINGHAM:
Congresswoman, I will double check on that, but I--it would certainly be my understanding.

PORTER:
Okay.

I actually have it in front of me. Madam Chairwoman, I ask to enter the System of Record Notice and the OMB Purpose Statement into the record.

MALONEY:
Without objection.

PORTER:
So, Mr. Dillingham, is no. These disclosures don't make any mention that you will be using administrative records for citizenship. And since you are going to be using these records for federal administrative records to help determine citizenship, you should have submitted a request to the Office of Management and Budget. You should have submitted supporting statements explaining exactly how those federal records would be used.

The notices are very clear. They say--indicate how, by whom, and for what purpose the information is to be used. The president's executive order doesn't wave or relieve you of the requirement to be transparent. Will you commit to filing a new System of Record Notice that clearly advises that the administrative records will be used to determine citizenship status?

DILLINGHAM:
I'm not sure I understood that last part of your question. Would I be--what I be assured that I do what?

PORTER:
Will you please commit to following the law--

DILLINGHAM:
We--we will follow--

PORTER:
--With regard the Privacy Act and filing a new System of Record Notice and a new Statement of Purpose to the OMB. If in fact, I am correct that your existing statement makes no--no mention of using the administrative records for the purpose of determining citizenship, when that, in fact, is you have--testify is your intent.

DILLINGHAM:
Congresswoman, I will certainly ask our legal counsel to look in the Statement of Records Notice to see if we're in compliance.

PORTER:
Thank you very much.

My last question for you is, will you count every person regardless of citizenship because that is what is required by the Constitution?

DILLINGHAM:
As I have said here today, we're going to count everyone living in this nation.

PORTER:
Okay.

So the Constitution says that representatives shall be apportioned among the several states according to their respective numbers, which shall be determined by adding the whole number of free persons. In the Constitution, what do you think person means in that context?

DILLINGHAM:
Congresswoman, that was a topic of the first panel here. And as I said in--in my opening remarks, discussing the policies and history and particularly the legal analysis, it isn't one of the--it wouldn't be prudent for me at this time.

The--as the director of the Census Bureau, we have to get the work done, and I'm not going to engage. And quite frankly, I'm not prepared to engage in--in the legal analysis or the policy debate. We are a statistical agency producing statistical products, and if they're legal, we--we will produce them. And it will be the best available data that we have.

PORTER:
Well, Mr. Dillingham, I--I appreciate that. But you can't wax on about your faithful execution of your constitutional duty and then dodge questions about the Constitution in the same hearing. But I do appreciate your following up on the Systems of Record Notice and the Privacy Act. And I'll--I'll follow-up with you directly about that.

I yield back.

DILLINGHAM:
Thank you so much.

MALONEY:
I thank the gentlelady for her questions.

And before I recognize Representative Ranking Member Comer, for his closing remarks, I--I want to seek clarity on one thing if I could, Mr. Director.

DILLINGHAM:
Sure.

MALONEY:
I asked you earlier if you would send this committee the results of the Bureau's analysis under the president's memo, and--and you responded that the Bureau would be transparent.

DILLINGHAM:
That's correct.

MALONEY:
So can I take that as a yes that you will share the results of the Bureau's analysis?

DILLINGHAM:
It is the policy and practice of the Bureau to share with the world any final decisions we make on that. But in the discussions of it and that--I cannot pledge that. I can say that as--as we--as the decisions are made, they will be transparent, and for everyone, particularly the users of the data.

MALONEY:
Okay.

I now recognize the Ranking Member Comer for his closing remarks.

COMER:
Thank you, Chairman Maloney. I appreciate, again, you calling this hearing today on the 2020 Census.

I want to reiterate what I said at the beginning of this hearing this morning by saying that everyone should complete their census form and engage with census enumerators if they come to your door. It's very important that every single American is counted.

I support the president's action last week to exclude illegal immigrants from the apportionment count, as do a majority of Americans. Including illegal immigrants in the count for representation in Congress only dilutes the representation of all Americans who vote in elections and makes a mockery of our basic principle of one person, one vote.

I just want to make some points to correct the record about some things that we have heard today. Democrats have made some very misleading or incorrect statements that I would like to take this opportunity to correct.

First, we have heard from Democrats that the president's memorandum means that illegal immigrants are not counted for purposes of the 2020 census. This is not correct. Illegal immigrants are still counted for purposes of the 2020 census. The presidential memorandum

does not direct the Census Bureau not to count illegal immigrants, it only affects the subsequent use of census data to conduct the apportionment of congressional seats and electoral college votes among the states.

Illegal immigrants, while counted for the census will be excluded from the apportionment base. Second, we have heard from Democrats that the President's memorandum will divert funding or actual federal funding flowing to states as a result of the 2020 census. This is also incorrect.

The president's memorandum does not direct or diverged in the federal funding or exclude illegal immigrants from being considered in future funding decisions. Complete census 2020 data once tabulated will be available for Congress, federal agency, state legislatures and municipalities to use when making funding decisions.

We have also heard from Democrats that the Supreme Court ruled that asking whether someone is a citizen is unconstitutional. That is not correct. In fact, the Supreme Court actually held that asking whether someone is a U.S. citizen on the census is lawful.

The justices said that quote in light of the early understanding of and long practice under the enumeration clause, we conclude that it permits Congress and, by extension, the Secretary of Commerce to inquire about citizenship on the census questionnaire. Although the administration had failed to comply with some procedural requirements in reinstating the question which had appeared on previous census forms, the question itself was not ruled to be unconstitutional.

We have also heard that the president's memorandum is unconstitutional. Not so says the constitutional law expert Dr. Eastman who testified here this morning. We heard from him that the proper understanding of the Constitution is that we should only apportion seats based on the citizenry and not for inhabitants, especially those who are here illegally.

They are here illegally. Counting those unlawfully present creates perverse incentives, dilutes representation of voters in states with fewer illegal immigrants, and undermines the principle of one person one vote. Representation should matter to everyone. It is a simple question of fairness. I yield back.

MALONEY:
I want to thank the Ranking Member and all of the participants today, all of our panelist and especially you director. I think you for your service in the military and for your public service and for voluntarily coming here today to be with us. I--I want to close by saying that it is an undisputed fact that the coronavirus has changed everything in our country. It has changed everything the way we do things and I would say that the coronavirus has changed the census because of the tremendous challenges, the concern for your enumerators health, the

enumeration was put off from your testimony today you say the enumeration for the hard to count will begin August 10 and when you put this off you also or rather Secretary Ross ask us to put off the date for collecting the information and also for sending the apportionment to the states from October 20, 22 to the end of April 2021.

And our Congress, our members of our Democratic Caucus we passed a bill in the coronavirus and we included the day change that you requested so it is against this backdrop of all of these challenges that you are confronting with the hard to count, with the coronavirus and I would call it a disruptive and historic disease that has really overburdened the Census Bureau and created more challenges not just with the Census Bureau but to all of government and it is against this backdrop that President Trump issued.

What I considered an illegal memorandum last week and the purpose that we call this hearing, this emergency hearing is in response to that memorandum and this memo would dramatically change the manner in which the census count is reported. I agree with my colleague that you have testified, and I applaud you that everyone will be counted.

We will all work hard to get undocumented every one counted in the census but on Monday I want to point out that the Bureau posted on its website that the Census Bureau is working toward the plan to complete field data collection by October 31, 2020, yet I noticed today that this notice has been removed from your website yet it hasn't been replaced with a new data or with any date on when the field data collection is supposed to happen.

Now I believe we should do what the census professionals say they need, that they need this postponement to get the field data by October 31 and to report it later in April 2021, but it has been reported in the press that the administration is trying to rush the apportionment count and trying to push it back to December 30 (INAUDIBLE) for President Trump would leave the White House if he possibly we don't know what the outcome of the election is but he would be leaving the house before the election results if he loses the election.

So I am can learn that the administration is seeking to rush the process and sacrifice the accuracy of these senses for political gain, that the presidents intent is to have all of this done before he leaves office so that he can do what I believe is an illegal action, so I hope that you all live up to the standards of professionalism, stand by the request of Secretary Ross.

I did check with the professionals in New York who were working on the census, and they are working with the numbers that Secretary Ross requested that the data is completed by October 2020 and that is translated to the states by April 2021, and I also want to say that without objection all members will have five legislative days with which to submit additional written questions for the witnesses to the chair which will be forwarded to the witnesses for their response and I ask our witnesses to please respond as promptly as they are able, and I now say that this hearing is adjourned.

List of Panel Members and Witnesses
PANEL MEMBERS:
REP. CAROLYN B. MALONEY (D-N.Y.), CHAIRWOMAN

DEL. ELEANOR HOLMES NORTON (D-D.C.)

REP. WILLIAM LACY CLAY (D-MO.)

REP. STEPHEN F. LYNCH (D-MASS.)

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REP. HARLEY ROUDA (D-CALIF.)

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REP. DEBBIE WASSERMAN SCHULTZ (D-FLA.)

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REP. RASHIDA TLAIB (D-MICH.)

REP. KATIE PORTER (D-CALIF.)

REP. JAMES R. COMER (R-KY.), RANKING MEMBER

REP. JIM JORDAN (R-OHIO)

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REP. KELLY ARMSTRONG (R-N.D.)

REP. GREG STEUBE (R-FLA.)

REP. FRED KELLER (R-PA.)

WITNESSES:
FORMER CENSUS BUREAU DIRECTOR VINCENT BARABBA

CENSUS BUREAU DIRECTOR STEVEN DILLINGHAM

CLAREMONT INSTITUTE SENIOR FELLOW JOHN EASTMAN

FORMER CENSUS BUREAU DIRECTOR KENNETH PREWITT

FORMER CENSUS BUREAU DIRECTOR JOHN THOMPSON

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Sent: 7/30/2020 6:13:13 PM
To: Colleen Holzbach (CENSUS/PCO FED) [Colleen.Holzbach@census.gov]; James L Dinwiddie (CENSUS/ADDC FED) [James.L.Dinwiddie@census.gov]
Subject: CQ Transcript of Yesterday's Hearing
Attachments: CQ Hearing Transcript 07.29.2020.docx

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MALONEY:
The committee will come to order. Without objection the chair is authorized to declare recess of the committee at any time. I now recognize myself for an opening statement.

Thank you all for being here today. Our Constitution requires that every 10 years we count every person living in the United States of America. We use the discount to allocate more than $1 trillion in federal resources, to draw legislative maps, and to assign electoral college votes to states. It is no exaggeration to say that the census is a cornerstone of our democracy.

Last week, the president issued a memorandum directing the secretary of Commerce to provide him with and inform--with all of the information necessary to exclude undocumented immigrants from the census count for were apportionment purposes. Let me be clear, the president's direction is unconstitutional, it is illegal, and it disregards the precedent set by every other president beginning with President George Washington.

The Constitution requires the census to count quote the whole number of persons in each state end quote. Federal law requires the secretary of Commerce to report quote the total population end quote of each state to the president and it requires the president to transmit this information to Congress.

In the 230-year history of the Census, no president has ever tried to manipulate they census count in this way. In fact, just two years of the Census Bureau reaffirmed its commitment to do the exact opposite of what the president is now trying to do. The Bureau committed to counting every person regardless of partisanship or status under the rules of Congress set in the Census Act of 1790. The president's decision to release this illegal memo now appears designed to inflict maximum damage to the accuracy of the ongoing 2020 census.

In just two weeks, the Census Bureau will start visiting the homes of millions of people who have not yet responded to the census. The President's latest attack on immigrants could sow fear and confusion in communities across the country could lead many people do decide not to participate. This will hurt communities that are already undercounted, underrepresented, and underfunded.

Addressing the chaos caused by the president's memo will drain valuable resources from the Census Bureau which is already struggling to administer the 2020 census in the middle of an unprecedented pandemic, and it will further divide our country at a time when we need unity. Of course, this is not the first time that President Trump has attempted to politicize the census. For more than two years, he tried to add a citizenship question even though the Census Bureau's own studies showed it would depress response rates in many communities.

When this committee investigated Secretary Ross and other administration officials denied they were trying to exclude immigrants from congressional apportionment and instead claimed falsely that the Department of Justice needed citizenship data to enforce the Voting Rights Act.

The Supreme Court saw through their explanation calling it quote contrived end quote and blocking the addition of the citizenship question. And when Secretary Ross and Attorney General Barr refused to turn over documents about the real reason for the citizenship question, the House held them both in contempt.

Now the president is trying again to weaponize the census to hurt immigrants and help Republicans. As a nation we depend on the census to be nonpartisan, fair, and accurate. As I told Director Dillingham the last time he appeared before us, our Constitution requires it, our communities rely on it, and our democracy depends on it. We are here today at this emergency hearing because the Trump administration is threatening this cornerstone of our democracy.

We will hear from four former Census Bureau directors who oversaw the census during the both Republican and Democratic administrations. They will share their views on the president's unprecedented attempt to manipulate the census count and why it is important to count every person in the United States. Then we will hear directly from the current Census Bureau Director Dr. Dillingham. I expect Dr. Dillingham to give us an honest assessment of how the president's memo could impact the accuracy of the census and what the Bureau is doing to address this risk.

I thank all of our witnesses for participating today, and I look forward to your testimony. I now recognize the distinguished Ranking Member, Mr. Comer, for an opening statement.

COMER:
Chairman Maloney, I appreciate you calling this hearing today on the 2020 Census. Let me begin by saying unequivocally, the 2020 Census is counting every resident in the United States regardless of citizenship status. Any assertions to the contrary are scare tactics which have a consequence of reducing participation in the census.

The census is underway now. I want to encourage every American to complete their census form. Starting in August, census enumerators will be fanning out across the country to count not responding households. I encourage everyone to engage with the enumerator if they come to your door, but if you're concerned about an enumerator coming to your door, you can complete your 2020 census online now at mycensus2020 or my2020census.gov.

I truly wish the hearing today or oversight hearing of the 2020 census because COVID-19 has created a lot of operational challenges for the census. Unfortunately, this committee has conducted no oversight of these impacts. Once again, Democrats are focusing their efforts on political issues, not the basic good government oversight this committee is charged with conducting.

Last week, President Trump took a very important step to ensuring the sanctity of our nation's elections and equal representation under the Constitution. The president directed the secretary of Commerce to report an apportionment count for the House of Representatives, which excludes nonlegal residence in the United States including illegal immigrants.

All Americans should care about who is being included in the apportionment count; including illegal immigrants in the count for representation in Congress only dilutes the representation of all Americans who vote in elections and makes a mockery of our basic principle of one person one vote.

The president's action restores the concept of representational government envisioned by the Constitution. In a country so closely divided as the United States, illegal immigrants and noncitizens have a material effect on representation. Representation should matter to everyone; it's a simple question of fairness. Predictably the Democrats liberal interest groups have already filed lawsuits against the president. Like the sound and fury surrounding the citizenship question the legal questions about the president's action are likely to wind up at the Supreme Court.

This hearing today is the Democrats first shot across the bow of Chief Justice Roberts and the other Supreme Court justices. The intimidation of the Supreme Court begins today. I urge us all to focus on the task at hand, the completion of the 2020 census count now underway. With that, I yield back.

MALONEY:
Thank you. Now I would like to introduce our witnesses. Our first panel is composed of former Census Bureau directors. We are grateful to have their expertise. Our first witness today is Mr. Vincent Barabba who served as the census director from 1973 to 1976 and again from '79 to 1981.

Then, we will hear from Kenneth Prewitt who served as the census a director from 1998 to 2001. Next, we will hear and go to Robert M. Groves who served as the census director from 2009 to 2012. And finally, we will go to John H. Thompson who served as the census and director from 2013 to 2017.

The witnesses will be muted so we can swear them in--un-muted so we can swear them in. Witnesses, please raise your right hand. Do you swear or affirm that the testimony you are about to give us the truth, the whole truth, and nothing but the truth, so help you God?

UNKNOWN:
I do

UNKNOWN:
I do

MALONEY:
Let the record show that the witnesses answered in the affirmative. Thank you. Without objection, your written statements will be made part of the record. With that, Mr. Robin--Barabba, you are now recognized for your testimony.

BARABBA:
Thank you. (INAUDIBLE) formulated in 1928 stated that it if men defined situations as real, they are real in our consequences. In essence, (INAUDIBLE) serves as the potential that when incorrect situations are perceived by people as real, they are real in their consequences.

The real problem with the President's current action is that by reproducing his illegal desire of only counting citizens, this is that many approaches he's taken to ensure that he achieves his real objective. That is to make sure less people will be counted in states with large minority populations, which does not support President Trump or the positions he has taken. If this occurs, this those areas will have their representation in Congress and other legislative districts reduced as well and it will receive fewer government approved allocations based on the census count.

However, the incorrect perception of possible direct harm by filling out the form by non-citizens is not correct because it is against the law. Any census bureau employee (INAUDIBLE) to disclose or publish any census or survey information that identifies an individual or business. This is true even for interagency communications.

The FBI and other government entities do not have the legal right to access this information violating the confidentiality of a respondent is a federal crime with serious penalties, including a federal prison sentence of up to five years with a fine of up to $250,000 or both. In fact, when these protections have been challenged, title 13's confidentiality guarantee has been upheld in the courts.

I will now provide an example of how the Census Bureau and other agencies work together to follow title 13. It on August 13, 1980, late in--late that afternoon, four FBI agents arrived at the district office in Colorado Springs armed with a search warrant authorizing them to seize the census documents and include--including

completed questionnaires in the course of their investigation of a case involving alleged questionnaire classification and payroll fraud.

I was immediately informed of the situation and contacted the director of the FBI. After a brief flurry of telephone calls to employees in Colorado, we agreed to a mutually satisfactory conclusion that could be reached while the disputed questionnaire remained in the custody of the Census Bureau. Ultimately, the documents were placed in a secure room protected by two locks with one key held by the FBI and the other by a local census official.

Under this arrangement, only sworn census employees were allowed to enter the room but an FBI agent had to be present when the door was opened. While the door was unlocked, an agent was stationed outside the room to monitor the activities of the census personnel. The Census Bureau brought in and experienced census bureau enumerators from outside the Denver area to re-interview the respondents in area for the where the alleged fraud had taken place. They prepare the original questionnaires with those from the re-canvas.

Census Bureau officials prepared a report that described all significant discrepancies uncovered but did not leave reveal any confidential information. Mrs. Chairwoman (INAUDIBLE) I served as Census Bureau director through employment by presidents of both political parties. In 1980, I had the honor of providing secretary of Commerce with the Census Bureau statement showing the population of the states and a number of representatives to which each state is entitled, which he then forward to the president.

I was also proud of the fact that our outreach program to low income and minority populations led to an estimated count of nearly 97 percent of our population. The 1980 census was also a clear demonstration with a nonpartisan manner by which a census should be conducted. The 1980 census was designed and planned during a Republican presidency and successfully implement as designed and planned during the Democratic presidency.

It will be up to Congress and the press to make sure that this information (INAUDIBLE) by the president be addressed forcefully and that is true motivation (INAUDIBLE) that census belongs to the people, not the president. The entire population of persons in the United States should participate willingly in the 2020 census (INAUDIBLE) moment to reaffirm our founders' intent that everyone be counted. Thank you.

MALONEY:
Thank you so much for your testimony and your service. We will now hear from Dr. John Eastman, Professor Henry Salvatori Professor of Law and Community Service Director Center for Constitutional Jurisprudence Dale E Fowler School of Law and Senior fellow Claremont Institute. Dr. Eastman

EASTMAN:
(INAUDIBLE)

MALONEY:
Should we go to another one?

UNKNOWN:
Yeah.

MALONEY:

We seem to have some technical problems. We're going to go to the next speaker after Dr. Eastman and come back to him because there seems to be a problem with connecting with him. Thank you. We will now turn to Dr. Prewitt. Mr. Prewitt, you are now recognized.

PREWITT:
Thank you very much, Madam Chairwoman. We know that this--this discussion will include concern about the--in putting the noncitizen, and or the illegals into the apportionment count. I just have to say three things about that.

First, we've never done it. The census has never done it. Second, they can't do it by asking questions. You're not going to knock on the door and say are you are you not. And third, the administrative records are inadequate to do it. So even if it was a good idea, we don't know--we don't yet know that we can do it, that the Census Bureau can do it.

And with that as my starting point, I want to go on and say some things about the larger census as a--as that ranking member invited us to do. We--we all know that we were about 62 percent with respect to nonresponse with respect to self-reporting, but that leaves, you know, more than a third of the population uncounted.

And I have to really stress this point. Nonresponsive follow-up, hard to count, very difficult since his territory as we all know. And we are not in control. The we is the Census Bureau, the we is the Congress, the we is the White House. COVID is in control of whether we will be able to that as a Census Bureau, will be able to do this account successfully before the end of the year, which they are now on that--on that schedule.

And we know about 15 percent of the American population has already told us in polls that they do not intend to cooperate with the census. And so I'd like to make two, three quick points. How do I define a successful census? The bureau will know as no other unit of government can if the numbers will accurately reapportioned and fairly distribute federal funds for a decade.

It knows that the census account is the denominator of every vital statistics we rely on whether the number--whether it's the number of consumer products, whether it's differential rate of infection across the population subgroups on the pandemic, and so forth. Every number that we use for 10 years is anchored to the quality of the census.

Secondly, the bureau knows that these statistical facts can easily damage and the flawed numbers that will be produced will--will--that we'll inflict on society will create serious damage to the society. And it's not--it's not pretty; 10 years of homeless veterans because we mis-locate their--mis-locate their--sorry--mis-locate their hospitals, 10 years of tropical storm disaster relief that is too little too late because traffic congestion is underestimated.

Ten years of poor planning by local school districts because they have flawed estimates of how many one--first graders are going to show up, 10 years of missed Chamber of Commerce--misled Chamber of Commerce because predictions of population growth and characteristics are off base. We know that will be the consequences of a--of a census that does not count as best it can. Quite in--quite separate from who's in the apportionment count, we have to start with a good census.

The third thing I would say about this is the bureau will not want to inflict the damage that flawed numbers will produce. The Census Bureau is too honorable, too scientific, too proud of its professional standards, too faithful to its constitutional duties. The bureau will struggle with the enormous burden of whether to release substandard results. I urge the Congress to share the burden.

I would ask Congress to please appoint, using the National Academy of Sciences or some other apolitical trusted institution of its choosing, to produce predetermined quality metrics that can assess of the final 2020 numbers reasonably match what the bureau knows that they should be. And the bureau has very good estimates

from ACS, from demographic analysis, very good estimates of how many people across the state all the way down to the census tract levels.

And so, if we can have this special group of experts to sort of create the metrics by which we will judge if we have an adequate census to do what it's supposed to do and, if not, what steps should the country take.

MALONEY:
Thank you. We're going to return to Dr. Eastman if we have solved the difficulties of reaching him. Dr. Eastman?

EASTMAN:
Let's try--let's try this again. Can you hear me now?

MALONEY:
Yes, we can.

EASTMAN:
Very good. Thank you. Chairman Maloney, Ranking Member Comer, and other members of the committee, thank you for inviting me to participate in this important hearing.

I actually think President Trump's directive is not only good policy, but perfectly constitutional. And I want to address real quickly something Mr. Prewitt said. I think there's a confusion here between the two purposes that we use the census for. One is for apportionment set out by Article 1, Section 2 of the Constitution. The other, exercising Congress' spending power or its commerce power, is to do a whole myriad of other things like allocate federal resources, determine where we're going to need schools and VA hospitals and what have you.

Presidents Trump's order addresses the apportionment part of that. It doesn't have anything to do with the broader purpose of the total count on the census. And I think the political theory underlying the reason we have an apportionment clause is extremely important, so let me begin with that.

We--we--we get our political theory from the Declaration of Independence. It sets out universal principles, all men are created equal, that we are endowed by our Creator with certain unalienable rights, but we apply those universal principles in a particular context. The Declaration starts off by talking about one people separating themselves from another. The theory of representative government is that it is based on the consent of the people to be governed, not on the consent of people elsewhere, but on the consent of the particular people that are setting up a government.

Now, those--those principles, the consent of the governed, the representative government theory, find their selves into the text of the Constitution. Right from the very beginning, it's as we the people of the United States. It doesn't say we the people of the world or we the people of any foreign nationals who happen to be present when we take a census. It's we the people of the United States. That language is mimicked then in the apportionment clause.

Article 1, Section 2, Clause 1 says representatives are chosen by the people, that same people referring back to the people of the United States, now the people in there several states. And then in Clause 3, it says the people again, and they are chose--choose their representatives based on the total number of persons. That refers back to their representatives. That refers back to the people in the several states.

And proof of this is the clause excluding Indians not taxed. That was a clause. It was designed to recognize and to exempt from the census count those people who work in the states but not part of our body politic, who were

not citizens. As the Supreme Court held in--in Elk versus Wick--Wilkins, Indians not taxed are excluded from the census for--because for the reason that they are not citizens.

In other words, the whole political theory of the Declaration codified into the Constitution is that we are counting people for purposes of apportionment in order to reflect accurately representative strength and divide equally and fairly the representation among the several states based on their numbers of people who are citizens, who are part of the body politic.

I'll give you an example. If the census in--if the 1984 Olympics was held in 1980 and it happened to coincide with Census Day, we wouldn't have added two or three congressional seats to California because there were a couple million people visiting Los Angeles for the Olympics. And this has always been our history. Diplomats, visitors are never been counted because they're not part of the body politic. They don't adhere to the necessity of--of--of representate--the theory of representative government.

The Supreme Court has upheld this as well. It's a recognized in Reynolds versus Sims, for example, which was the equal protection, one person, one vote case, that it's the equal number of citizens. They refer repeatedly this--the language of citizens rather than total population. Now, for most of our history, there wasn't much difference. The--the disparity between citizens and noncitizens was roughly similar one district to another, so we didn't have to get into this question.

But we now live in a circumstance where there are vast differences state-by-state between the number of citizens compared to the total population. And to continue to count total population for apportionment purposes is to give an un--an undue weight to people--to states that have large numbers of noncitizens living within their borders. That's not consistent with the--with the principles of representative government. It's unfair to those states that--they continue to have only citizens. And it's particularly unfair when the number of noncitizens includes large numbers of people who are not here legally at all. It creates a perverse incentive to encourage illegal immigration to undermine the weight of the votes of citizens elsewhere in the country.

Thank you, Madam Chairman. I look forward to your questions.

MALONEY:
Thank you. I--I--I now is--next is Mr. Groves. And I understand that--that you have a hard stop at 11:00. You will be excused with our thanks and you may have questions for the record. Mr. Groves, you are now recognized.

GROVES:
Thank you, Chairwoman Maloney and--and Ranking Member Comer. Since 1790, each U.S. decennial census has sought to enumerate all residents in the country. Some of the first words in the U.S. Constitution seem to illuminate the intent of the founding fathers on the score.

Before the decennial mandate is laid out in Article 1, Section 2, the prior section, Section 1, notes the qualifications of membership in the House of Representatives by "No person shall be a representative who shall not have attained it to the age of 25 years and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state in which he shall be chosen." So, I note the explicit designation of the word citizenship for qualifications of members of the House.

In the very next section, Section 2, outlining the decennial census, the word citizen is not used either in referring to the senses or to the apportionment of the House of Representatives. Instead, the phrase whole persons is used. This goal, a complete enumeration of all persons, residents, and the country, has been the basis of all Census sense that conducted by Thomas Jefferson in 1790.

It has been the basis of reapportionment decade after decade; indeed, a decennial census is the only event we have in this country in which all persons participate. I am not a lawyer and thus will not comment on the legal basis of the recent memorandum. I will instead comments on the critical needs of the Census Bureau going forward with an eye towards quality assurance and transparency. I have four points.

One, the Census Bureau technical staff must be free to complete the 2020 census at the maximum level of quality possible within the unprecedented constraints of the pandemic. As you know, the technical staff at the Census Bureau has requested in the delivery of various products. This request flows from the delay in the conduct of various stages of data collection. This delay, no doubt, has saved lives of enumerators whose public service will make these efforts successful. I applaud the technical staff of the Census Bureau, making this decision. The decision, however, forces a delay of the delivery of 2020 products. I support this delay and urge Congress to authorize it.

Number two, all of us need to convey the message again very clearly that the 2020 census must enumerate all persons resident in the U.S. regardless of the outcome of the administration's memorandum. The decennial census has the goal of enumerating all persons in the United States. We must double down on this message in the coming days.

Number three, the Census Bureau should release all quality indicators of the measurement of citizens required on the July 11, 2019, executive order. Rarely in the conduct of censuses throughout the world is the responsible agency asked to produce official estimates critical to the society without prior testing.

The attempt to assemble from administrative record systems and other sources counts of citizens in small geographical areas is unprecedented in the history of the Bureau. With unprecedented efforts comes the obligation to inform the country of the strengths and weaknesses of the product. I urge Congress to assurance that the valuations of the accuracy of such statistics be presented along with the estimates themselves.

Number four, the credibility of the 2020 census can be achieved only by wide dissemination of quality indicators (INAUDIBLE). I urge the Census Bureau given the unique nature of this data collection to publish intermediate indicators of quality of the 2020 census. These would include process indicators, comparisons with population estimates from demographic analysis and comparable tabular form, and initial field data from the post enumeration survey, for example, match rates of households. Credibility requires transparency. The sooner the country can see multiple indicators of the 2020 census quality, the sooner the use case for the census can be made.

In conclusion, I am pleased to submit this written testimony and look forward to testifying before the committee.

MALONEY:
Thank you. We will now conclude this panel with Mr. Thompson. Mr. Thompson, you are now recognized.

THOMPSON:
Good morning, Chairwoman Maloney, Ranking Member Comer, and members of the committee. Thank you for this opportunity to testify before your committee regarding the July 21, 2020 memorandum for the Secretary of commerce on excluding illegal aliens from the apportionment base following the 2020 census.

I am extremely concerned that this action will adversely affect the quality and accuracy of the 2020 census. The remainder of my testimony will focus on five areas that I believe are critical for your committee and the leadership at the Department of Commerce and the Census Bureau to consider.

First, effects of the directive on the 2020 census response for the hard to count populations. I believe that the memorandum has a high potential to reduce the likelihood of census participation in hard to count populations,

including non-citizens and immigrants. A significant component of the Census Bureau plan to get a complete count of these populations is getting out a message that the 2020 census is important to local communities and that respondent information is kept completely private and not shared with any outside entity, including law and immigration enforcement.

I am very concerned that the release of this memorandum will increase the fears of many in the hard to count community that their data will not be safe. The end result will most likely be increased nonparticipation and increased undercounts of these populations.

Two, effects of not accepting the Census Bureau recommendation to extend the 2020 census deadlines. The Census Bureau, through the Department of Commerce, has requested that Congress extend the deadlines for providing apportionment counts and redistricting data by four months. It is critical that these deadlines be extended.

The effective conduct of the operation to enumerate those households that do not sell respond, non-response follow-up, or NRFU is necessary to achieve a fair and accurate enumeration for all populations. I am concerned that not extending the deadlines will force the Census Bureau to make adjustments to the NRFU.

These adjustments will most likely include reducing the number of NRFU visits and increasing the use of statistical methods to impute responses into a much greater percentage of housing units than in previous censuses. The consequence of actions such as this would tend to underrepresent the hard to count populations and over represent other populations.

Three, the risk of introducing serious errors into the 2020 census apportionment counts before the quality and accuracy of the 2020 census is understood. For the 2020 census, little is known at this point regarding quality, accuracy, and, most importantly, the number of undocumented persons that will actually be enumerated. I am very concerned that a much lower number of undocumented persons will be counted in the 2020 census relative to previous censuses due to increased fear that their information will not be secure.

At the same time, a significant portion of legal residence could be overcounted. It will take very careful analysis to understand the properties of the 2020 census and to determine how many if any undocumented persons are included in the enumeration. This analysis will not be available when the apportionment counts are released; therefore, using the existing estimates of the undocumented population to reduce the 2020 census numbers would have unknown and possibly serious adverse effects on the accuracy of the resulting apportionment.

Four, there must be transparency in how the estimates of the undocumented population are constructed. The 2020 census is a foundation of our democracy, and there must be assurances that any actions that would affect the census are based on objective methodologies, a long-held principle of the Census Bureau is openness and transparency.

Five, the importance of not leaving, giving the appearance of political interference with the conduct and tabulation of the 2020 census. Perceptions that the results of the 2020 census have been manipulated for political purposes will greatly erode public and stakeholder confidence not only in the 2020 census but in our democracy.

When I was directing the 2000 census as a career executive under the leadership of Census Bureau Director Dr. Kenneth Prewitt, we went to great lengths to ensure all stakeholders that data-driven decisions were being made and that there was no consideration of politics in the conduct of the census. I would strongly urge the current Census Bureau and Department of Commerce senior officials to follow these principles for the 2020 census.

In conclusion, thank you for this opportunity, and I look forward to answering any questions that you may have.

MALONEY:
The chair now recognizes herself for five minutes for questions. I would like first to thank all of you for joining us today. It is powerful to hear from for former census directors who have been appointed by presidents of both parties. Collectively you have served Richard Nixon, Gerald Ford, Jimmy Carter, Bill Clinton, George W. Bush, Barack Obama, and Donald Trump.

On July 21, the president issued a memo directing the secretary of Commerce to provide him with the information necessary to exclude undocumented immigrants from the census count for apportionment purposes. Many people have opined already--

MALONEY:
--that the president's memorandum is unlawful and unconstitutional. I have studied it closely and believe it violates the clear language of the Constitution and existing federal laws. But I wanted to ask each of you the same question for a yes or no answer.

In your opinion and based on your knowledge and experience, does the president's 20--July 21 memo seeking to exclude undocumented immigrants from the apportionment base appear to violate existing federal law and historically enduring views of the Constitution, yes or no? Mr. Barabba.

BARABBA:
Yes.

MALONEY:
Dr. Eastman.

EASTMAN:
No.

MALONEY:
Dr. Prewitt.

PREWITT:
Yes.

MALONEY:
Mr. Groves.

GROVES:
Yes.

MALONEY:
Mr. Thompson

THOMPSON:
Yes.

MALONEY:
Second question, based on your knowledge and experience, does the Constitution require the census to count every person living in the United States at the time of the census, including undocumented immigrants, Mr. Barabba, yes or no?

BARABBA:
Yes.

MALONEY:
Dr. Eastman.

EASTMAN:
No.

MALONEY:
Dr. Prewitt.

PREWITT:
Yes.

MALONEY:
Mr. Groves.

GROVES:
Yes.

MALONEY:
Mr. Thompson

THOMPSON:
Yes.

MALONEY:
Third question. Based on your knowledge and experience, do you agree that that federal law requires the president to send Congress an apportionment count based on the census account of the total population of the U.S., including undocumented immigrants, Mr. Barabba? Yes or no?

BARABBA:

Yes. Yes.

MALONEY:
Dr. Eastman. Dr. Eastman.

EASTMAN:
No. No.

MALONEY:
Dr. Prewitt.

PREWITT:
Yes.

MALONEY:
Mr. Groves.

GROVES:
Yes.

MALONEY:
Mr. Thompson

THOMPSON:
Yes.

MALONEY:
And lastly, and is it correct that all previous censuses and apportionment counts in the history of the United States have included both citizens and noncitizen, including undocumented immigrants, Mr. Barabba, yes or no?

BARABBA:
Yes.

MALONEY:
Dr. Eastman, yes or no?

EASTMAN:
No.

MALONEY:

Mr. Prewitt.

PREWITT:
Yes.

MALONEY:
Mr. Groves.

GROVES:
Yes.

MALONEY:
Mr. Thompson

THOMPSON:
Yes.

MALONEY:
Thank you. I--I think that all of these answers speak for themselves. The president may not pick and choose who is included in the census account or the apportionment base. The Constitution, federal law, and the historic practice of the Census Bureau dating back more than two centuries as required the census account and the apportionment base to include every person in the United States, regardless of their immigration status. I now yield to the distinguished ranking member for five minutes for questions.

COMER:
Dr. Eastman, thank you for testifying today. And let me be crystal clear. I strongly support the president's order. I want to start with a few basic questions. What is the constitutional and legal justification for the president's apportionment decision, briefly?

EASTMAN:
Well, the Constitution says count all persons in several states. That refers to the people of the several states. That refers to the people of the United States. As the Indians not tax exclusion clause makes clear, it was designed to cover citizens. Those are the people that we were choosing representatives to represent. It doesn't include people who are here visiting and certainly not people who are here visiting unlawfully.

COMER:
Right. So why is it using total population not a good metric for an apportionment account?

EASTMAN:
Well, for many of our nations--much of our nation's history, total population was roughly approximate district by district to citizen population. That is no longer the case and the political theory and that tax and the reference to the people that is contained in the Constitution suggests that we now take account of the fact that we have great disparities district to district for apportionment purposes on the number of citizens versus the total population.

COMER:
Will you briefly explain the principle of one person, one vote?

EASTMAN:
Well, the idea of one person one vote set out by the Supreme Court in Reynolds vs. Sims is tied to the idea of representative government that we should each have an equal vote in whom I will represent--who were going to choose as our representative.

We're not talking about other people in the world having a say in who we choose as our representatives. It's one person, and that means one citizen, one vote because those are the people that are choosing who's going to represent them in this particular place in this particular government. It's not a--it's not about government, it's a government of the people of the United States.

COMER:
So for the issue at hand, can you explain how counting illegal immigrants for purposes of apportionment dilutes the political power of citizens and illegal immigrants in states with fewer illegal immigrants?

EASTMAN:
Take--take two states like California 2.5 million estimate illegal immigrants. That's roughly three or four additional congressional seats beyond what the citizen population will allow. And you are diluting the votes of citizens in other places that have not encouraged such illegal immigration into their states.

If our--if our representative government is going to be based on citizens, then--then diluting the vote of citizens to overweight the apportionment in the number of seats, and it's not just seats in Congress, it seats--it's votes in the electoral College for president as well, and this is nonpartisan. California and Florida and Texas would also lose seats if the president's order is upheld. That's, you know, some on the Democrat side, some on the Republican side.

This goes more to the basic notion of a prisoner of government and who it is our--our elected representatives are supposed to be representing. And it's citizens here. It's not people from elsewhere in the world.

COMER:
So doesn't counting illegal immigrants for purposes of the apportionment base distorted the principle of one person one vote?

EASTMAN:
It most certainly does, and it dilutes the votes of legitimate citizen voters in states that have low numbers of illegal immigrants or other foreign nationals present within their borders.

COMER:
All right, my last question. How does the president's memorandum on apportionment restore representation and apportionment in the House of Representatives?

EASTMAN:
Well, it did gets back into the apportionment base that I think our Constitution envisioned certainly the theory of our Declaration of Independence envisioned. And that is that one people there choosing our representatives,

but we're going to apportion that people according to state and allot of the number of congressional states based on that, not however many people we can cram into the state leading into the census to roster up our numbers. It's citizens who are choosing representatives. Citizens those representatives are representing and therefore, the apportionment ought to be tied to citizenship.

COMER:
Well Dr. Eastman, you've done an excellent job explaining this issue, but I think an overwhelming majority of Americans support. I appreciate your testimony and forward to further questions. Madam Chair. I yielded balance of my time.

MALONEY:
Thank you. The chair now recognizes Representative Norton.

NORTON:
Thank you, Madam chair. And this is an important hearing and I appreciate this hearing. I'd like to approach this--my question from a constitutional basis as I practiced constitutional law before I was elected to Congress.

The Trump administration's attempt to exclude undocumented immigrants from the citizen count appears to me to be plainly unconstitutional. The language of the Constitution is pretty clear. Article 1 Section 2 says the apportionment of representative shall be based on "The actual enumeration of," and here--here are the words, "The whole number of persons." Persons, and I'm underlining that.

The 14th Amendment says representatives shall be apportioned, again, including, "Among the several states according to their respective numbers counting the number," here again is that word, "Of persons in each state." Persons. I don't see citizens and I don't see any other word such as voters.

So I really don't need to taught constitutional law the way I did. You don't need a low degree of any kind or dictionary to go through the exercise I have just gone through. All numbers persons in each state, every single person. Since most of you have been directors of that census bureau, for the record, I would like your answers to the following. Does--in your understanding, does the term whole number of persons in each state include undocumented immigrants living in the United States, Mr. Barabba?

BARABBA:
Yes.

NORTON:
Mr. Pruitt?

PREWITT:
Yes.

NORTON:
Mr. Groves.

GROVES:
Yes.

NORTON:
Mr. Thompson.

THOMPSON:
Yes.

NORTON:
I'd like to ask each of you based on your experience, your actual experience, a related question. During your tenure as director of the Census Bureau, did you have any doubt that the Constitution requires a census count to include undocumented immigrants living in the United States? Mr. Barabba?

BARABBA:
No, I did not have any doubts.

NORTON:
Mr. Prewitt?

PREWITT:
No.

NORTON:
Mr. Groves?

GROVES:
No doubts.

NORTON:
Mr. Thompson?

THOMPSON:
No doubts.

NORTON:
Let me direct you--if--if the Trump administration had any doubts, they might go to the census's own website. Here is a question from that website--bureau's website entitled "Fighting 2020 Census Rumors, setting the record straight." Question, are noncitizens counted in the census? Answer, yes, everyone counts.

The 2020 census count everyone living in the country, including noncitizens. I put this on the record because I've--anything this hearing--conclusions we come to should be based on just such documented evidence.

The administration might also have looked at the letter sent to Congress from the Justice Department in 1989 when George H.W. Bush was president and Attorney General Bill Barr was the head of the department's Office of Legal Counsel. That letter affirms the department's--the Justice Department's conclusion that both the

enumeration clause and the 14th Amendment quote require the--and here I am quoting them, "the inhabitants of states who are illegal actions--aliens to be included in the census."

Mr. Thompson, as the most recent census director on this panel, could you briefly explain why you believe it is important that the census include everyone, every living person in the United States, not just citizens or voters?

THOMPSON:
Certainly. So, the Census Bureau is charged with a very difficult task, and that is counting everyone in the United States. The Census Bureau has no enforcement powers whatsoever. They're a statistical agency, so they wouldn't even have the ability to try to ascertain someone's legal status or not legal status. Now, I might add that if they tried to do that, then they would--they would produce counts that--that were seriously flawed.

NORTON:
Thank you very much. Thank you, Madam Chair--Chair. I yield back.

MALONEY:
The chair now recognize Representative Gosar.

GOSAR:
Thank you very much, Madam Chairman. Dr. Eastman, in your testimony and opinion piece you wrote in June of last year, you--you connected the citizenship question to the fundamental notion ingrained in our system of government, the consent of the governed. Representation is based on such consent, and this notion was confirmed in the 14th Amendment, which excluded Indians not taxed, because they were not part of the political body.

You conclude then that citizenship is at the core representation. However, in today's discussion, we are again addressing the question of whether we can allocate representation based on the known presence of millions of individuals who are not citizens. A question to you; do you feel that President Trump's memorandum calling for an apportion--apportionment count that tallies only the number of citizens and legal residents in a state is in line with the core founding tradition of the 14th Amendment?

EASTMAN:
I--I do. Not only is it in line with it, I think it's compelled to by it. The notion of consent of the governed requires that we--that we apportion our representatives based on who's going to be governed, not on people who are here illegally or people who are temporarily visiting, or Indians not taxed. I think the Supreme Court's decision in Elk versus Wilkins is very clear.

The reason that clause is there is--Indians not taxed(PH) are excluded from the count is because they are not citizens. Well, the Indians not taxed right now are illegal immigrants or foreign nationals who are visiting this country but who are not part of our body politic. The same principle applies.

GOSAR:
And that has a lot to do with application of our laws to the governed, as well as trying to make sure that--that we are the holding to--to the--to the country, would it not?

EASTMAN:

It--it--it does. Look, the--the very notion of consent of the governed is that a particular people decide on the kind of government they're going to have and who the representatives in that government are going to be to govern them in order to best secure the inalienable rights that they have from nature and nature's God. It's not designed to give other people a voice.

I mean, why have we spent the last three years concern about Russia's interference in our election if we think anybody from the world over ought to have a say in the choosing and the allotment of our representatives? The fact of the matter is it's the body politic, the particular people that choose our representatives to govern ourselves and to apply laws to other people while they are visiting here. But they're not the governing body. They're not the political regime.

GOSAR:
Dr. Eastman, you actually heard the discussion from the gentlewoman from the District of Columbia. You know, she says that the--specifically that citizens are--are not enumerated. Can you address that?

EASTMAN:
Sure. So, it says the--counting the number of--whole number of persons, but it--but it says their representatives. And the--the their refers back to the people in the states, in the several states. The people refers back to the very opening language of the Constitution, we the people of the United States allotted according to the people in the states. And it's those persons that we're going to count.

We have never in our history counted every single individual who happens to be within the state at the time of the census. We've not counted visitors. We've not counted Indians not taxed. We've not counted diplomats. The principal reason why we don't count such folks is they are not part of the people. They are not persons that form part of the people in the states that are the people of the United States.

You can't read that one word in isolation as she did. It's part of the larger language of Article 1, Section 2 as well is the preamble, and it's part of the principles that are set out in the Declaration of Independence tied back to the very notion of consent of the governed.

GOSAR:
Thank you. Finally, Madam Chairwoman, I would like to express my concern with the actions of this body over the past several years. Partisan leadership is forced this committee to consider the simple question of having a person identify themselves a citizen on--numerous times. However, we have only had a few hearings on the topic of issues like hard to count populations, an issue for my district and I'm sure districts of several other members of this committee.

This misdirection has forced this committee to deal with how we asked one question to non-Americans more so than how we ensure Americans in these hard to count populations can participate in the entire census, even though the majority constantly states its intentions to count every person.

American voters and American tax dollars send us all to Washington, DC to provide for and oversee the census, yet partisan leadership has neglected this true intention, which concerns members like myself who are focused on ensuring their constituents get their proper representation and protection from their federal government.

Maybe we ought to entertain that, if we're going to give another stimulus, what we ought to do is ask that they fulfill filling out there census. If you want to get everybody spoke, may--maybe that's an incentive that we could go by. I yield back.

MALONEY:
The chair now recognizes Representative Lynch. We now recognize Representative Cooper.

COOPER:
Thank you so much, Chairwoman Maloney. And also I would like to honor Delegate Norton. Your line of questioning has exposed the fact that, for those not keeping score back home, that virtually every living director of the census support your view that the president has taken a unilateral and outrageous version of the 14th amendment, which is probably unconstitutional.

You would think that a country is old and as distinguished as America would be able to reputably count its own citizens and follow the president established by every living census director to count not only citizens but others such as undocumented people in each district. There are countless questions surrounding the census. An issue we're facing in my congressional district is this.

I am told that outreach specialists, partnership specialists will have their contracts terminated September 30, and that the census will continue until October 31. So, I would like to find out from--

COOPER:
--the previous census directors what effect this could have on the accuracy of the count when partnership specialists are terminated a month early, a month before the census has ended. I do not know the impact of this decision on the numerators themselves, but it would seem that partnership specialists wouldn't have been hired unless they added some value to the process so I would like to hear from Mr. Prewitt, Mr. Groves, Mr. Barabba and Mr. Thompson about the effect of this premature and early termination of the census specialist on the accuracy of the count.

BARABBA:
This is Mr. Barabba. Let me speak first. In fact yesterday I talked to the individual who is responsible for the area in which I live. She was very concerned that she would be--that her contract would be eliminated a month before the activity is completed.

She has reached out to many, many organizations throughout the area, and keeping in contact with them is important to the absolute completion of the census particularly in areas that we have in our district and in our area like the Salinas and other areas which have significant minority populations.

GROVES:
Let me--this is Bob Groves, let me just comment. If there is one piece of evidence that we have with great assurance, it is that local community leaders that have the trust of diverse communities in their areas are key to the original response, the soft response as well as the nonresponsive follow-up stage. We know this from several decades of work in a interference in their performance will affect the quality of the census, and we should avoid it whenever possible.

COOPER:
Is it going too far to say that--go ahead.

PREWITT:

Sorry just one more (INAUDIBLE). We have a vast pro bono labor force out there trying to help us do the census. This was launched in the 2000 census, it never existed before, and it is responsible for the fact that we have a self-response and a non-response of the people who don't respond. It is attributable to that crowd of people, and they are in the thousands, in the thousands. They--they are schoolteachers, they are union leaders, they are chambers of commerce leaders in the thousands to help us do this census, and they think their job is to count everyone.

COOPER:
What can communities do to prevent the termination of these partnership specialist or two if need be supplement or substitute the work of these specialist in that crucial month of October? Mr. Thompson--

BARABBA:
(INAUDIBLE) committees can do, but the Congress can do something, and that is to make sure that the period is extended.

THOMPSON:
So as my former colleagues have all said a really important component of getting a complete count is getting the message out on the local level, but the census is very important to your community and very importantly that the census is completely confidential which is not a message that can go out from Washington.

We started these programs in the 2000 census, and we saw some dramatic decreases in the under accounts of various hard to count populations. So for the month of October, it is critical that local communities, local leaders keep getting those messages out about why the census is important to their community and that it is completely confidential. The census doesn't share information with anyone.

COOPER:
I think the chair of. I see that my time has expired.

MALONEY:
The gentleman yields back. The chair now recognizes Congressman Jordan. Congresswoman Foxx?

FOXX:
Thank you, Madam Chair. Doctor Eastman, the president's memorandum, notes the interpretation of the 14th Amendment term quote persons in each state" is subject to judgment leaving up to each decennial census the Census Bureau releases a detailed rule on determining residency for each decennial census count. Do you agree that the standard for residency is subject to judgment?

EASTMAN:
I do, and we have routinely altered that. We have included people who are long-term residents in the state but not short-term residents. We have included people who are no longer residents in the state but are abroad because of work or military service or what have you and every--every census those--those parameter.

FOXX:
So, do you believe it is appropriate for residency criteria to change to exclude illegal aliens?

EASTMAN:
I do.

FOXX:
Mr. Thompson, when you were director you drafted the current residency rules for the 2020 census, is that correct?

THOMPSON:
Yes, it is, Congresswoman.

FOXX:
So it is fair to say that you support counting every person residing in the United States, legal or illegal, is that correct?

THOMPSON:
That is correct.

FOXX:
Okay. When you were director, did you support changing the rules for military residency?

THOMPSON:
I did.

FOXX:
And so let me understand this. There are many of Americans who reside overseas, including military personnel, yet they are enumerated as if they were residing in the United States, but they aren't residents because they are not present on April 1, 2020? So using your logic military personnel deployed abroad should be excluded. Is that correct?

THOMPSON:
No, ma'am. We--we did a lot of review of the previous census residence rules we put them in the Federal Register for comment and based on a lot of input we made the decision that we should count the overseas military in the United States.

FOXX:
Okay, well, that is absolutely the way it should be, in my opinion, but because we recognize these individuals are normally U.S. residents but were asked to serve abroad and will return when their short service is over. They are serving the country and deserve to be counted and represented, but their representation is still looted by illegal aliens being counted even though they have broken our laws to come here.

Mr. Thompson, another question for you. The 2020 census residency criteria changed how prison inmates are counted for the 2020 census. Prison inmates are enumerated at their prison, which is technically their residence on census day. Is this correct?

THOMPSON:
That is correct, and that is where they have been counted in most censuses.

FOXX:
Okay. Well, it is very controversial because some people believe that they should be counted at their residence pre-incarceration because that is their normal residence, not the prison. Some people argue you are diluting the representation of inmates by counting them at their prison site, so you believe though that prison inmates representation is diluted--make do you believe that it is still diluted because of how the census enumerates their location?

THOMPSON:
So the final decision on where to count the prisoners were made after I actually left government service, but I support the Census Bureau's decision to count the prisoners where they are incarcerated.

FOXX:
So you believe the fair representation of prison inmates why do you support the dilution of prison inmates and other citizens constitutional representation by supporting the counting of illegal aliens?

THOMPSON:
Throughout my experience at the Census Bureau, which included 27 years as a career employee and then four years as a political appointee as director, I operate under the guidance that the census was to count everyone in the United States regardless of status.

FOXX:
Thank you, Madam Chair. I yield back.

MALONEY:
Thank you. We now recognize Congressman Lynch.

LYNCH:
Hello there, can you hear me?

MALONEY:
We can hear you.

LYNCH:
Great. Well, thank you, Madam Chair for holding this very important and very timely hearing. And I want to thank all of our witnesses as well. I'd like to ask a question of Mr. Barabba, Mr. Groves, Mr. Thompson and Mr. Prewitt.

I noticed that back in April, you signed--you each signed a public letter supporting the bureau's request to delay this--this process and I think Mr. Prewitt, you were--you were quoted in one of the articles that I--I read. You said that the truth is that the only thing in charge of this census right now is the virus.

Not the Bureau, not the president. And the virus will be in charge until it isn't. Mr. Prewitt, would it be correct to say that they coronavirus presents an enormous challenge to the Census Bureau to conduct an accurate and timely account of the American people under these conditions?

PREWITT:
A huge challenge. Unprecedented.

LYNCH:
Yeah. Now, the reason that--I'm assuming that the reason that you requested the delay was to give the bureau more time. This is--this is the largest and most complex census ever conducted in this country and then--and then you add--and that's in normal times and then you add in the pandemic and the limitation of the enumerators and--and people being hunkered down. I guess I'm assuming that you also wrote that letter based on it being in the best interest of the country, is that correct?

PREWITT:
Yes, sir.

UNKNOWN:
Yes, sir.

UNKNOWN:
Yes, sir.

LYNCH:
Now, this most recent memorandum that the president submitted last week directing the Census Bureau to take a whole different approach to this census in the middle of the census, it seems to me that this new memorandum of questionable legality really will--will require the Bureau to dedicate considerable resources and a huge workaround in light of the new memorandum. Would--would that be a correct assumption here?

UNKNOWN:
Yes.

UNKNOWN:
It would.

UNKNOWN:
Yeah.

UNKNOWN:
Yes.

LYNCH:

And--and do so--so you've got this whole shift in resources, this redeployment, and a whole different program that's been put in as of last week directing that Census Bureau to change--change their plans. And yet--and yet, on Monday, the Census Bureau also posted on its website that despite this huge demand on resources that arose last week with the president's memorandum, the Census Bureau says that it is working towards this plan to complete the field data collection by October 31, 2020. Do you think it is feasible to dedicate all those resources to the object of the new memorandum and yet, not have the accuracy of the census impacted?

PREWITT:
Right now, that census I believe, sir, is at risk of being inadequate to do the task it is charged to do. A serious risk. And I would like to take as much of the burden off of them as we can. That's operational burden, timing burden and so forth.

I was extremely disappointed when it turned out that they were not going to get the four month extension going on into 2021, which we were counting on and they were planning around that and then suddenly, there's a reversal on that decision. And in my sense, the chances of having census accurate enough to use is--is unclear very, very much unclear whether we'll even have a census. That's why the debate about the illegals and undocumented is beside the point if not even going to have a census that we can take to the American people. And that's what I'm worried about.

LYNCH:
Thank you very much, Mr. Prewitt. Madam--Madam Chair, my time is expired, and I yield back. Thank you.

MALONEY:
Thank you. I now recognize Representative Palmer.

PALMER:
Thank you, Madam Chair. I have a couple of reports. One of which is from the Pew Research Center about the transient nature of people who are here and are here unauthorized here illegally. About 40 percent of the people who are here illegally are here--won't even be here for the next census. Given that, the transient status of millions of foreign residents in the U.S., doesn't it make it even more problematic to include unauthorized noncitizen, people who are here illegally and who are here temporarily to be counted for apportionment, Dr. Eastman?

EASTMAN:
I--yes, I--I agree, and I think it applies to legal temporary immigrants as well, people want temporary work visas or student visas.

PALMER:
Well, the point being--

EASTMAN:
--It's a very transient population. Yeah.

PALMER:
Yes, sir. To the point being is that these are not people who will be here to participate in our government in any form or fashion. I'd like to also point out that 60 percent of the unauthorized immigrants that people who

are residing here illegally reside in just 20 metro areas that are self-declared sanctuary cities, counties, or states. By violating federal law, by establishing themselves as sanctuary sanctuaries for people who are here illegally, including some who've committed felonies, by the way, have these estates created an advantage for themselves that could cause harm to states that are declared centuries, Dr. Eastman?

EASTMAN:
Yes--yes, they do, depending on the distribution of the illegal immigrant population, states that are encouraging illegal immigration stand to gain a large number of seats in the House of Representatives as well as votes in the electoral college for president--

PALMER:
--Well, could that--

EASTMAN:
--To the detriment of other states.

PALMER:
Doesn't that create an incentive for certain states and in certain places to--to declare themselves sanctuaries, to give benefits, to give protection from prosecution for whatever crimes they might commit to increase the number of people in those areas, to give them this advantage? I mean, isn't that a rational thing to do if you're already acting in contradiction to federal law?

EASTMAN:
Well, it's--it's rational in the short term, Representative Palmer. And not so much in the long term. But--but you know, Alabama is likely to lose a seat in Congress and a--and an alert electoral vote for president as a result of--of this kind of encouragement for illegal immigration to reside in certain states like California.

PALMER:
Speaking of rational, and I try to be rational. I try to be linear in my thinking, so I start and follow evidence where it might lead. Your points early--early on about the right to self-government resides with the citizens, not with noncitizen, whether they are here legally or illegally, and--and to make this point, we don't allow foreign citizens to work residing in the United States, whether they're here legally or illegally to run for office, do we?

EASTMAN:
No, we don't.

PALMER:
Okay. We don't allow people who are here from foreign countries or they are here legally or illegally to make campaign contributions to U.S. candidates, do we?

EASTMAN:
No, we do not.

PALMER:
And presumably, we don't allow people who are here from foreign countries, whether they are here legally or illegally to vote in our elections, do we?

EASTMAN:
We're--it's illegal for them to vote, although we got evidence that large numbers have voted.

PALMER:
That's why I say presumably. So let me ask each of the other panelists, are those laws fair? Mr. Prewitt--Dr. Prewitt, are those laws fair? Should we allow foreign citizens to run for office to make financial contributions to candidates or to vote in our elections? Yes or no.

PREWITT:
We just--I'm sorry--

PALMER:
--No, no, that's a yes or no--

PREWITT:
--You're asking me a question--

PALMER:
--Do we--should we allow foreign citizens to run for office? Should we allow foreign citizens to make campaign contributions? Should we allow them to vote in elections, whether they're here legally or illegally? That's a yes or no. Your silence is--

PREWITT:
--That's what the law is now, and I agree with the law.

PALMER:
Okay, that--that's a great little answer. Mr. Thompson, yes or no?

THOMPSON:
I agree with the laws of the United States.

PALMER:
That's a--that's a--you agree that we shouldn't allow that. Dr. Eastman, I think I know your answer, but give me a quick answer. Yes or no.

EASTMAN:
Yes, absolutely.

PALMER:
All right. If that's the case, why in the world would we think it's--it should be legal to allow people who are here illegally or legally be counted for apportionment to influence our government when close to 40 percent of them won't even be here for the next census?

PALMER:
Can you answer that? It doesn't make sense, does it?

EASTMAN:
Yeah, I don't--it doesn't make sense, and I don't think it's consistent with the--the theory and the text of the Constitution either.

PALMER:
I thank the gentleman. I yield back. Madam Chairman, I would like to enter these just like these documents into the official record.

MALONEY:
May I see what the documents are?

PALMER:
Yes, ma'am. They're documents from the Pew Research Center, and one of them is from the Migration Population Institute located here in Washington, DC.

MALONEY:
Okay, without objection.

PALMER:
I--I thank the--the chairwoman and I yield back.

MALONEY:
I--I now recognize Representative Connolly.

CONNOLLY:
Thank you, Madam Chairman, and thank you for your long leadership on trying to preserve an accurate census and a fair and transparent process associated with it. Your leadership has meant a great deal and has served our country well. Thank you.

I'm must say, listening to this discussion, Dr. Eastman would be apparently very happy with the decision of Roger Taney and the Supreme Court that ruled on Dred Scott, because of that decision they decided that no African-American, free or slave, was a citizen of the United States deserving of any of the privileges of white people.

That was actually the language of the ruling. And therefore, no blacks would've been counted in the census. And we would've had millions of Americans declared noncitizens, under Dr. Eastman's logic, not counted in a census.

And we would've had no picture of America, especially south--the southern part of America in terms of the actual demographics, just how powerful the numbers were of African-Americans who, in the Constitution, were singled out to be counted as three-fifths of a person for the purpose of the census, which, by the way, inflated the numbers of Southern representation in the Congress at the time.

You know, immigrants throughout American history have been subject to this kind of smear and innuendo we've been listening to. You know, they're all criminals. They're all trying to cheat. States are using them to inflate their numbers. You know, there were movements of the 19th century, the Know Nothing Party, to ban them, to deny them the vote. Irish immigrants, there was a big movement in New York in the mid-19th century to deny Irish immigrants the right to vote because they were illiterate, they were ignorant, they worshiped a foreign religion, they were really Americans.

This kind of nativism, this kind of bigotry frankly has no place in the carrying out of the census. The language of the Constitution--and for a crowd that talks about originalism, well, the language is clear. It says persons. It doesn't say citizens. It says persons. It wants to get a feel how many people are here at a given time, how many people are residing in the United States of America, not what their future intentions are, not what their statuses, are they residing here for the purpose of understanding the population of the United States at any given time.

And--and that's how the census has been carried out. Let me ask Mr. Prewitt, and--and all of--all of the former directors could answer this as well, have we ever adopted, to your knowledge, in the carrying out of the census in modern times a selective process of not enumerating certain individuals because of their status?

PREWITT:
No, sir.

BARABBA:
Not to my knowledge.

CONNOLLY:
Mr. Groves? Mr. Groves? Mr. Thompson?

THOMPSON:
No.

CONNOLLY:
And why do you think we need to have account of the people--the persons residing in the United States? Why is that important? Why isn't Dr. Eastman right? Let's only count citizens, full-blooded Americans citizens and nobody else.

PREWITT:
My quick answer on that is they--or the--they're if they put gasoline in their car. They're paying property taxes if they live someplace, that is they're functioning as people in the country. And--and more--more than that, that you have a really difficult--difficult situation to uncount them.

I--I don't think the other members of the committee have paid enough attention to my first point. We do not know, the Census Bureau does not know, how to do what the president is asking them to do, and it's going to hurt the census and therefore we are at risk of not having a census in--in 2020.

CONNOLLY:
And--and Mr. Thompson, is it--is of the case that, for example, throughout American history this is what we've done? We counted immigrants whether they were citizens are not in the 19th century, the turn of the 20th century, as well as currently. Isn't that the case?

THOMPSON:
That is the case.

CONNOLLY:
Yeah. So, this--what Dr. Eastman is propounding sounds reasonable, except it would fly in the--the face of over 200 years of practice in American history and, in my view, would flaunt the actual words of the Constitution of the United States. Thank you. I yield back.

MALONEY:
Thank you. The chair now recognizes Representative Roy.

ROY:
Madam Chairwoman, before I start, may I ask which of the experts remain available for response?

MALONEY:
I--I believe--I believe Mr. Graves had an appointment at 11:00 and had to leave, but the rest are there.

ROY:
So, Mr. Barabba, Prewitt, and Thompson--

MALONEY:
--Yes--

ROY:
--Are all available?

MALONEY:
Yes.

ROY:
Okay, thank you. Sorry. Mr. Eastman, let me ask you just a quick question about the law. If I recall correctly, there was a case in which Justice Thomas in 2001 in dissent clarified that there is a split in the circuits and a split in the law, Ninth Circuit versus the fourth and the fifth, as to what the court's position would be on the

question at hand, on apportionment and what we're talking about. Is that true? And--and would you expound on that very briefly because I need to move on?

EASTMAN:
Yeah. So, it was a case out of Hawaii that was dealt with. They wanted to apportion locally based on citizen population rather than total population. And the court upheld that, and--and there was language in it that strongly suggested such was compelled by the notion of representative government. Judge Skadinsky (SP) on the Ninth Circuit specifically said that even though the decision doesn't absolutely require that technically, the logic of it compels it. And I think that's right.

If I may, can I go back? Representative Connolly, I know you're protected by the speech and debate clause, but that doesn't mean I should not respond to the slanderous statement you made. I do not defend Judge Taney's decision in Dred Scott.

In fact, I am a vigorous defender of the dissenting opinions in that. It was an absolutely wrong decision. African-Americans were treated as citizens in this country, and Taney was wrong. I will not let you get away with the slander just because you're protected by the speech and debate clause.

ROY:
Well, Professor, I was going to give you an opportunity to respond. I'm glad you did. I was going to ask you that question. I thought it was irresponsible of my colleagues ask a question along those lines, and I'm glad that you responded. It was--it was not appropriate to direct that towards you on a very debatable question, a very real question.

And at a bare minimum, we can all agree that there is a split in the jurisprudence or a difference of opinion in the jurisprudence on whether or not apportionment should be accounted for in the way we're discussing and--and that this is a live question. And that citizenship, in fact, matters.

The citizenship must matter if we're to be a nation of laws and if we're going to have citizens vote, citizens running for office, that we should have a robust debate and discussion and that, frankly, this body, this Congress ought to act.

My colleagues on the other side of the aisle spent last year fighting every ounce of effort on the part of this administration or this body and Republicans in this body to try to ask a question, a simple question, on the--on the census as to whether or not your citizen or not. The vast majority of Americans recognize that that is an important question to ask.

But I would just say again to the professor we agree, at a bare minimum, there's a split in the jurisprudence on this question. Is that correct?

EASTMAN:
That's correct.

ROY:
Thank you. A--a question here for Mr. Barabba, Prewitt, or Thompson, and I'm going to go through a few things because I have limited time here, and then I just want to get your yes or no on whether I'm characterizing this appropriately.

My understanding of the way the census counts is that we have something called count imputation and that we have something called characteristic imputation. And that in count imputation we have status count imputation,

we have occupancy count imputation, and we have household size count imputation. What does this mean for the average listener?

It means that we make stuff up. It means that we have situations where we literally have an address. We can't find the house and we impute to that address the characteristic--or I should say the count of a house nearby. It means that we go through on occupancy and say, well, we find the house and there's somebody there but we can't find them, so we just say, well, you know what?

The next door neighbor, there's five white people in the house, so we're just going to put five white people in this house. Or that we have household size imputation that says, well, we don't know how many or numbers in it. Well, we don't know if it's one or two or three, but we're just going to guess that it's 5 or 10 based on who's next door, and that in fact, we have characteristic imputation where we go into race and characteristics and that this is a reality of what our Census Bureau does in order to achieve numbers.

Now that is what is actually going on. Now there's a whole other thing where we have the community survey, the ACS, and I would ask Mr. Eastman if you would jump in here real quick. Is that not correct that the ACS is used and that the court acknowledges that it is appropriate for it to use those estimates and sampling for purposes of the application of the Voting Rights Act?

EASTMAN:
Yes, that is correct.

ROY:
And so my question here would be would it not, therefore, of course, be appropriate to use if you are a state for redistricting purposes, not apportionment let me just ask this question, for redistricting purposes, the same data if you are going to use it for the voting rights act?

EASTMAN:
Yes, absolutely, and it is more current because it is taken every year instead of just the decennial census.

ROY:
And you should use the ACS in this case if we are going to be doing apportionment, you can use the ACS for apportionment?

EASTMAN:
I believe we could, certainly to coincide with the census.

ROY:
So my question to the representative--the former director of the Census Bureau am I correct that the Census Bureau does, in fact, have to fill holes and make assumptions on data when they go house to house, when they get into imputation is a way that the Census Bureau does that, just a yes or no and then I will finish my questions Madam Chair.

Mr. Thompson?

THOMPSON:

Thank you for on muting me. The Census Bureau has used a technique called count imputation because if they don't do anything, that means they are assuming everything is vacant or nonexistent, which isn't the case either.

ROY:
Mr. Prewitt?

PREWITT:
Yes, it is a long-standing practice. It is used as rare as possible. You would much rather get a direct response, but we don't always get direct responses, and we don't say oh well that's too bad we will just have to go--these are well established, technical, statistical processes that have given us a more complete census than we would otherwise have.

ROY:
Thank you, sir, and then Mr. Barabba, and then I am done, Madam Chairwoman.

BARABBA:
I concur with my colleagues' comments.

ROY:
Thank you all.

MALONEY:
Thank you. We now recognize Congressman Raskin.

RASKIN:
Madam Chair, thank you very much. Thanks for calling this super important hearing and it's really wonderful to hear all of the prior census directors who converge around a very simple conclusion which is that the president's proposal is a radical break from history and a radical break from the text of the Constitution, a radical break from the structure and the spirit and the meaning of the Constitution and so basically every methodology we have for interpreting what the Constitution means supports the proposition that we have been doing it right for more than two centuries that is we have been counting everybody.

That is the way we have done that, there is no reason to overthrow that right now and what we are getting really from the administration is a whole series of attacks on the election, attack on male in balloting, president threatening not to observe the final results of the election if he doesn't like it and so on. This is all part of kind of thin anticipatory temper tantrum by the president.

I wanted to correct a couple of things that were floating out--out there are specifically about voting and citizenship, and there seem to be this false equation between voting and citizenship. The Supreme Court has been very clear that they don't imply one another.

They are obviously large categories of people who are citizens who can't vote starting with children and historically the vast majority of citizens couldn't vote because women couldn't vote as well as children as well as people who weren't landowners or property owners and conversely there were lots of people who could vote who were not citizens for the vast majority of American and even today there are lots of municipalities and localities which allow people to vote without regard to citizenship in local elections but the way that it existed through the 18th and 19th and really up to the early 20th century.

Was that what mattered was race qualifications, gender qualifications, property and wealth qualifications for voting and if you were a Christian white male property owner it didn't make any difference what your quote citizenship was, and that was a confusing concept in a way for more than a century whether that was determined that the state level or the federal level.

We didn't have these kind of rigid ideas about citizenship that are being propounded right now. So that was a conservative position having to do with land ownership and property ownership and race and gender for a very long time. It wasn't until we started getting immigrants coming in from southern Europe and other places that that turned around.

You should go back and check out the history leading up to the Civil War and the admission of Kansas and Nebraska and a number of the other states they are because it was the Republican Party which was the great champion of alien suffrage in America and the advocate of the idea that if you would be willing to move out to the Midwestern and Western states, you should be allowed to vote before you became a citizen.

That was Lincoln's position, that was the position of the Republican Party. It was the South's position that there were all of these radical immigrants coming over from Europe bringing anti-slavery ideas that they should--that--that it was their position that they shouldn't be included for that reason.

In fact, if you look at article one of the Confederate Constitution of the United States, it says that you must be a citizen of the Confederacy in order to vote, something that we don't have in the U.S. Constitution which is why noncitizens could vote for most of our history and lots of cities and indeed in a corporations I wanted position on the other side is that--is that you need to be a citizen of the United States to be a member of a corporate board of directors and to vote in a corporation in America or to own stock in America. I mean, that would be a really startling position, but it seems to flow from what they are saying.

Let me just ask I--I got curious about this whole question of Indians not taxed that was repeated so joyfully by one of the witnesses and I wonder Mr. Prewitt if I come to you what is the situation today Indians not taxed, certainly there are children who are native Americans who were not taxed but also with adults who are not paying taxes and are they counted today as part of the census despite the constitutional text?

PREWITT:
Yes, they are.

RASKIN:
Okay, that--that--that is interesting. Let me ask another question of you, Mr. Prewitt. If we were actually to go ahead and adopt the president's proposal and now we see why of course they were pushing for their citizenship question which was struck down by the Supreme Court as lawless and a violation of the whole administrative procedures but now we know why they were doing it but if we were to go ahead with this how would they actually since we don't know who is a citizen and who is not a citizen how would they go ahead and try to make that work?

PREWITT:
And my judgment there is no way. This is what worries me about this initiative. The expert on administrative records at the Census Bureau for many, many years, and I will now quote her, she is now with Georgetown University. To produce a good number that is a good number separating out the documented from the undocumented you'd need to be able to draw a clear line between the two categories sharp definition doesn't exist in the administrative records available to the Census Bureau's.

This is an article in science magazine just published yesterday, and so we are all anxious about this initiative not because of the arguments that are being made about so forth and so on, it is what is it going to do to the

census itself in 2020 and look, if we don't come up closer to 100 percent that (INAUDIBLE) then we are in trouble.

RASKIN:
So, Madam Chair, just to conclude it is not only unrooted in the text of the Constitution and impractical, but it is a danger to having the real census counted and completed. Thank you very much for your indulgence Madam Chair. I yield back to you.

MALONEY:
Congressman Hice? Congressman Hice? He is online. You need to unmute yourself, Congressman Hice.

HICE:
Okay, all right.

MALONEY:
Okay, great.

HICE:
Thank you, Madam Chair. Listen, I want to thank all of our witnesses for being here today, unfortunately, I think it is largely a waste of your time as yet again it is for hours. I mean, we continue not doing our job of oversight and, in this case specifically, as it relates to the census. We--we--here we are four months into the census, and this is the first time we've had a hearing about it.

We've only 120 days into this we are just now getting around to it, and as Mr. Prewitt shared a little earlier we may not even have a census this--this go around because of the pandemic and other issues and get the irresponsibility of this committee to do proper oversight this is only the third committee hearing, full committee hearing of the year from my account and this is just unacceptable.

Had my colleagues been willing to show up for work as we have done in the Republican Party perhaps we would be able to continue our--our oversight and to somehow think now that we are engaged in an emergency over this, and even in this emergency hearing we are still not providing oversight as to what is happening with the census is just unthinkable to me and highly irresponsible, and I would ask the chair if we could get back into the order of what this committee is supposed to be involved with.

But as it relates to right now, to again somehow think that it is unreasonable or unconstitutional for us as a nation to have the number of citizens who are in this country as well as the total number of people in this--in this country is just unthinkable to me. To think this is somehow a radical break for us to know the number of citizens as well as noncitizen is in itself an absurd way of thinking about all of this to me.

But here, nonetheless, we are. Dr. Eastman, I appreciate the testimony that you've given any answers that you've given. I know this has already been covered, but I think it's worth reiterating again. Is the president within his authority to direct a memorandum to the Census Bureau?

EASTMAN:
I--I believe he is and I think the supreme court's decision in the Franklin vs. Massachusetts (INAUDIBLE)

HICE:

And likewise, is within his authority to ask that Bureau to send him an apportionment count that includes citizens and legal residents, is that correct?

EASTMAN:
That's correct.

HICE:
Okay. And just reiterate again why this is so important that we have a count of citizens, not just illegals as well. I mean, we need to know--I'm fine if you want to know the total number here, but the critical aspect is knowing the citizens. Again, reemphasize why that is the case.

EASTMAN:
The importance of knowing the citizens and apportioning according to the citizen distribution is because it's the citizens that control the government. It's not foreigners that control our government. That's one of the most basic premises of the consent of the governed, principles set out in the Declaration of Independence.

HICE:
Yeah, absolutely. I mean, I don't see what's so complicated about this. It's illegal for a--a non-citizen to vote. It's illegal for them to be involved in our political process. And yet now, for all practical purposes, we have a political class, a political party that is determined to give citizens of foreign countries the right to vote in our federal elections, to be involved in impacting our federal elections.

This whole thing to me got to be deeply troubling. And at worst, it--it should be seen as election interference for us to enable or fight on behalf of individuals who work illegally in this country to impact the--the voting power of the citizens of this country is (INAUDIBLE).

And quite frankly, you look back, I don't know, Dr. Eastman, if you caught any of the DC statehood debate that we had around here, but it's the same thing then as it is now. It's all about gaining and strengthening political power for the Democratic Party and it shrugs off old norms, it shrugs off common sense, it shrugs off the law in itself.

And I would just thank you again for your testimony here today and I would implore my colleagues on the other side to end these showboat hearings and let's get back to the work of good census oversight. And with that, Madam Chair, I yield back.

MALONEY:
Well, I thank the gentleman for his testimony and I'd just like to respond to his attack. I--I read the president's census memo carefully and I believe that it is blatantly unconstitutional and that complying with his memo would violate federal law. That is why we called this important hearing. And I'd like to say--

HICE:
--And the chairwoman--

MALONEY:
--You don't have to take--

HICE:
--Is certainly entitled to her and--

MALONEY:
--Sir--sir--may--I did not--I did not interrupt you. May I complete? You do not have to take my word for it. All four of--of four former census directors that served both Republican and Democratic presidents said they also believed that the president's memo appears to violate the Constitution and existing law. So this is serious and I now recognize Congressman Rouda.

ROUDA:
Thank you, Madam Chair. It must be exhausting for Republicans when the president tweets out lies and you are forced to defend it. It must be exhausting to be a Republican when the president of the United States holds a press conference and sells snake oil salesman cures for the coronavirus. And it must be extremely exhausting to come in here and defend the president of the United States when he takes unconstitutional actions such as he has done here.

Candidly, I feel sorry for you. I feel sorry members of the House of Representatives of the United States of America are afraid to speak their mind, to speak the opinions that they hold, to speak the truth that they know in their hearts, in their mind and defend this president at all costs, defending the indefensible. And it seems that the primary argument that has been stated as Representative Raskin pointed out at least a half dozen times in this hearing is that Indians not taxed were not counted.

The utter stupidity in that statement lies in the fact that undocumented immigrants last year according to the Internal Revenue Service paid $9 billion in payroll taxes. According to the Internal Revenue Service, undocumented immigrants paid $12 billion in Social Security benefits, more than they received. And according to the Institute of taxation and economic policy, undocumented immigrants paid $12 billion in state and local coffers.

Yet, here we are. Here we sit today because of this memorandum by this president telling us clearly what's most important to this president. Yet, we sit here today 140,000 of our fellow Americans are dead. Tens of thousands more Americans will die in the coming months because of the utter lack of leadership by this president.

The economic collapse of our country is unfolding before our eyes because a president is unwilling to do what is necessary as the leader of the United States to ensure that we take the actions we need to take to protect Americans. And it tens of millions of Americans are out of work, struggling to figure out how to pay rent, pay the mortgage, pay medical bills, and put food on the table for their families.

Yet, here we are today because of this president showing us and the minions to follow him what is important to them. Not as a Democrat, not as a former Republican, but as an American, we are better than this. I yield back.

MALONEY:
Thank you. I now work recognize Representative Green.

GREEN:
Thank you, Chairwoman and Ranking Member and thanks to our witnesses. The right to vote is sacred. As Americans, we are blessed to live in a country that respects the time honored tradition of one person, one vote. Wars have been fought. Marches have been led. Blood, sweat, and tears have been shed defending and advancing this fundamental right.

Unfortunately, Democrats are attacking this very right and are trying to disenfranchise American citizens in order to gain more power. Some states, such as California, have already flirted with openly allowing illegal immigrants to vote in state and local elections. Currently in California, you can register to vote online. They require is you check a box certifying that you are a U.S. citizen and you either provide a Social Security number or a California driver's license. But remember, driver's license, which they also grant to illegal immigrants.

Disturbingly, the LA Times reported that over 1 million illegal immigrants had a driver's license in California, and that was 2018. The fact is today's Democratic Party leadership, they don't care about one person one vote. They care about obtaining power at any cost, even if they have to attack the very foundation of our Republican--American citizenship and the right to vote.

Now, Democrats are continuing their offensive on the Constitution by attacking the 2020 census. They've managed to politicize every step in the census process, even criticizing President Trump for trying to include a citizenship question. Moreover, Democrats are ignoring history under the rule of law. The citizenship question has been included on most censuses from 1820 to 1950 and as recently as 2000.

Additionally, the Supreme Court ruled in 2019 the questions' inclusive--inclusion is perfectly legal. Despite this, the Democrat shenanigans managed to get the question removed by default since it was too late at the question before the service or printed. The citizenship question, when used to determine apportionment, is a simple matter of fairness and common sense. American citizens have certain rights that noncitizens do not have, the most fundamental of which is the right to choose our leaders.

Democrats are eager to cry foreign interference when it comes to the Russian hoax, but if we count illegal immigrants in apportionment, particularly those new to our country, how is that not foreign interference, I guess all Russia has to do is send a few thousand people across our soar--our poorest southern border into California and they get an extra vote in Congress.

How is continuing illegal immigrants--or counting illegal immigrants in the census or in the apportionment process not an assault on the fundamental rights of every American citizen? I'd like to ask my Democratic colleagues if an illegal immigrant can vote, then what's the point in citizenship? Why not have France just vote in our elections? What's the point of our legal immigration system?

There's no escaping the fact that including illegal immigrants in the apportionment process dilutes the vote of every single American citizen. Not only is it unfair, it creates an incentive for states to accept more illegal immigration. Authors Hans Von Spasky (SP) and Mike Gonzalez have written ill--including illegal immigrants in the apportionment process "perversely incentivizes states to encourage more illegal immigration in violation of U.S. laws and the well-being of American citizens, all in order to gain more Congressional representation. Simply put, those here legally should have no say in electing America's leaders."

Make no mistake. The Democrats are simply grabbing power at the expense of the American people again. The Democrats have actually made the point of the unfairness of counting illegal immigrants for apportionment in this committee today. Many of the Democrat members have asked in survey fashion a series of questions of each of our witnesses. The answer yes, no, yes, yes each time. The problem is this. It's a biased sample. They allowed us one witness and they provided three witnesses who share their opinion.

It's unfair. It's biased. And it's exactly what we'll get if we count illegal immigrants in apportionment. It will misrepresent the votes of Americans in states that abide by our laws. The assertion that the opinion of the census directors is somehow reflective of the people of America is absurd. They are three voices out of 330 million people. Their opinion counts 3 out of 330 million.

Rather than helping to get the Census Bureau an accurate count during a very difficult time with the pandemic, Democrats are further throwing a wrench in the process by coupling statutory relief with the census poison pill provisions. It's shameful. But it all goes to show you the truth. Democrats are more about power than they are

about the integrity of our elections for the fundamental right of every American citizen. Thank you, Chairman, and I yield.

MALONEY:
I--I--I thank the gentleman for his testimony. And I--I do want to point out that the Census Bureau is not asking people about the citizenship status on the 2020 census, which the Trump administration wanted to do. They tried to do that, but this was struck down by the Supreme Court of the United States of America so the citizenship question was removed.

I now recognize Debbie Wasserman Schultz, Representative Schultz from the great state of Florida.

WASSERMAN SCHULTZ:
Thank you, Madam Chair. I'm going to present some inconvenient facts that really fly in the face of the ridiculous argument that was just made by the--the gentleman who previously--who previously spoke, and that is that in the section from census.gov labeled the importance of apportionment, it reads Article 1, Section 2 of the U.S. Constitution mandates that an apportionment of representatives among the states must be carried out every 10 years.

Therefore, apportionment is the original legal purpose of the decennial census as intended by our nation's founders.

Apportionment is the process of dividing the 435 memberships of seats in the U.S. House of Representatives among the 50 states based on the state population counts that results from each decennial census. The apportionment results will be the first data published from the 2020 census, and those results will determine the amount of political representation each state will have in Congress for the next 10 years.

Not only does the not--does the Constitution not qualify what type of person or category of individual will be counted for apportionment, the Trump administration's own Census Bureau specifically leaves out any reference to categorizing the type of individual that we are counting and whether or not they will count towards apportionment.

The founding fathers intended that everyone living in the United States other than originally counting slaves, tragically, as three-fifths of a person, should be counted for the decennial census specifically for apportionment. That's in the Constitution too.

So, what's going on here is that the U.S. Supreme Court scuttled the administration's bigoted plans to try to intimidate people who are not citizens from answering the census and thus being able to be counted and counted for apportionment purposes, and instead are trying to back door the--the citizenship question by using an executive order to not count those who are not citizens in apportionment. It's not constitutional. It's not legal and is transparent in its really venomous political intent.

My question is that we have a number of--a number of experts here, and I want to just go through a couple of key facts. This committee's investigation showed that the likely reason for the citizenship question was electoral politics. I'd like to--to ask Mr. Barabba, do you agree that the policies proposed by President Trump's memo last week to exclude undocumented immigrants from the apportionment count are consistent with the real objective for the proposed citizenship question? That was for Mr. Barabba.

BARABBA:
Oh.

WASSERMAN SCHULTZ:
Did you hear the question?

BARABBA:
Okay. I did not hear my name. I'm sorry.

WASSERMAN SCHULTZ:
That's okay.

BARABBA:
Would you repeat the question, please?

WASSERMAN SCHULTZ:
Sure. Madam Chair, if I can have a few additional seconds to make sure I don't lose my time? Do you agree that the policies proposed by President Trump's memo last week to exclude undocumented immigrants from the apportionment count are consistent with what the real objective was in originally proposing the citizenship question?

BARABBA:
I--I believe what he's trying to do is to have an effect on the outcome of the--of the apportionment process to the state.

WASSERMAN SCHULTZ:
Could you be a little more specific?

BARABBA:
If you count fewer people, indeed, as I pointed out in my testimony for low income, they're more likely people who do not vote for the president because of his positions.

WASSERMAN SCHULTZ:
Mr. Prewitt, can you explain why fears in the immigrant community about the census would depress response rates and ultimately lead to a less accurate census count?

PREWITT:
Yes, because they're afraid that the answers will be used against them, as the--it was unfortunately produced in the 1941 period with Japanese American 60 years ago. We're still talking about that. They cast a very long shadow over the census. And what we're going through now will cast another very long shadow. If they are afraid that it will be used against them as a group, then they have a reason to sort of dodge it and not respond to it and hide out.

WASSERMAN SCHULTZ:
Thank you. Mr. Thompson, after the issuance of this recent memorandum, it--it really is even harder to escape the conclusion that the Trump administration is attempting to manipulate the census count for political

purposes. If this behavior is normalized, what impact do you think this will have for the future of our democracy and ensuring an accurate count in the decennial census?

THOMPSON:
So, that--that's an excellent, excellent question, congresswoman. It--it is incredibly important that the census be viewed as a nonpolitical objective enterprise, because it is the foundation--one of the cornerstones of our democracy. And perceptions that it's been politicized, as Dr. Prewitt said, will have a long, long lifespan and it will make it very difficult to take that only the census, but censuses in the future.

WASSERMAN SCHULTZ:
Thank you, Madam Chair. I yield back the balance of my time.

MALONEY:
Thank you. We now recognize Representative Higgins by remote. He's online. Representative Higgins?

HIGGINS:
(OFF-MIC) Madam Chair.

MALONEY:
Thank you.

HIGGINS:
Thank you, Madam Chair. This--this type of anti-American rhetoric--

HIGGINS:
--I'm hearing from my colleagues across the aisle today is exactly why regular American patriots don't like politicians and don't trust the government. What--what are the democrats trying to hide right now?

This is the number one thing. It's the major point that--that is incredibly clear. Across America, from sea to shining sea, by hard working American citizens, voting rights in America and congressional representation in America belong to American citizens, period. Our nation's fabric has changed through the generations.

The census is conducted primarily for a portion in every ten years. This is a--this is a challenge that has evolved and changed over the course of time and what we now face is--is the very clear fact that illegal residents of our country or illegal occupiers of our country have significantly affected representation. What are the democrats hiding? Illegals interfere with our republic when it comes to congressional apportionment and voting.

President Trump's new policy would restore congressional representation to its rightful owners, the citizens of America. What are the democrats hiding? What--why would we not want to know how many citizens versus non-citizens are in our country?

I'll tell you why. America, and I hope you're paying attention. Estimates range from 12 million to 25 million illegal aliens in this country at 700,000 constituents for congressional district. That's 17 to 35 congressional districts that can be swayed by illegal aliens within our country.

The 115 Congress majority, republic of majority, was 47. The (INAUDIBLE) 16th congress, the Democrats hold a 34 vote majority. The reality is that illegal aliens present in our country, if counted for apportionment, actually do shift the balance of one man, one vote away from densities of population of American citizens towards densities of population of illegal immigrants.

And, my colleagues across the aisle don't want America to know that. But, I do, because we prefer to speak the truth and I--and I--and I take offense to some of the language that's been used towards myself and my colleagues by the gentleman prior. You don't know our hearts, sir, good sir. You calling us minions and other things. You're wrong for that and you know it. America is watching and they know it.

Mr. Eastman, you--you are a constitutional scholar. Are you not, good sir? Mr. Eastman, please unmute yourself.

EASTMAN:
(INAUDIBLE)

HIGGINS:
My question was are you a constitutional scholar, sir? Madam Chair, I'd like this time observed(PH).

EASTMAN:
Let's try again. Can you hear me now?

HIGGINS:
Yes sir, Mr. Eastman. My--my question was are you a constitutional scholar, sir?

EASTMAN:
Yes I am, sir.

HIGGINS:
Please unmute yourself, sir.

EASTMAN:
It's unmuted. I'm sorry, I don't know what the problem is. Yes, I am.

HIGGINS:
Back on track here. Welcome to 21st technology that doesn't work for remote committee hearings. I urge my colleagues to return to regular order.

Mr. Eastman, are you familiar with the--with the--with the President's new policy that we're discussing today? Can it or can it not be challenged in court as constitutional or unconstitutional?

EASTMAN:
According to (INAUDIBLE)

HIGGINS:
Your--your audio is not functioning, sir.

EASTMAN:
--(INAUDIBLE) let's try this. Is that better?

HIGGINS:
Yes, sir. That's better. Madam Chair, I'd like this time observed for later.

EASTMAN:
Okay. Yes.

HIGGINS:
Mr. Eastman, my--my question to you is very simple. Are you familiar with President Trump's policy regarding--regarding the Census that we're discussing today? Can this policy be challenged constitutionally in court or can it not? Is that not our process?

EASTMAN:
Well, it's already been challenged in four different cases in court. I--I believe when it gets to the Supreme Court, based on the Franklin versus Massachusetts case, the Trump policy will be upheld. But, it will certainly be (INAUDIBLE)--

HIGGINS:
--And, in the interest of time, if the--if the--if President Trump's policy is overturned by the Supreme Court, which is our judicial procedure, I would encourage my colleagues to wrap their passion up in a judicial challenge properly. If the president's policy is overturned by the Supreme Court, then that's it, isn't it?

EASTMAN:
Well, that's--yes, that's it and Congress would certainly have a say with the constitutional clarifying amendment. But, I believe the Constitution allows for the policy already.

HIGGINS:
Very well. So, prior to Supreme Court rulings that--that--that have established by--by majority rule in the Supreme Court, that an agency's action is final when an agency completes its decision making process, specifically as it regards to the census that the president is not--is not required to transmit the secretary's report directly to Congress. Rather, he uses the data from the census in making his statement. Are you familiar with that ruling as written by Justice O'Connor?

EASTMAN:
Yes I am. That's the Franklin versus (INAUDIBLE) to which I've been referring.

HIGGINS:

Yes, sir, it--it certainly is. So, Madam Chair, I thank you for your indulgence. We had some technical difficulties from the gentleman. I just want to clarify that what's before us today is the balance of power of the representative republic of American citizens that we are supposed to serve. And, if you--if any of my colleagues or fellow Americans across the country have a problem with the president's decision, then by all means, follow the constitutional process by which you will challenge that as to Article III in the judicial process.

Madam Chair, I yield.

MALONEY:
Thank you. I now recognize Congressman Sarbanes from Maryland. Congressman Sarbanes.

SARBANES:
Thanks very much, Madam Chair. Can you hear me?

MALONEY:
Yes, we can.

SARBANES:
Okay. Well, appreciate the hearing. You know, fundamentally, you--you can't run a country if you don't know how many people are in your country, and that's the purpose of the census, plain and simple. It's not a democratic power grab.

This is a patriotic exercise that we engage in every ten years to know who is in our country, how many people, so we know how to provide services and resources and function as a country. That's what this is about. This is about being able to function properly and efficiently as a country so we know where to build the roads and the hospitals and the schools.

I want to know how many people live in my district. Whatever district I'm representing as a member of Congress, I need to know how many people there are living in that district so I know what the schools should be, how many resources should come behind community health clinics, what--what's the capacity of the hospitals that we need and our other healthcare providers.

That's the purpose of this and if we don't take the Census seriously, we're not going to be able to function as a country in an effective way. So, that's what this is about. This isn't about political power grabs. This is about doing what makes common sense and what our Constitution calls upon us to do every ten years.

Now, I--I don't want to belabor what the president has done because it's very clear, based on the testimony and I think an easy reading of the Constitution, that what the president has proposed most recently is not only unconstitutional, it's completely unworkable. I'd like the former directors, if they would, to--to give me your perspective on this very delicate line that we're walking right now.

On the one hand, we know that the census needs to be completed within a certain period of time so that the data all works and the further--further we get away from April 1st, the more potentially compromised that can be. On the other hand, we don't want to rush the census--

SARBANES:

--in a way that would undermine its accuracy. And I fear that the president is seeking to do that now. From what I understand, he's trying to sort of telescope the process here. So could you speak, and any of you are invited to--to weigh in, of the former directors, tell me what your greatest concerns are right now about our ability to conduct the census in an efficient way to gather up the data to be confident in it and how do we navigate this--this window that we have to pull that off? And I'll--I'll turn it back to the--to the directors.

THOMPSON:
Well, I can--I can start. The--the clearer people who are experts at making the census requested a four-month extension of the deadlines in their title. They know what they're doing. They know what it's going to take to get the census done. Not extending those deadlines is going to put tremendous pressure on the Census Bureau. It's not clear what kind of quality counts they can produce if they don't get the extension. So it could be a really big problem.

SARBANES:
Mr. Prewitt.

PREWITT:
Yeah, I would just add to that, as I tried to say in my opening testimony, I really do think right now we ought to be appointing an independent, apolitical group of statisticians and otherwise informed people, National Academy of science can certainly do this and look at metrics. What were they telling us that we have a census that is inadequate for the purpose of reapportionment, is inadequate for the purposes of spending over $1 trillion, and it's inadequate as a base number for all of our other surveys, for 10 years.

I think we are at risk of getting to the country a set of numbers which will make what our previous--what you said at the very beginning, you want to know how many coming to school, how many in the hospitals. What's the traffic load? What about emergency preparation? All of those depend upon numbers and I am very worried that we may not have those numbers at a level at which we are able to give them to the--to the president at the end of this calendar year. So the extra four months is really important.

SARBANES:
Thanks very much, Madam Chair. I appreciate the opportunity and I think what we're hearing is the politics need to be kept away from this space. The president is trying to politicize it. We need to keep it in a safe zone and get this right and do it properly for the benefit of the country. I yield back.

BARABBA:
Chairwoman, could I make a comment, please?

MALONEY:
Thank you. Who--who is wanting to make a comment?

BARABBA:
Yeah, I just want add to what my colleagues have said that the manner in which the president is positioning this question on citizenship will be more--is designed to be alarming to noncitizen to be counted and it's this approach that is going to make it difficult for the census to do its job, which is to count everyone, every person in this country.

MALONEY:
Thank you. I now recognize Representative Robin Kelly from remote. Kelly.

KELLY:
Thank you, Madam Chair.

MALONEY:
Thank you.

KELLY:
A couple of points I wanted to make first that I've been on oversight for over seven years and most of that time I was in the minority and I never remember the minority having more than one witness. I just wanted to make that--make that point. And I thought I heard one of my colleagues say that to have the undocumented count because that will help us in with our century cities. Well, Chicago is a sanctuary city and New York is a sanctuary city and we already know that Illinois will lose one congressional seat.

So counting the undocumented is not helping us over another state that you make represent that doesn't want to take out the undocumented. But I wanted to ask Mr. Groves if undocumented immigrants do not respond to the census either because they are afraid of being identified or are motivated because of this memo what effect do you predict this will have on the distribution of federal funds and it would affect some communities more than others?

PREWITT:
I--if I'm I needed, I will--Dr. Groves has left.

KELLY:
Oh, I'm sorry. That's right. I've been waiting so long.

PREWITT:
I'm sorry. No, no, I'll give you a quick response. Look, right now with respect to that 62 percent of the public that has sent in a form, that's a highly variable number state-by-state that goes up as high as 72 percent and goes down as low as 52 percent.

That's a 20 percent difference between those two states. And if that carries forward for the rest of the census, that means were going to have states that are counted close to 100 percent and states are counted at 80 percent. And that is not a functional census.

That by definition--hugely disproportionate the way that federal funds get spent because the federal funds is a fixed number and is proportionate to size. So if somebody is 100 is 80, the one that's 100 is actually going to get 20 more because is going to be spent somewhere. So it's a very serious issue.

KELLY:
And also the other thing is when I think about one of the counties I represent is Cook County and even if someone is undocumented, they--they need help or care the county or the city, you know, they still help. They just don't, you know, leave people to die or to be homeless and that kind of thing. They--they'd still feel that responsibility and none of that is free, you know, it cost money.

PREWITT:
Yes.

KELLY:
So that's why it's so important. Madam Chair, I yield back early.

MALONEY:
Thank you. The gentlelady yields back, and I now represent--Representative Grothman is now recognized.

GROTHMAN:
Okay, thank you very much and thank you for having this hearing. Always enjoyable. I think there's some confusion. So the first question I have is for Dr. Eastman. The president's memo, as I understand it, doesn't include distribution of federal funds. It's only for the purposes of apportionment, am I wrong in that?

EASTMAN:
No, you're absolutely right correct on that. The two are distinct and their acts actually the constitutional authority is different for each of the two.

GROTHMAN:
Okay. So this idea that if we--we--we don't count people who are here illegally is going to result in, say, less federal aid to the city of Chicago, that's not accurate, right?

EASTMAN:
That's not accurate. The count will be there. The question is what are the numbers we use for apportionment purposes, not for all the other myriad uses for defenses.

GROTHMAN:
Okay, good. Now, I wanted to ask you about other people who are, you know, I happen to live in Wisconsin. There are people who could be in Wisconsin for a variety of reasons.

There could be people who were born there and will die there and live there their whole life. There can be people there who are diplomats from our consulate in Chicago or driving around seeing what's going on up there. You could have tourists who plan on leaving, you could have people who spend seven months of the year in Florida and five months of the year in Wisconsin. You could have somebody coming over from Iowa who is taking care of an aging relative and expects to return home.

Could you comment on these different situations? Are all of these people supposed to be counted for apportionment purposes, none of these counted for apportionment purposes? If we go through them--a diplomat, they're not counted, are they, even though there in Wisconsin?

EASTMAN:
No, diplomats are counted even though they are persons in the state. If you want to take the--the technical reading and offered, visitors are not counted. Temporary people passing through are not counted. And I think that Indians not taxed are not counted. We haven't had that category since citizenship was offered in the 1920s

broadly to native Americans. But for the first 100 century (PH) and include our nation's history, they want counted.

It's because what--as the Supreme Court said, what we are ending for here is being represented. Who's in charge? Who are the sovereign people that are choosing the representatives and allocating the distribution of seats in Congress and electoral votes based on that.

GROTHMAN:
Okay, and I'll give you the specific example. Let's say I'm in Wisconsin. Let's say a woman who moves into Wisconsin to take care of her aging mother and expects to return home from Iowa, has no intention of staying in Wisconsin, maybe her mother is even in home hospice. Should she be counted as a Wisconsin resident?

EASTMAN:
I don't believe she should be, and I don't think the Census Bureau does. They asked where her normal place of abode is.

GROTHMAN:
Okay. If I'm in this country illegally, how under any circumstances--what conclusions would you reach to say that a person who is here illegally intends to stay permanently? I would say I would think if I was called in a country illegally for whatever reason I would expect to return home. Isn't it kind of insulting to somebody to say if they're here illegally we're going to make the assumption they're there permanently?

EASTMAN:
Well, I--I--I think so, and--and, you know, you can read this then into the phrase in the state. The--the other argument has been, well, anybody that's residing in the state; well, they've added the word residing to there. So, why don't we also add the word more consistent with the theory, lawfully residing there? That gets more at the question of who's being represented, those who are here lawfully.

GROTHMAN:
Well--well, right. I'm going to go back to the two situations. If you have someone in Wisconsin taking care of an aging relative until they pass away, you know, we consider they're a permanent resident another place, right?

I think normally if you have a college student who is in Wisconsin for nine months and then returns to Iowa, that--Iowa is considered their place. They only--they don't intend to stay in Wisconsin full-time.

By what logic could you say if someone, say, is overstaying a visa and--you know, but plans on returning home, we assume returning home, how--what--what type of legal logic could you have to say that we expect that person to stay in Wisconsin permanently? I don't understand that. Can you imagine a legal theory that we're going to assume somebody who comes here illegally is going to be considered a permanent resident?

EASTMAN:
Well, there--there--there's one theory that's been floated called virtual representation. Even though they're not part of the citizenry of that state or that community, they are nevertheless there, and so therefore the people would treat them as if there being representative even though they have no say in the government. I think that is--

GROTHMAN:
--Well--well--well, why don't we--

EASTMAN:
--Fundamentally incompatible--

GROTHMAN:
--Assume they're going to leave though? That's what I don't understand.

EASTMAN:
Yeah, I don't--I don't--Congressman, I agree with you. I don't understand it either. But I'm--I'm trying to tease out the theory on the other side to try and make some sense of it, and I can't. It is so fundamentally incompatible with the notion of consent of the governed that is the cornerstone of our system of representative government.

GROTHMAN:
Well, I--I--I just will say, on behalf of the illegal citizens in my state, I think it's insulting to imply that in the future they're never going to obey the law. Thank you.

MALONEY:
Congresswoman Lawrence is recognized.

LAWRENCE:
Thank you, Madam Chair. I would like to bring the focus back to what the census is established, and that is to count every person. I was a mayor, and I know that the amount of people who were driving over my roads go into the population, goes into the formula of how much I come to the federal government, say I need X amount of bill dollars, I need X amount of dollars. I need to know how many children are going to our schools so that we can anticipate the amount of brick-and-mortar or the amount of taxation for educating the children in our community.

It's so sad that this current administration uses every single angle to politicize it and have it to be a Democrat or a Republican issue. The census has nothing to do with your political affiliation. It has everything to do with the numeration of the people who live in this country so that we can appropriately allocate the funds throughout our country.

I know in my district there's a very rich and, thank God, amazing diversity of people, strong representation from the Middle East and Bangladesh, other countries. We have Jewish. We have African. We have India. So, when--when you knock on the door of a home and you say are you legal or not legal, the trust because of this administration's just--just absolute aggressive immigration, demoralizing the value of people in our country, it creates fear whether you want to admit it or not.

Mr. Thompson, are you still here? Is Mr. Thompson still here?

THOMPSON:
Yes, I'm--I'm here.

LAWRENCE:
Okay. Is it true that the immigrant communities have historically been undercounted in the census? And can you explain why this is problematic?

THOMPSON:
That's a--that's an excellent question, congresswoman. So, the Census Bureau has always been measuring a differential undercount, and that is for the white non-Hispanic population, they have been measuring slight over counts. For other populations, African-Americans, Hispanics, they've been measuring undercounts. American Indians, they been measuring undercounts. And they call it the differential undercount.

So, the implications of that are--filter through all the important uses of the census, including apportionment, including redistricting, and including the allocation of $1.5 trillion in federal funds every year. If there's an undercount in a community, then that community doesn't get its fair share of--of any of those resources.

LAWRENCE:
So, when a--when a community does not get the proper allocation of funds, when we start talking about poverty, when we start talking about generational misrepresentation, it is all tied to the census and how we count the citizens and the people of this--of this country. Is that correct?

THOMPSON:
Yes, ma'am.

LAWRENCE:
Do you agree that President Trump's executive order is likely to make the problem worse by discouraging legal immigrants from completing the census?

THOMPSON:
Yes. I included in my testimony my concerns that a memorandum was going to increase fears among the hard to count populations, which would include immigrants, not citizens, that their data would not be safe, and therefore their nonparticipation.

LAWRENCE:
Madam Chair, I just want to be clear on the record that the census is not a Democrat or Republican issue. It's an issue about how we will fund our country. I sit on appropriations, and I say often if you want to know where a person's heart is, if you want to know what your values are, follow the money. And if we systematically eliminate and discourage participation, then our values will be very clear that, if you are minority, if you are an immigrant, you have no value. Thank you so much. I yield back.

MALONEY:
Thank you. Thank you to the gentlelady for her--her powerful statement. Congresswoman Miller is now recognized.

MILLER:
Thank you, Chairman Maloney, Ranking Member Comer, and to all of you witnesses who are here today.

As we will discuss further in the next panel with Dr.--Director Dillingham apportionment is drastically different than taking the census. It is essential that the census count every person living in the United States, as this data is used to appropriate federal resources to the communities in need. Another use for this data is to fulfill the constitutional duty of apportionment.

Apportionment is the essential process that Congress takes to make sure that the members of Congress are distributed fairly and proportionally across the United States. Allowing some states with a high number of undocumented immigrants to support the will of American citizens by denying other states their fair representation cannot be allowed.

While many across the aisle actively champion illegal immigration and deny the government's duty to protect our southern border, to turn around and try to distort the president's actions to protect American democracy into a constitutional crisis is an absolute farce.

This hearing is just a continuation of the lack of leadership that America is so tired of seeing out of Washington. I support President Trump's memorandum of apportionment and reiterate the importance of making sure American's voices are heard here in Congress and at the ballot box.

Dr. Eastman, how would counting residents living in the United States illegally undermine the representation of legal American citizens?

EASTMAN:
Well, it would create an apportionment that shifts numbers of representatives in the House of Representatives and also the electoral votes for president from places where there are not large numbers of illegal immigrants to places where there are, therefore diluting the vote and political power and sovereignty of the people in the states that--that do not have large numbers of illegal immigrants and benefiting those that have violated our law.

MILLER:
So how (INAUDIBLE) or smaller rural states which already have very few members of Congress negatively impacted by the larger states who are bolstering their census counts with undocumented immigrants?

EASTMAN:
We have got a number of states that will lose or not gain a--a seat in Congress as a result of counting the large number of the legal immigrants that have consolidated in particular states in the three or four states, for example. It--it would shift away from the rural states, and it would debase the votes of American citizens in large portions of the country.

MILLER:
So basically in a congressional district where half the population is comprised of undocumented immigrants, is that fair representation to a district that is comprised entirely of American citizens? Doesn't that dilute the representation that citizens have in Congress?

EASTMAN:
It--it does so in two ways. It gives that state with illegal immigrants and additional seating Congress that creates--that enhances their political power and it also takes each voter in that district and essentially makes their vote worth twice as much as the votes in a district where there are no illegal immigrants.

MILLER:
So historically, why has it been the standard to use total population for apportionment instead of the number of citizens, and does this actually use subvert the democratic will of American voters?

EASTMAN:
Well, historically we have used total population because there was not a differential between total population and citizen population and so total population was a very good proxy for--for the political representation but we now have a vast disparity between citizen and noncitizen areas of the country, and that is skewing the political authority of the people that are supposed to be choosing the representatives to government.

MILLER:
Thank you. I yield back my time.

MALONEY:
Thank you. I now recognize the vice-chair of the committee, Congressman Gomez, for five minutes. Thank you for coming.

GOMEZ:
Thank you, Madam Chair. I just want to remind people I am actually very happy that President Trump and the administration revealed its true colors. For the long time if we remember back when they were trying to add the citizens it question to the census it was always about enforcing the voting rights act, and they repeated it and repeated it and repeated it, but even your Republican Chair Trey Gowdy didn't even believe that was the case.

He even made the argument that their lodging didn't make sense because they have been enforcing the Voting Rights Act the Justice Department since its existence without having that information on these citizenship on the census, so we always knew what this was about. It was about (INAUDIBLE), it was about the apportionment expert trying to create a scenario that they could make an argument why citizen--undocumented immigrants and not all people should be counted in apportionment.

That was what it was always about, so it just reveals their true colors that they put forward this executive order and this memo--memo of understanding and the reason why it was always about that because this administration and Trump have always attempted to use the census as a political weapon to marginalized communities throughout the country and I believe that this is only the next step because I believe the true direction of this administration wants to go and some individuals on the right of the political spectrum is to undermine the 14th Amendment itself, the idea that in the person, all persons born or naturalized in the United States are subject to the jurisdiction of the United States and are citizens of the United States.

That is where ultimately they want to go. They as I'm talking about the Trump administration, I'm talking about the people who are on the right who don't see people who are born here as valid citizens of this country. So this is just the next step you know what President Trump has done in these memos, but I believe that it would be found unconstitutional.

I believe that some of the recent rulings by the Supreme Court indicate that this court is not a Republican court or a Democratic court, it is the Supreme Court of the United States of America and I look forward for this case to go forward, but the present memo does I believe violate the Constitution. It also violates federal status--statutes as enacted by Congress.

Title 13 states that after the census is complete, the secretary of Commerce shall send the president and I quote a tabulation of total population by states which then the president must transmit to the Congress a statement showing the whole number of persons, it doesn't say anything else, it says of persons in each state.

I would like to go down the line and ask each of you a question. In your experience as director of the census bureau, did you ever understand federal law to allow the secretary of Commerce to exclude undocumented immigrants from the census count he or she is required to send to the president? Mr. Barabba?

BARABBA:
No. The answer is no.

GOMEZ:
Mr. Prewitt?

PREWITT:
No.

GOMEZ:
Mr. Thompson?

THOMPSON:
No.

GOMEZ:
Those are some simple questions when it comes to this issue that it has never been allowed, and no one has ever requested it, but this administration is trying to once again use the census for political ends and to marginalized and undocumented community and undermine our democracy.

We have a choice to make. The country is getting more diverse no matter if we throw up roadblocks, no matter what we do the country is changing, but it's not about how we shouldn't allow those changes to determine our character, it is how we handle those changes that will determine the character and the values of this country. I am proud to be an American, and a lot of the people who are here undocumented or otherwise are also proud to be in this country, and we will fight for our place in this country every step of the way until the day that we are no longer on this earth. With that, I yield back.

MALONEY:
Thank you, Mr. Gomez. The chair now recognizes Congressman Keller.

KELLER:
Thank you, Madam Chair. Thank you, Ranking Member Comer. Last week the President issued a memorandum directing the Department of Commerce to provide him with an apportionment count, which only includes those in this country legally. Since we all know that an apportionment count, a census count, and a redistricting are different things I am concerned that the title of this hearing conflates all of these into one group creating the assumption that these terms are all the same thing makes the accusation that the President's actions are unconstitutional which they are not.

Doctor Eastman, can you explain how an apportionment count is different from a census count and redistricting?

EASTMAN:
Sure. The census count total count that is addressed things like federal spending and how many schools we need and how much space we made on the highway those are exercise pursuant to congresses power under the commerce clause and under the spending clause, and we get a total count, it doesn't matter on what basis you are here, but apportionment is supposed to be tied to people who are choosing representatives, and we can have an apportionment count of the persons in the state for that purpose that is different from the total population count that would include visitors, it would include people on temporary basis, it would include all of those other things, and we can have two different counts.

The President's memo is directed to the apportionment count, what numbers of persons are we going to use for distributing our political power in this country based on the population of citizens of we the people.

KELLER:
Thank you. This committee has spent endless hours holding hearings, conducting investigations, issuing subpoenas, and holding administration officials in contempt of Congress all due to an issue with the citizens it question on the census. While this effort eventually--was eventually abandoned, a citizen said question should not be controversial, and neither should be using an apportionment count of only those who reside in our country legally. If someone is here illegally, they should not be represented in the United States Congress.

Doctor Eastman, why did the Supreme Court rule that a citizenship question being asked on the census questionnaire is, in fact, constitutional?

EASTMAN:
Well, because first of all history we have asked that question on almost every census in our entire history. The only reason it blocked it from the current census is because the Supreme Court found that the department had not properly gone through the requirements of the administrative procedures act, but it went out of its way to say asking him about citizenship is perfectly constitutional.

KELLER:
Okay. Just one thing. I know there has been a lot of discussion on why we need to make sure that the representation is correct, but I know some of the people on the left want to do away with the electoral college. By--by counting people who are not U.S. citizens here legally is that a way to make the electoral college less relevant or over time irrelevant by shifting representation away from American citizens?

EASTMAN:
It does. It has the same effect of diluting the votes of citizens that the apportionment of the House of Representatives has because the electoral college votes are based on the total number of seats one has in the House of Representatives plus the two senators.

KELLER:
So--so if I couldn't get an amendment through, I couldn't get a national popular vote and I wanted to do away with electoral--electoral college, I would--I would want to count people for representation purposes who are--who are in our country illegally?

EASTMAN:
You--you certainly would enter the impact of--that citizens have on the outcome of elections. And that undermines the very notion of the consent of the governed.

KELLER:
And the thing--the point I guess I wanted to make, by the way the Trump administration wants to make sure that we know the difference between when we're talking apportionment and census and redistricting. We want to take care of everybody that is here--here in our country, but we also want to make sure that the government is selected by American citizens and not people who are not citizens of this country. Is that correct?

EASTMAN:
That's correct. And I don't think it's partisan. Look, I mean, if you look at the numbers, Texas is going to lose seats as a result of this as well as California. It's hard to say that that's a partisan outcome. It's--it's a good governance outcome.

KELLER:
It's an outcome that means we are--we are exceptional because we're Americans and we should have government that is decided by American citizens and not people that are national foreign nationals in our country illegally. Thank you, Madam chair, and I yield back.

MALONEY:
I thank the gentleman and I think all of the panelists for their testimony and remind them that they--very--there will be additional questions that may come to them and I would be grateful for their swift response.

We will now go to the second panel. But first, I'd like to respond to Mr. Hice's request that we have--he mentioned we needed a hearing on the hard to count communities and stated that we had only had not enough hearings on--on the census.

I'd like to place in the record that since I've been here, there have been five hearings on the census, including one on the hard to count communities in the 2020 census, which was January 9, 2020.

We were also privileged to have Director Steven Dillingham here on February 12 and appreciate him coming back very much and we also had one on beyond the citizenship question, repairing the damage and preparing the count for we the people in 2020 and we also had one on getting the--the count counted to the importance of the census for both states and local communities and on March 14 we had Commerce Secretary Wilbur Ross.

So I would like to place in the record these hearings that we had, five, and I mentioned to ranking member, if you'd like to have another hearing on hard to count communities as Mr. Hice mentioned, would be glad to accommodate having another.

And I'd also like to place in the record that listing of 12 full committee hearings that we had on different subjects. But obviously, five with both the through committee and subcommittees has been a priority. As it should be for this--for this country. I'd like to place this in the record. Thank you.

So the first panel is dismissed with our great thanks. Thank you for your time, thank you for your service, thank you for coming back to testify with us from across the country. We are very, very grateful. Thank you.

And we are also grateful that we are joined by Mr. Steven Dillingham, the current director of the census bureau. We thank you very much for your time, for your service, and for agreeing to be here. We are very

appreciative. If the witnesses would please rise and raise your right hand, do you swear or affirm that the testimony you are about to give is the truth, the whole truth, and nothing but the truth so help you God?

DILLINGHAM:
(OFF-MIC)

MALONEY:
Thank you. Let the record show that the witness answered in the affirmative. We thank you. Without objection, your written statement will be made part of the record. And with that, Mr. Dillingham, you are recognized for your testimony. Again, thank you for your service. And I just wanted to add the--the coronavirus has changed everything and I--it has really changed how we've been able to conduct the census. And I appreciate your service during this very, very difficult time. Thank you for being here.

DILLINGHAM:
Chairwoman and Ranking Member, I don't know if you noticed, but I had my own specially designed mask and I provided one to you in the working member. So I hope you find it useful. It's at least for getting the message out. Thank you so much.

Chairwoman Maloney, Ranking Member Comer, and members of the committee, I am honored to be with you today. I'd like to congratulate Ranking Member Comer on his recent appointment. I appreciate the support of Congress and this committee's commitment to a successful 2020 census.

The nonpartisan U.S. Census Bureau is the nation's leading federal statistical agency. Its career and non-career staff work together to advance its mission always in accordance with governing laws and court rulings. The Census Bureau does not set policy, nor does it control the use of its data products. The Census Bureau adheres to the highest standards of scientific integrity and transparency and the principles and practices of federal statistical agencies.

Meeting challenges posed by the unprecedented brutal pandemic remains at top priority. The Census Bureau's dedicated workforce has worked hard and professionally to keep the 2020 census on track. This morning I am pleased to highlight some recent developments.

On July 21, the president issued a presidential memorandum that has been the topic certainly of the first panel. In response to the memorandum, Secretary Ross called upon that Census Bureau to examine the directive and commence efforts to develop methodologies for producing a special tabulation for apportionment. A group of expert possible methodologies. Operations are not affected by the memorandum.

We remain committed to accounting t every person in the right place and only once. To help the Census Bureau meet challenges posed by the pandemic, the White House office of management and budget submitted request to supplement our hiring, pay incentives, outreach and replenish our contingency funding to provide the necessary flexibility.

Despite the pandemic, the 2020 census self-response has been a tremendous success. We are now almost 63 percent with more than 92 million households counted. About 80 percent have chosen to respond using the Internet.

Our response system has not had a single minute of downtime since we first invited people to respond online beginning in March. We successfully set up--we sent up and we say up to five mailings because if you do answer it self-response, you're not receiving hopefully after a period of time not receiving additional mailings.

But we successfully sent up to five mailings in an additional mailing to areas with the post office boxes. Our sixth mailing has begun and it should reach 34 million non-responding households. In September, we will be sending--we will be sending a seventh mailing, including questionnaires to the lowest responding tracks and hard to count areas.

Our update leave is--which is our operation to hand deliver packets to housing units, well it is certainly generally complete, it certainly 99 point--the last I looked it was I think it was about 99.9 percent. It was--it's basically complete except for some very small communities. Our counting college students continues to progress.

We have a special operation to ensure complete and accurate count of college students. College students must be counted with a live or stay most of the time as of April 1. Congress is considering legislation which was passed by the House to alleviate confusion among college administrators.

The largest component of our field operation non responsive follow-up is underway and expanding rapidly. We have begun a soft launch in selected areas where we could do so safely and effectively. The first six areas since this office has began work on July 16, six more began on July 23.

Tomorrow, 35 others will begin work and 40 more will start on August 6. They will be announced today. The remainder will begin this work on August 11 and will be covering the entire nation. Today, we are announcing that as part of our non-response follow-up operation, we will contact some households by phone.

Health and safety of Census Bureau staff and the public remains our priority. The provision of personal protective equipment, trainings, and adherence to social distancing reflect our commitment to health and safety of the public and our employees. We require census employees interacting with the public to wear a face mask regardless of location. We daily monitor health conditions nationally and at the state and local levels.

Our hiring of census takers and staff continues. We now have 3 million applicants available as temporary census workers. We continue receiving about 1500 new applicants each day. Our 248 area census offices are completing the hiring process for about 0.5 million temporary census workers. More than 900,000 job offers have been accepted.

Our partnerships are unprecedented, exceeding our most ambitious goals. With almost 400,000 partners, we are expanding our outreach to hard to count populations. Despite having to delay the mobile questionnaire assistance efforts due to the pandemic, partnership staff have identified assistance sites where people go when they leave home such as grocery stores, such as pharmacies and other places in compliance with local, state, and federal safety guidelines.

We have seen great examples in New York City, and I know that you have participated, Madam Chairwoman, in Kentucky as well and probably in all member districts. The 2020 census communications campaign continues to expand its reach. We increased the communications contract budget from $500 million to $700 million, and increased our media buys, which are in pro--progress now. We were on many types of advertising in low response rate areas, including those with hard to count audiences.

As voices in your communities, thank you for sharing our message that participating in the 2020 census is easy, safe, and important. We appreciate your strong support for 2020 census and our operations. Our committed employees and volunteers remain on mission and are accomplishing tremendous results.

Our offices have lead other federal agencies in reopening in a rapid, phase, and safe manner. I could not be prouder of our talented and dedicated career and temporary workforce, soon to become the nation's largest.

We are grateful that almost every House and Senate office is active as a 2020 census congressional partner. We look forward to our continued work together, and thank each of you for your support. Together, we are

reminding everyone that the 2020 census belongs to our nation at large and will help shape a better future for all who live here.

Thank you so much. I look forward to your questions.

MALONEY:
Thank you. And--and the chair now recognizes herself for questions. And--and I appreciate your testimony that the census belongs to the people and it's part of our--our future. I--I do want to report that in New York the census has been nonpartisan, professional.

They have responded to every request from the mayor to attend various meetings from the community. They have been at the community boards, the block associations. They work weekends handing out information in the parks and have responded to every request my office is made for them to join us in getting the word out to the public in a nonpartisan, professional way. And I want to thank you for that.

DILLINGHAM:
Madam Chairwoman, I want to thank you, that--I had some particulars with regard to your efforts in the food distribution areas of New York City, and appreciate you as well as your colleagues all across the country.

MALONEY:
It's very, very important. But I must tell you, Director Dillingham, I am very, very concerned about the president's memo. And I have read the president's memo very carefully, and I believe that it is blatantly unconstitutional and that complying with this memo would violate federal law. And I strongly urge you not to violate federal law.

But you don't have to take my word for it. We had quite a lengthy hearing today, and all four of your professional nonpartisan predecessors testified on the previous panel that they believe the president's memo appears to violate the Constitution and existing law. So, I would like to ask you, do you agree with your predecessors that the memo appears to violate the Constitution and existing federal law?

DILLINGHAM:
Madam Chairwoman, I--I was able to catch parts of--of that hearing. I--I know just perhaps the letter parts. And I--I was amazed at what a healthy discussion and debate and--and a very livid one at times with regard to policy and history as well as long. They're in a different position than I'm in. I respect them greatly and we have many things in common, certainly the completeness and accuracy of the 2020 sentence--census.

We have other things in common, and that is the--the respect for the bureau--the Census Bureau, as well as the principles that govern it, the relevance, the credibility, the integrity, the independence, etc. So, we have much in common. But I am not in a position where I can express my opinions with regard to the policy, with regard--and wouldn't even wise with the history, and certainly not within the legal analysis, which is now a subject of litigation.

So, as I did last year, I have to back off. I cannot answer or even give my personal views, because my job as the Census Bureau director will be to execute the 2020 census. And we do abide by court decisions and controlling law, so we will have to wait and see how that legal debate comes out, and we will do our job. But that is our focus. Our mission right now is a complete and accurate count that will include everyone living in this country.

MALONEY:

Well, in your job executing the 2020 census, did you or anyone else in your knowledge from the Census Bureau contribute to the president's July 21st memo or provide input on it before it was released?

DILLINGHAM:
Madam Chairwoman, I certainly did not. And I'm not aware of others in the Census Bureau that did.

MALONEY:
I--I understand there are roughly five political appointees. Did any of them participate in this memo?

DILLINGHAM:
Madam Chairwoman, I think, including myself, we have six now, that's out of more than 6000 employees.

MALONEY:
Okay.

DILLINGHAM:
But--but to my knowledge, they did not. And--and I would not have reason to think so. We do have--I'm sure as you have pointed out, we had two new ones. So, I--I can't speak for--for actions that occurred prior to them joining the Census Bureau.

MALONEY:
Well, let's move on to the nuts and bolts of the memo. It appears that the president is asking the Commerce Department for information that would allow him to exclude undocumented immigrants from the apportionment base. As we all know, the Census Bureau will not be asking people about the citizenship status on the 2020 census. The Trump administration tried that. The Supreme Court struck down.

So, my question is, Director Dillingham, how will the Census Bureau and Department of Commerce be determining the number of undocumented immigrants in each state?

DILLINGHAM:
Madam Chairwoman, I can tell you that, as you referred to, the presidential memorandum has some specific that it. And prior to that, we did have an executive order last year that also directed us to look at our administrative data.

The Census Bureau has a long history of collecting administrative data that is very valuable and very many different ways. So, this particular presidential memorandum, and it resulted in the secretary of commerce giving us the directive and guidance proceed with the requirements of the presidential memorandum. And it calls upon us to look at our administrative data and any data that we have in trying to determine the number, which is a statistic on undocumented persons in the country, and for the use of applying it to the apportionment count.

So, what we're doing, we have experts at the Census Bureau that are now beginning the process of looking at methodologies. And we have collected data from many agencies, federal agencies--many of the memoranda were already in existence, but some additional federal agencies to see what we can gain from that administrative data and what the methodology might be in developing a count of undocumented persons.

And it's--that process is just beginning. The presidential memorandum just came out last week.

MALONEY:
Well, Dr. Dillingham, your testimony says the bureau, and I quote, "has begun to examine and report on methodologies" to let the president exclude undocumented immigrants. So, my question is what steps has the bureau taken--

MALONEY:
And will you share in the reports with this Oversight Committee that has jurisdiction for the census in its operations?

DILLINGHAM:
Madam Chairman, as you are aware, we are very transparent organization, and maybe the precision of that statement was maybe a little bit misleading at this time. We have convened a group. The group was selected by our career deputy at the Census Bureau, and they have been tasked with this. There have been no reports, there are no draft reports, but they have previous experience in this area, so they are generally aware of methodologies that have been considered to be applied to administrative data and so for them this is a new tasking to look at, but they are just beginning their work.

MALONEY:
Okay, thank you. And I think it's obvious that the President is going to try to use some external information that does not come from the census count to exclude undocumented immigrants so my question Dr.--Director Dillingham cam is, isn't it true that the Bureau cannot provide the President with actual responses from every person in the U.S. confirming their immigration status?

DILLINGHAM:
Well, we are to look at the administrative data that we have, which we have been collecting, and to determine to what extent it might identify and how it would identify and how the data is to be matched, etc.

We have just--we have just recently there is still some data that hasn't been finalized, but we have received most of the data from the other federal agencies, and we are receiving data as well pursuant to the executive order last year from some state agencies so that process is again it is underway. There have been no reports that there have been no analysis that I have seen, and they are moving rapidly as possible to look at the data, look at the methodologies, and really to find options to see how that would be done.

MALONEY:
Thank you and Dr. Dillingham if the Census Bureau and the Commerce Department are going to be relying on external data that they have cobbled together to estimate the number of undocumented immigrants then I believe that they clearly will be violating the Constitution which requires and I quote actual enumeration" so I am concerned about that, and you testified in February before this committee, and I quote we must work together to foster public trust, and I agree, and it seems to me that following the words of the Constitution--

UNKNOWN:
Madam Chair?

MALONEY:

--federal law and 230 years of precedent are essential parts of that public trust, and we owe it to our children and to future generations to pass an objective nonpartisan and fair census, and I hope we can work together to reassure the public that the government will follow the Constitution and I yield to you for your comments and then to my distinguished Ranking Member for his questions.

DILLINGHAM:
Madam Chairwoman you are exactly right that everyone regardless of how they feel about the development of a new option with the apportionment data everyone is committed and the presidential memorandum provides that we will count everyone and so we will develop the number, the total count and we wanted as accurate and complete as possible. The issue, as you described as one, is there going to be a new tabulation for purposes of apportionment.

MALONEY:
I yield to my distinguished colleague.

COMER:
Thank you. Director Dillingham, thank you for being here today and let me begin by thanking you for being here. I think you arrive probably three hours ago. I apologize that you aren't on the first panel. It is unprecedented and somewhat disrespectful that they had of such an important government agency would be put on the second panel, but nevertheless you have a great attitude and appreciate you being here and look forward to some--some good questions.

Let me begin by saying the online response this year has been remarkable. Your enumerators are now in the field practicing social distancing and utilizing PPE. I think it is important to note that you're putting the care of your workers and the public at the forefront, and I am told the census is well-positioned to deliver a timely and accurate count.

Turning to the president's memorandum on apportionment from a fundamental fairness perspective, it's the right thing to do. We cannot allow individuals unlawfully present in the United States to dilute the votes of citizens and lawful immigrants who waited their turn to come to this country to engage in our democracy, and I am confident a majority of Americans share that opinion.

With respect to the consensus, it's more complex than a simple headcount. Let's touch on tourist visas, for example. If a tourist overstays they are visa, and they just don't leave are they considered a resident?

DILLINGHAM:
Well, we have a historically developed set of criteria for residency that we apply and as you have described if it's a simple tourist to is not usually residing where they are found in this country, no we would not--we would not want to count in the response from those individuals. It should be, and it is explained on the form their usual residences the keywording.

COMER:
So for purposes of apportionment if a person who stayed longer than 60 days over which I am under the impression that is the legal definition of a United States resident by the way the census rules are this person who overstayed their visa they--they are not lawfully present and therefore it is fair to say that they wouldn't deserve to have representation in Congress is that correct?

DILLINGHAM:

Well again, we apply the criteria of usual residency, and it will differ by times and circumstances, but that is the criteria we use for delivering a complete and accurate count.

COMER:
So what--back to the earlier question that Chairwoman Maloney ask what databases does the presidents memorandum propose we use to determine who will be included in the apportionment part? And who should not?

DILLINGHAM:
The presidential memorandum does not really specify, but in the executive order of last year is specified a number of agencies. I have the listing here, but we have some I think it is 16 or 17 agreements in place, some were already in place before that happened, but it is a wide variety of federal agencies, and in addition to that the executive order ask us to begin collecting state data where possible, and there are many uses of the data generally, but some of the data uses include matching to make sure you have the right individuals, so you were not double counting, duplicating, etc.

So we have some 16 or 17 agreements in place where the data has come to the Census Bureau or is in the process for a couple of them still coming, and then we have some state data that we have available, and so we will be looking at the data very, very carefully and the Census Bureau administrative data is not new, and some nations actually do their census based on administrative data and one of the things as well under the executive order is for us to be thinking about the next census and so there are a lot of people that actually disagree on this question that are very interested in the utility and as the chairwoman pointed out the accuracy of administrative data because it could have many benefits in the future as it does now.

COMER:
So you are confident that we can get an accurate count of legal citizens for the purpose of congressional apportionment?

DILLINGHAM:
I am confident that we are going to analyze the data that we have and look at the methodologies that might be employed for that purpose.

COMER:
Well, I am confident that you can get the accurate count, and I know a majority of Americans expect that because what America is seeing now, especially from my colleagues on the other side of the aisle is a Congress that continues to spend at an unprecedented rate deficit spending.

They are seeing mayors in certain cities of the United States turn a blind eye to vandalism and violence, and they expect to be represented fairly and accurately in the United States house of representatives, and this is very important, I don't think anyone here questions the importance of the census.

One thing that many of my colleagues on the other side of the aisle have tried to imply and imply falsely is that citizens would not be counted. The census is going to count everyone, correct?

DILLINGHAM:
That is correct.

COMER:
We are not leaving anyone out.

DILLINGHAM:
That is correct (INAUDIBLE)--

COMER:
But what the president--exactly--

DILLINGHAM:
Those two that you mentioned perhaps--

COMER:
Exactly. What the president's memorandum states and what the Census Bureau is going to implement is the fact that law-abiding citizens, legal citizens of the United States, should not be at a disadvantage with respect to congressional apportionment and I think that the memorandum is constitutional.

I think it's the right thing to do. If anyone out here questions how this is going to impact funding, it's not going to impact funding because we are counting everyone. The memorandum is solely clearly focused on congressional apportionment, and we are talking about as many as 24 seats in the U.S. House of Representatives.

It is a significant number of representatives in the United States House of Representatives, so I appreciate what you are doing. We feel at least in my district that this is the right thing to do. I think the majority of Americans feel it's the right thing to do, and we look forward to hearing further reports on the implementation. You are doing a great job getting people counted, and we look forward to the data that will be used to determine the correct apportionment as we move forward. Madam Chair, I yield back.

DILLINGHAM:
Ranking Member could I offer one point? The terminologies here very, but again the presidential memorandum in case I misspoke is focused on the undocumented who lack legal status differentiating on citizenship.

MALONEY:
Thank you very much. The gentleman yields back, and I recognize my colleague, who is chair of one of the subcommittees Jamie Raskin, and I want to thank him for his leadership on the senses. He has had several hearings in his subcommittee and field hearings on the importance of counting the hard to count and the importance of the census on local and state delivery of services, so I want to thank you for your leadership on the census. Thank you for joining us today.

RASKIN:
I would just return the compliment Madam Chair. You have really been an outspoken man just an unabashed champion of the census at every turn in this Congress and so thank you for your leadership, and I remember we have had several hearings on this sent one of them was in New York City before the nightmare of the COVID-19 crisis took over.

So Mr. Dillingham, Dr. Dillingham, welcome. A few simple questions. Is the word persons synonymous with the word citizen in the Constitution according to your interpretation?

DILLINGHAM:
Congressman I--I want to thank you and all you are doing for the 2020 census, and I understand you also wear a hat as a constitutional scholars so as I--as I explained to the chairwoman earlier that it was a very--

DILLINGHAM:
--(INAUDIBLE) display of democracy here today with the differing opinions both as to history and policy and legal analysis. And I understand that several lawsuits have been filed that will be looking at these definitions. So I have to back off from offering any legal analysis or opinion of myself because my job is to administer the 2020 census.

RASKIN:
Okay. Just my own little insight on it is that when the founders of the Constitution wanted to use the word citizen, they used the word citizen like in Article 3 Section 2 establishing diversity jurisdiction in federal courts were a citizen from one state could sue a citizen from another state.

But here in Article 1 Section 2, the founders said that the apportionment of representatives must be based on "The actual enumeration of the number of free persons." Of free persons. So I mean, can we agree that if the president's new interpretation is pasted onto the census this will be a radical departure from everything that we've done for more than two centuries?

DILLINGHAM:
This legal--presidential memorandum has--has nothing to do with our operation right now with the census. We're counting everyone. It has to do with a tabulation that has been requested on apportionment.

RASKIN:
Right. And--but for more than two centuries, that senses has counted all persons, right? And the administration's attempt to try to impose that citizenship question even was invalidated by a Supreme Court that Donald Trump helped to construct himself, but that Supreme Court said that this was a lawless effort by the administration, right? So--so, okay, so you--in other words, you're just going to remain agnostic on the constitutional question here, yeah.

DILLINGHAM:
I think I have a professional obligation. It's the prudent thing to do.

RASKIN:
Okay. Would you pronounce at least in this one has the text of the Constitution changed in the last two years?

DILLINGHAM:
Not that I'm aware of.

RASKIN:

Okay. And how long have you been with the census?

DILLINGHAM:
Just over a year and a half at this point.

RASKIN:
Okay, but it's your understanding that noncitizen have always been counted in the census according to the constitutional text?

DILLINGHAM:
It is my understanding that the presidential memorandum is requesting for a change in the tabulation and calculation for apportionment purposes.

RASKIN:
Okay. Let me switch over to talk about COVID-19. Are we taking care of our people sufficiently? Are we--are you training your census count takers in all of the proper COVID-19 precautions?

DILLINGHAM:
We are certainly trying to. I think we all are, but we're--we're very vigilant on that. We're continuing to do assessments each and every day seven days a week certainly with the data from the CDC from Health and Human Services, the state data, the local government data. We actually have a fusion center that is monitoring developments seven days a week.

We have purchased the Personal Protective Equipment. We have plans for obtaining more. We have a process by which everyone wears their mask. So yes, we are doing everything we very, very diligent and wanted to make sure that those practices are not only in the training, but we want to monitor. And so yes, I think we are doing an excellent job.

RASKIN:
Okay, I--the reason I ask is that I've heard from a field enumerator in training who has quit or is planning to quit because of COVID-19. And this person told my staff that, despite, you know, your--your formal expressed commitment to taking care of everybody, they are not getting any real training on how to minimize COVID exposure in their work. So they're given the Purell and a cloth mask, but no real instructions on how to conduct themselves to limit exposure. And so it would be great if you could get back to us.

DILLINGHAM:
Sure.

RASKIN:
Please do get back to us if you would with really what your plan is to fully educate the whole staff and to make sure that this is something we are on top of because enumerators can obviously become super spreaders if they are not following the right precautions.

DILLINGHAM:

Congressman, we certainly will and I will so that we do have challenges because a lot of our training is virtual training. But we are also improving that training and I will say when we're hiring, you know, 500,000, half-million employees, I can't say there's never slippage, but we are doing what we can and will continue to enhance if we identify any needs.

RASKIN:
Do you have a publication like COVID-19 rules for the road for specific instructions?

DILLINGHAM:
I don't have the training curriculum with me, but we can get you that.

RASKIN:
Okay, if you would share that with us--

DILLINGHAM:
--Certainly--

RASKIN:
--Just so we get that out there. Wants to make sure, one, that all of our enumerators are properly taken care of and two, the public knows that so that no one is afraid to interact with that.

DILLINGHAM:
Absolutely. And I might point out also as I mentioned in the opening statement that, you know, we're in the early stages of launching the enumeration now. So we're learning at this stage. And on August 11, we will be basically enumerating nationally. So we have a phase to this answer that we can learn and it is a very dynamic environment with the virus and so we're learning as we go and doing what we can to make sure everyone is protected.

RASKIN:
Well, I appreciate that and you can become a model to the rest of the government and the rest of the country. I yield back, Madam Chair.

MALONEY:
Thank you. The gentleman's time has expired. I now represent by video Congressman Gosar. Can you hear us, Congressman Gosar? You are now--

GOSAR:
--I can hear you. Can you hear me?

MALONEY:
--Okay. Yes we can. Thank you. You're now recognized.

GOSAR:

Thanks, Madam Chairwoman. Director Dillingham, we've heard of that fear mongering for months from my friends on the left and liberal media accomplices--accomplices of the allegations that--that responses to the 2020 decennial will fail behind previous decennial's. Could you elaborate despite the fear of being spread to those on the left by the current self-response rate is in fact on par or slightly ahead of previous decennial's at the same period of time?

DILLINGHAM:
Let--let me say that as we pointed out, the--the Internet option that we have documented this year, there was a lot of concerns last year and ensuring that all the protections were in place, the technologies were in place and we are very, to some extent a little bit surprised how people prefer the Internet option. And in this environment, it's by far the safest option and the most efficient option.

So 80 percent of our self-responses are coming in via the Internet. We still have the telephone option and--and at different times and right now, for various reasons, that's picking up a little.

But frequently, people will use the telephone option to just ask questions about how they can do the Internet option. So we have that. And of course, they can do the traditional paper option. So having those three options for self-response as well as expanding our mailings, our extensive outreach activities are making a difference. And so we're very pleased to be where we are.

GOSAR:
Can you hear me?

RASKIN:
Yes.

GOSAR:
Can you hear me?

RASKIN:
Yes, we've got you. Yes, you can proceed.

GOSAR:
Can you hear me?

RASKIN:
Yes.

GOSAR:
Oh, okay. I'm sorry. Now, we've heard for months from my liberal--liberal friends on the left that the integrity of the Bureau's network and backup system were inadequate to handle the online response.

Did they--they drum up this fear, but before they even send the census started, kind of like what we've been seeing today. Has the bureaus system ever crashed, as predicted by our liberal friends?

DILLINGHAM:
No, it has not. It has been tremendously successful. And as I said, we have not had a--

RASKIN:
--Mr. Gosar, I think you need to mute one of your devices. I think you're getting feedback. I think you might have this on two different devices. There we go.

DILLINGHAM:
We--we have had tremendous success with the three options and the favored option for self-response is the Internet.

GOSAR:
Director Dillingham, the majority likes to say that this administration does not want to count everyone and does not want to reach hard to count communities. As anyone in the Trump administration, including Secretary Ross, ever suggested you do less than your highest level of effort to count everyone, including reaching the origin to counter communities?

DILLINGHAM:
The--the latter part of that question is absolutely accurate. We're devoting tremendous effort all throughout the Census Bureau with seasoned professionals to make sure that we reach everyone and particularly the courage to count areas.

RASKIN:
Mr. Gosar, have we lost you? Mr. Gosar? Okay, why don't we proceed at this point then with Ms. Tlaib, and we--we'll come back to Mr. Gosar when we get him back up. Ms. Tlaib, you're recognized now for five minutes.

TLAIB:
Thank you, Chairman. Dr. Dillingham--

DILLINGHAM:
--Yes--

TLAIB:
--During our oversight hearing when you last testified on February 12th, I--I asked you about the administration's failure to include a racial or ethnic category for individuals who identify under MENA, which is the Middle Eastern or North African category. Following that meeting, I sent you a letter along with our Oversight Chairwoman Maloney, inquiring why this decision was made. And I have to say, I was pretty, you know, underwhelmed with the explanation.

Since then, I worked with Committee on Appropriations to ensure that this issue is a priority in the 2030 Census. And currently the Subcommittee on Commerce, Justice, and Science, their report does say and I quote, "The committee directs the Census Bureau to conduct a feasibility study on including a race category for individuals identified as MENA, which was not ultimately included in the 2020 Census questionnaire."

So Dr. Dillingham, will you commit on record to do as the committee directs, and conduct this study to include race category for individuals who identify as MENA?

DILLINGHAM:
No, Congresswoman, I--I do remember your request. My understanding was we did at least partially reply, and there may have been some other information that it may be in process--

TLAIB:
--The last time I--no, I'm asking you, we put this in the committee--

DILLINGHAM:
--I--so, yes, with regard--with regard to Congress, and I--I think you had indicated it was appropriators, asking us--we are certainly very interested in looking at that topic, and we're very much beginning the process of looking at the 2030--

TLAIB:
--Yeah, but the--yeah. Okay. Yeah. So, I just want you to know, Dr.--

DILLINGHAM:
--Yes.

TLAIB:
No, I hear you, because the '20--so the previous administration already decided to do it, you all just ignored it. So we're just--are we--so just to be clear, like, right now we are saying the committee also expects the questions, the--the MENA category to be on the 2030, will you support--support any committee that directs them--?

DILLINGHAM:
--I--I will support the research--yes, I will support the research into your issue. And--and I do think that one of the improvements that was done is in fact the write-in. But I understand that you wanted more than that, and we will look into it, yes, ma'am.

TLAIB:
Also, will you commit on record to do as the committee directs and conduct this study to include--I'm sorry, the committee report also put in there that the committee also expects that the questions on sexual orientation and gender identity will also be examined for possible inclusion in the 2030 Census. Will you commit on record to do as the committee directs and examine for the possible inclusion question on sexual orientation and gender identity?

DILLINGHAM:
Madam--Congresswoman, we--we--we will look at that. That--that has been a topic that has, you know, been examined and continues to be examined, and we do have questions in some of our surveys that, in fact, get to the heart of those questions. I think that there is a need to make sure that questions of that type would work with the Census, but we will certainly study that.

TLAIB:
I appreciate that.

DILLINGHAM:
Thank you.

TLAIB:
Thank you, and I kind of want to switch--switch subjects now. On April 13th, 2020, Secretary Ross personally called leaders in Congress to tell them the administration needed additional time to deliver redistricting data because of delays due to the coronavirus pandemic. In order to honor that request, on March 7, 2020, members of the Oversight Committee introduced the Fair and Accurate Census Act, which modifies the 2020 delivery deadlines (INAUDIBLE) the administration had requested well into 2021.

And also the Census official leading few operations that in many, quote, "We have passed the point where we could even meet the current legislative requirement of December 31st; we can't do that anymore." Dr. Dillingham, briefly, do you agree with the assessments my--that has been put forth by your colleague, Mr. Olson? Why and why not?

DILLINGHAM:
Congresswoman, if you could repeat the latter part of your question. But--but---

TLAIB:
--So--yeah, Tim Olson said we have passed the point where we could even meet the current legislative requirement of December 31st; we can't do that anymore." Do you agree with Mr. Olson?

DILLINGHAM:
Congresswoman, I can assure you that we do--are doing continuous assessments, and there had been--

TLAIB:
--So you don't agree with them?

DILLINGHAM:
I can't--I can't agree with--we've got many more assessments ahead of us, here. And we're proceeding with--

TLAIB:
--Okay, well--

DILLINGHAM:
--As soon as possible to conduct a Census.

TLAIB:
You know, he--he runs the field operations, Mr. Dillingham.

DILLINGHAM:
He does.

TLAIB:
Yeah, he's telling you, this--this is bad. Like we're not being able to meet the deadlines. This is--I don't know, it's common knowledge. I mean, if they're the ones on the ground with the direct contact with the people and our residents, I think you should listen to him.

DILLINGHAM:
Congresswoman, I--I also--I always listen to him, and he is a very important and knowledgeable member of the team--

TLAIB:
--But you're just okay--yeah. Well, despite the operational delays, the White House is now stating that corona relief funds will allow the Trump administration to rush a reapportionment count before December, before President Trump could leave the White House. So it now appears that the administration is trying to finish before December 31st.

You know what this is really about, and I got to tell you, I just need to you to choose your country, first, and making sure that--because for me, it's not about reapportionment, it's also about class sizes, healthcare, services for our residents. And I don't--you know, the constant politicizing of our Census has been disgusting and really undeserving. Our residents don't deserve this right now--

PALMER:
--Madam Chairman--

TLAIB:
--They want to be counted. They want to be able to afford--

PALMER:
--Madam Chairman. She--she's over time--

TLAIB:
--And you have people on the field telling you--

PALMER:
--Madam Chairman--

TLAIB:
--Yeah, well, I yield. Thank you very much.

PALMER:
Madam Chairman.

SARBANES:
This is Congressman Sarbanes, I think I've taken over the chairing of the committee, if I'm mistaken--

PALMER:
--Who--

SARBANES:
--And would yield to Mr. Palmer, next, for his questions--

PALMER:
--Okay, thank you. Just wanted to make sure--she was over time. Thank you.

SARBANES:
Mr. Palmer, you're recognized.

PALMER:
I thank the Chairman. Director Dillingham, for the record--and you can speak slowly so that all my colleagues understand it, but does the Census intend to count everyone?

DILLINGHAM:
Congressman, it certainly does.

PALMER:
Okay. So for the record, we're counting everyone.

DILLINGHAM:
We're counting everyone who lives in this country, and it's their usual residence, that is correct.

PALMER:
Thank--I thank the gentleman, and I think that's the proper approach for the Census Bureau, and I don't think we should make it about anything else, but counting people who are in the country.

Now, let me ask you this. We've got the issue of undocumented people living here, and as I've raised this point earlier in the first panel, a substantial number of those are transitory individuals, who--about 18 to 20 percent of whom will not be here for the next Census. So one of the issues that I--I wanted to ask you about, is how does the Census Bureau count undocumented immigrants or people who live in--in that transitory situation, where they're--they're only here for a few years and then they're gone? Do you--

DILLINGHAM:
--Well--

PALMER:

--Do you deal with that at all?

DILLINGHAM:
Congressman, we--we--if--if someone's living here for a years, in all likelihood they're going to be counted if they're usually residing here. Now, that doesn't mean they have legal status. So, one of the reasons we're going--the President, I assume, who directed us to look at the administrative data, are for issues similar to that. What--what is the status of some of the people who are usually residing in the country, and is it an undocumented status, or is it an illegal status? And that's one of the things for the Presidential memorandum.

PALMER:
So, let me be clear. So, when there's someone here who's only going to be here, say, another year or two, they'll be counted in this Census? Even though--because you don't know when they're leaving, that's---they'll be counted?

DILLINGHAM:
That's correct.

PALMER:
Now, this--I want to ask another question, and I'll come back to that, but do you include short-term visitors. I mean, people here are on student visas, who might be here for a year getting a master's or two years getting a PhD, or maybe in four years for an undergraduate degree. Do those--are those people counted in--

DILLINGHAM:
Congressman, usually a year makes a big difference. So, it--it--if they're usually residing here, and of April 1st they're residing here and they're usual residence, we do count them.

PALMER:
Okay. Well that raises--and I think reinforces the point that I--I tried to make earlier about, we should count everybody, but we shouldn't count everybody for apportionment, because you just testified that you count people who are here on student visas for--for the census.

But I don't think--well, I won't say that I don't think anybody would reasonably argue that those people should be counted for apportionment because I think there are a number of people in the--that are here now would say they should be.

But I think that raises this very serious issue for counting people who are--you won't even be here maybe for the next election, but they'd be accounted for apportionment. And it would have a profound impact on representation in Congress for a number of states that--and I--I raised this point as well in the previous panel about states that are--declare themselves sanctuaries. There--there are 20 metro areas, 60 percent of--of the unauthorized immigrants live in--in 60 cities--I mean in 20 metro areas that--that have declared themselves sanctuaries, which creates this--I think an incredible incentive for people to come there because they're going to be protected from--from federal law enforcement, even those who committed felonies.

I mean, this doesn't make any sense to me, but I do appreciate the fact, for the record, that you're counting everybody. I just think that--that--that I--I feel like, and I think a lot of my colleagues agree, that we shouldn't be counting people who are here temporarily or unlawfully for apportionment purposes. I thank the gentleman and I yield back.

DILLINGHAM:
Thank you.

MALONEY:
Thank the--the gentleman yields back. The chair now recognizes Debbie Wasserman Schultz from remote. Congresswoman Schultz?

WASSERMAN SCHULTZ:
Thank you, Madam Chair.

MALONEY:
Okay, great.

WASSERMAN SCHULTZ:
Director Dillingham, just a couple of weeks after the Supreme Court struck down the citizenship question, the administration issued an executive order that instructed the Commerce Department to obtain an estimate of the number of citizens and noncitizens by other means.

And Attorney General Barr was very clear about the purpose of doing that. He said, and I quote, "There is a current dispute over whether illegal aliens can be included for apportionment purposes. Depending on the resolution of the dispute, this data may possibly prove relevant."

You appeared before and oversight subcommittee just a few days later and were asked directly by Representative Pressley if you could confirm the citizenship data collected on--under the president's 2019 executive order would not be used in apportionment accounts, and you responded, "The--we produce--I--and appointment accounts. Let me get back to you on that--

DILLINGHAM:
--Yes, ma'am--

WASSERMAN SCHULTZ:
--Unquote.

DILLINGHAM:
Yeah.

WASSERMAN SCHULTZ:
When you testified in July 24th, 2019, where you already aware of the president's plans to exclude undocumented immigrants from the apportionment counts?

DILLINGHAM:
No, Congresswoman, I was not.

WASSERMAN SCHULTZ:
When did you first become aware that the president, the commerce secretary, or anyone else in the administration was planning to exclude undocumented immigrants from the apportionment counts?

DILLINGHAM:
Well, I was only formally aware upon issuance of the presidential memorandum, but there was--

WASSERMAN SCHULTZ:
--I know. When did you first become--

DILLINGHAM:
--I wasn't--there was a press story a couple of days earlier.

WASSERMAN SCHULTZ:
Reclaiming my time, reclaiming my time, when did you first become--not formally, but when did you first become aware that the president, the commerce secretary, or anyone else in the administration was planning to exclude undocumented immigrants from the apportionment counts?

DILLINGHAM:
I--I heard--there was a story in the local press here in the DC area, perhaps a Capitol Hill newspaper, or as I recall someone reported a story that such a directive may be coming down. And it was on a--as I recall, it seem like it was a--late on a Friday and I was waiting to--to learn more, and then a few days later the directive was issued.

WASSERMAN SCHULTZ:
You're the director of the census. You learned about the president's intent to issue an executive order from the--to exclude undocumented immigrants from apportionment counts in a newspaper article?

DILLINGHAM:
Actually, when I saw that--the formal--

WASSERMAN SCHULTZ:
(INAUDIBLE)

DILLINGHAM:
--The formal decision when it was posted on--on the Web.

WASSERMAN SCHULTZ:
So, no one gave you a heads up? You had no discussions prior to formal notification or seeing a newspaper article? You had no discussions with anyone at all prior to either seeing a newspaper story or a formal--a formal production of the executive order?

DILLINGHAM:
That is absolutely correct.

WASSERMAN SCHULTZ:
And you're under oath. You're under oath. So, you have no--

DILLINGHAM:
--Absolutely. The--absolutely, and I will swear to it all day long under oath.

WASSERMAN SCHULTZ:
Okay, just making sure that we're clear.

DILLINGHAM:
You have to--

WASSERMAN SCHULTZ:
--That is unbelievable to me, that you're the director of the census and you didn't hear anything about this before the formal execution of the EO or a newspaper article.

DILLINGHAM:
That is correct.

WASSERMAN SCHULTZ:
And--and that's because the decision to exclude undocumented immigrants from apportionment counts is clearly unconstitutional. As a federal officer, I'm--I'm sure you to an oath. You certainly took one here today, but you took an oath to uphold and defend the Constitution.

Do you not have the obligation as the census director to know how the data your agency collects will be used? And how do you reconcile that this memorandum--let me finish my question, please. How do you reconcile the recent memorandum with the oath that you swore to uphold?

DILLINGHAM:
Congresswoman, let me explain that the Census Bureau produces statistics and data. We have no control over its uses.

WASSERMAN SCHULTZ:
It certainly is your responsibility to know that the data that you collect is used according to the Constitution, isn't it?

DILLINGHAM:
I--I--I an aware of the provision for apportionment in the Constitution, yes. Yes, Congresswoman.

WASSERMAN SCHULTZ:
And--and your obligation under your oath is to make sure that you are--the data that you are collecting is--is--that you're aware of how it will be used. How do you reconcile the recent memorandum with the oath you swore to uphold, or are you just a data receptacle?

DILLINGHAM:
Congresswoman, like any federal statistical agency, we produce the best, most comprehensive, complete and accurate data possibly--possible. And we have received this request in a presidential memorandum to look at our data.

WASSERMAN SCHULTZ:
Right. I understand that. Reclaiming my time, I understand that you have received that request.

DILLINGHAM:
Yes.

WASSERMAN SCHULTZ:
You're responsible for the decennial census--

DILLINGHAM:
--That is correct--

WASSERMAN SCHULTZ:
--And the use of the data according to the Constitution. This Executive Order is not compliant with that. And I think anyone looking at the pattern of the administration's actions can see that this memorandum is an attempt to do an end run around the ruling of the Supreme Court and the requirements of the Constitution. And I only hope that someone leading the Census Bureau, and if not you, then someone else, will stand up and follow the law, not follow a lawless president. Thank you. I yield back the balance of my time.

DILLINGHAM:
Thank you, Congresswoman.

MALONEY:
The gentlelady yields back. Next is (INAUDIBLE) Grothman.

GROTHMAN:
Thank you; always enjoyable. I'm going to follow up on what the--some of the questions the gentleman from Alabama asked. If I'm in the military and I am from Wisconsin and I am stationed a variety of places over a period of years, never in this country, stationed in Germany, stationed in Korea, but I just decide to keep Wisconsin is my permanent address, I may pay taxes in Wisconsin, I may vote in Wisconsin even though I'm not there, where should they count that person for the purpose of the census? Or, since they're never sleeping in the United States, should they not count them at all?

DILLINGHAM:
We have special provisions for counting the military. And there--there's special criteria that certainly our--our leadership has been implementing for a period of years that--how they count people from either place of deployment or their legal residence. We can get back to you with the exact criteria--

GROTHMAN:
--Is that statute--

DILLINGHAM:
--But we do count the military.

GROTHMAN:
Is that statutory, or is that just a rule?

DILLINGHAM:
I will--I will get back to you if there's a statutory basis for it. But it is one of--it is our criteria.

GROTHMAN:
It's kind of relevant as to whether it's statutory or a rule, isn't it--

DILLINGHAM:
--It is. I mean--

GROTHMAN:
--Very, very relevant--

DILLINGHAM:
--We have a practice, accepted practice.

GROTHMAN:
Yeah, I--I'd like to know that.

DILLINGHAM:
Okay

GROTHMAN:
Second question is for students are concerned, if somebody lives in Wisconsin but goes to school in Ohio, you know, returns over summer break, returns over--you know, probably given how much people go to school nowadays, it might be at the time spent at both places. And that person therefore, I think, probably should file taxes in Wisconsin and vote in Wisconsin. But you're saying that person should be considered a resident of Ohio?

DILLINGHAM:
Well, we--the enumeration criteria does not match the tax requirements. In what we do with college students is where they usually reside, and we look at April 1st. so, basically to simplify, we generally count particularly full-time college students where they're residing. And if they're on a college campus outside of their state, that is where we count them so that at--at University of Wisconsin you'll have a lot of students from Ohio that would be counted there. It's really to capture the count for that locality.

GROTHMAN:
Okay. I--I'd say it's about 50/50. And let's say they're on--on spring break on April first. That doesn't matter though if they're home with their parents for a week on April first.

DILLINGHAM:
The April first is--is particularly with the pandemic is not quite as determinative as to where--what their usual residence is--

GROTHMAN:
--Okay so you're saying--

DILLINGHAM:
--Yep--

GROTHMAN:
--Okay. Interesting. And with regard to diplomats if somebody is from France, has been living in an apartment in--in Virginia for six months. You count that person for the census--or for six years even. You count that person as a--a Virginia resident for purposes of the census.

DILLINGHAM:
It--it--it's based on their usual residence. I think there are some exceptions for consulates and--and--and embassies that people are actually living in an embassy. But we--we do count pe--again, people where they usually reside.

GROTHMAN:
Okay. So if a--a student comes here from France and is here for three months and then leaves for three months and comes here for three months where--where are they counted?

DILLINGHAM:
Well the--that might be a tough question as to where they usually reside. But I will--

GROTHMAN:
--Usually reside means where they physically are.

DILLINGHAM:
Where they usually physically are--

GROTHMAN:
--Well I--I talked to people a while ago on the last panel. I think I have this right. And I gave an example in which some woman from Iowa--an Iowa resident all the way, car registered in Iowa, votes in Iowa, pays tax in Iowa. They come to Wisconsin because mom is in home hospice and they want to take care of their mom at the end of their life. They're--intend to return to Iowa. At what point for the purpose of the census is that person gonna be counted in Wisconsin instead of Iowa.

DILLINGHAM:
Well it's probably going to be where they claim that they usually reside--

GROTHMAN:
--We don't even know yet. Alright. They're just kinda hanging--they don't know yet. They're hanging out in Wisconsin with mom. Two months in, four months--

DILLINGHAM:
--No--

GROTHMAN:
--When they're there for six months will (INAUDIBLE)--

DILLINGHAM:
--Yeah, if--if it's hard for--to determine--you--

GROTHMAN:
--It's not hard for--it's not hard for the--the Wisconsin Department of Revenue to determine. It's not--it's not difficult for people who vote to determine where they should be. Just a minute we're wait here for a second.

MALONEY:
Can someone mute their--there's a distrup--disruption. Is--can someone mute their--their--their devices please? Please mute your devices. Please mute your devices please. Okay. I'm sorry. I--

GROTHMAN:
--Well you--your--

MALONEY:
--You'll get extra time, Mr. Grothman. I'm sorry.

GROTHMAN:
You did a good job there. You have a career in law enforcement waiting for you if you ever move on from here.

Yeah--yeah--in that situation at what point does that person say I'm counted in Iowa instead of Wisconsin or Wisconsin instead of Iowa--

DILLINGHAM:
--It will be an individual factual circumstance. I--I might add generally that might help with this is that when people--particularly students--move for example to Madison, Wisconsin--they're from out of--Madison, Wisconsin when they're from out of state, generally there's sort of tradeoffs.

So if they come from another state that they're not counted where they're perhaps paying taxes, or their parents live they would be count--and vice versa.

So that's sort of the reasons I think behind the criteria--

GROTHMAN:
--Okay. I'll give you a final question because people are asking about this--this race stuff. Obviously--you know--with intermarriage--so many people in this country are interracial. Who determines what so called race you are?

DILLINGHAM:
The respondent determines and can write in--

GROTHMAN:
--Whether you're one-eighth something, whether you're--

DILLINGHAM:
--The respondent determines--

GROTHMAN:
--It has nothing to do--it's entirely subjective. Unlike where I live.

DILLINGHAM:
That is correct.

GROTHMAN:
I can be one--one-sixteenth Mexican. I'm Mexican. I'm Mexican.

DILLINGHAM:
That--that is correct.

GROTHMAN:
Okay. Thanks.

MALONEY:
I--I want to thank the gentleman for his line of questions. It was interesting. I'd like to add to it Americans living abroad who were assigned to--or American citizens, but they are working abroad or maybe just vacationing abroad for several years. Where--where are they counted?

DILLINGHAM:
Actually they are not counted. If they are not u--if they are not usually residing in the U.S.. And one of the reason--there's been much research and there's been prior case law on that as I understand it.

But at the same time we have people from those countries that may be living here with the same circumstance. So, we only count those residing in the country. And if they're--if they're abroad for years of study or--or--or whatever purpose that--we don't count them.

MALONEY:
Thank you. Congressman Sarbanes is recognized.

SARBANES:
Thank you. Thank you Madam Chair. Thank you Dr. Dillingham. I wanted to talk to you about the timelines that you're working under. Could you review for me the--am I understanding it correctly that the field operation that was originally scheduled to finish I guess maybe the end of July was pushed to October as a result of these dynamics that you're--you've referred to.

DILLINGHAM:
Congressman we did have a shift in schedule because of the pandemic. So in--in late March we had to really call--call a halt to our operations that required human interactions for reasons of safety just like the rest of the country. The governments and the businesses, we basically had to suspend our operations.

And at a point in time we--we had to start to begin our assessment process. Well when do we think with the current knowledge we can restart and in--and complete the process. And as you are well aware nationally and certainly with the President's task force they begin to lay out criteria and guidance for what we call reopening and resuming our operations.

And we're really in the forefront of the federal agencies in getting back to business and opening our 248 offices all across the nation. But we have to do it safely and we have to do it--and also we will have to enumerate safely--

SARBANES:
--And was there--and was there a--also request by the administration? I think it came to Congress to push back by two or three months the tabulations related to the apportionment and--and that process from what it would normally be.

DILLINGHAM:
Congressman, those--there--my understanding is there were discussions but that wasn't at my level. And so that is my understanding that there have been some discussions and consideration of that. And it's been also reported in the news. But that's--that's not something I personally participate in--

SARBANES:
--It's also true--and then is it also true that very recently the administration appears to have reversed direction on that and is now suggesting that they want the census to be wrapped up quickly so that that tabulation that I just referred to could actually happen before the end of the year. Are you aware of that?

DILLINGHAM:
I'm not aware of--of all--all the many reasons except to say that the Census Bureau and others really want us to proceed as rapidly as possible and to get this--get a complete and accurate count as soon as possible.

SARBANES:
Mm-hm. Do you worry about the--the census being compromised if there's pressure to finish it too quickly? And what would that date be in your mind?

DILLINGHAM:
I--I don't have a date in--

SARBANES:
--What do you need? How much time do you need to give us the assurance that the census can be conducted in a way that yields a robust result?

DILLINGHAM:
Well-well congressman we certainly want a complete and accurate census. So that will be certainly a consideration as to when we consider the job as done.

SARBANES:
Mm-hm. Well--look--I mean--I think--my--my anxiety here is that the--the--the administration originally seemed to be reasonably accommodating the pressure of the pandemic on your efforts by requesting some extension of time with respect to how the--the results are tabulated for certain purposes.

That was in line with your own judgment that you needed to push the field operations back by two or three months. So that was consistent. But now we're--

SARBANES:
--hearing that they're looking for money to push the process forward, in what I'm concerned would be a very premature way and would actually undercut your ability to get this done properly. So you're sort of being whipsawed right now between these two different impulses. And I'm alarmed at that, and I think it could undermine the senses. So we're going to keep a very close eye on this and try to protect the independence of this process from the--the sort of politics that--that are leaning in on you right now.

And with that, I'll yield back.

MALONEY:
I want to thank the gentleman for raising that important point. The census professionals have told me that they need at least ten weeks to do a professional count, and they are starting on August 11th. And there's been some rumors of trying to complete it by December 31st.

The professionals that I've talked to in the Census Bureau say that that's impossible, that they need to have the full ten weeks to get the--they expect to knock on the doors at least six times to get an accurate count. And--and we are supporting, really Secretary Ross's suggestion and request to--to extend the time for the census. So there are others that say that for political reasons, the president wants to have this earlier so that he can make

determinations about what information is sent to the states. And I--I think that's clearly unconstitutional and wrong.

I want to thank you, Mr. Sarbanes, for helping me out earlier and--and becoming the chair. Thank you for your--for your work and for your questions.

I now recognize Congressman Higgins.

HIGGINS:
Thank you, Madam Chairwoman.

Dr. Dillingham, are you present today voluntarily or by subpoena, good sir?

DILLINGHAM:
I'm sorry. I'm going to have to ask you to repeat that question.

MALONEY:
He--he asked if you were here voluntarily or by subpoena.

DILLINGHAM:
No, I'm here voluntarily.

HIGGINS:
I--I can repeat my questions, Madam Chair. Thank you.

MALONEY:
Okay.

HIGGINS:
Are you here voluntarily or by subpoena, good sir?

DILLINGHAM:
I'm here voluntarily. Voluntarily, that--that is correct.

HIGGINS:
Yeah, I think it's important that America recognizes that you're voluntarily appearing at a hearing that's titled Counting Every Person Safeguarding the 2020 Census Against the Trump Administration's Unconstitutional Attacks. Are you--are you a gentleman of--of integrity and good faith, sir?

DILLINGHAM:
Certainly, I--I strive to be. I think I am. I 've--I've had the distinction of being confirmed by the U.S. Senate unanimously on two occasions, the first time in 1990 by the committee that was chaired by then-Senator Biden, and then most recently by Senator Ron Johnson. I have served six administrations, so I have

considerable experience. And I think they determined that I met the qualifications by statute as well as their criteria for being unbiased, objective, and professional.

HIGGINS:
Yeah. Thank you for you--for your service and that clarification. You're a gentleman of distinguished accomplishment, and we very much appreciate your participation in the effort to secure an accurate and very thorough census.

You are this administration's director for the U.S. Census Bureau, U.S. Department of Commerce. Is that correct?

DILLINGHAM:
That is correct.

HIGGINS:
So you are--you are the--the--you're the main guy representing the--the quote-unquote, "Trump administration," as--as you set before, this panel--this--this committee today.

DILLINGHAM:
Congressman, I will say that my statute, my selection was to--to be nonpartisan. And the agency is nonpartisan and a pretty independent statistical agency.

HIGGINS:
As it should be.

DILLINGHAM:
Yes.

HIGGINS:
Which you represent that the administration's best efforts to secure an accurate census. Is that correct?

DILLINGHAM:
For an accurate census? Absolutely, Congressman.

HIGGINS:
And you intend to do just that, sir? You--you stated--you quoted that the--the president's directive, which stated in part to provide information permitting the president to the extent practicable to exercise the president's discretion to carry out the policy of the exclusion of illegal aliens from the apportionment base to the extent feasible and to the maximum extent of the president's discretion under the law.

And that's--that's a quote from the president's directive. You stated that--that this does not change the Census Bureau's plans for field data collection across the nation. Do you stand by that--that statement, sir?

DILLINGHAM:

Congressman, I do, that our operations will continue as planned. And in the--in context of this presidential memorandum, it--it does not impact. It really is a request for a special tabulation for apportionment purposes, which is apart from getting a complete and accurate count of people living in our nation.

HIGGINS:
Exactly, and I very much appreciate you appearing before the committee today and in service to our nation, doing your very best to lead a--a large team of dedicated Americans to determine a precise count for our--our census.

And your appearance before the committee today, despite the fact that--that was a premeditated effort to identify that President Trump's administration and the census efforts to--to be (INAUDIBLE) as unconstitutional. I applaud your courage for appearing today minus the subpoena.

My final question to you, sir. You stated in your written--in your written testimony that the Census Bureau is working to complete data collection as soon as possible and it strives to comply with the law and statutory deadlines. Does that--does that quantify your efforts, sir?

DILLINGHAM:
You--you are exactly right. That's what we're trying to do. And--and the final question was we--we are proceeding in that direction. If that answers your question, sir. I--I'm a little bit--I have a hearing problem. I--I did volunteer for a tour of service in Iraq and sometimes the acoustics here are--are challenging.

HIGGINS:
That makes two of us. That makes two of us.

Sir, thank you for appearing before today. Madam Chair. I yield.

MALONEY:
Thank you.

DILLINGHAM:
Thank you, Congressman.

MALONEY:
Thank you.

And we now recognize Congressman Welch.

WELCH:
Thank you very much, Madam Chair, for this hearing.

And Dr. Dillingham, thank you for appearing voluntarily.

A couple of things, one, just an observation. I know you can't speak about the administration position on many of these issues. You've got to just do the job as best you can. But I note the irony that the position of the administration essentially is that undocumented immigrants are not, quote, "persons." They're not persons.

And in that respect, that analysis shares--its shares the finding of the United States Supreme Court in Dred Scott, which was the most ignominious decision of the Supreme Court in our history, which said that African Americans were not persons. So I think that--I'm just saying that because I think you should understand--all should understand why we're appalled by that administration position.

What I'd like to ask you about specifically, Doctor, is the challenge of getting an accurate count in rural areas. And Vermont is quite rural. And our response rate is, I think 47th in person and 40th on the Internet. And we have challenges with access to broadband in many parts of our state.

And we also have migrant workers who are helping us in our agricultural sector. And I understand that your Census Bureau Center for Economic Studies predicted a 2.3 percent drop in self responses and an 8 percent drop in responses in households with non-citizens, including--that includes illegal--non-citizens.

My question to start is, have the census self-response rates lagged in rural areas? And what among--that's number one. And how are you going to address that?

DILLINGHAM:
Sure.

Congressman, we--we track the areas all across the country and we do it by census tracks. And--and anyone in the country can go to our website and they can see how their jurisdiction, their track, their community is doing with self-response rates. I don't have the--the figures here before me, but we--we are well aware that in some rural communities you have special challenges and we have very special procedures that we do.

I discussed earlier, it may be in my prepared statement, about our update leave. And--and we also have various ways that we're--increased mailings that we are doing in--in the--the low response areas. And we have a variety of things that we will be enlisting in the weeks ahead. And--and beginning August the 11th, we should be in all communities.

And I--I hope that we have already made progress in most of the rural communities. But we will do everything we can according to our--our--our best abilities and--and informed by the knowledge of the past and the previous decennial census and current data.

WELCH:
Well, just to interrupt you--

DILLINGHAM:
--Yes--

WELCH:
--What are some of the specific things? It's hard. I mean, it's hard to get access to people who are quite skeptical, even suspicious of government. And--

DILLINGHAM:
--Sure--

WELCH:
--Anyone coming from the Census Bureau is perceived by many to be a government person.

DILLINGHAM:
Sure.

WELCH:
So, what are the specific things you're doing, particularly among the immigrant community, to find them and--and--and count them?

DILLINGHAM:
Certainly. One of the--the--the most important thing, when we have our communications campaign and we have very targeted communications even on local radio and whatever communications those communities--that--that will resonate with them and they will get the information. In addition to that, we of course have a partnership specialist usually selected from those areas that have knowledge of those areas.

We're also, very importantly, using our partners. With 400,000 organizations, the largest ever, those organizations literally reach into every community in this country. Now, I will say that during the pandemic--

WELCH:
--I only have a few minutes. I only have a few--I only have a few seconds.

DILLINGHAM:
I'm sorry.

WELCH:
Just--if you're unsuccessful in getting a full count, how does that undercount adversely affect communities for states like Vermont?

DILLINGHAM:
Well, if you have an undercount--you know, the census data is--is some of the most used data, if not the most used data, at least indirectly, in the country. So, it's used for certainly the allocation of resources, federal, state, and local. It's used for planning. It's used for research. It's used for decision-making. So, there is a malt--and it's used in the private sector. So, it is very useful. And our theme that--in the message we send is help shape your future, answer the 2020 census. And so, we are trying to communicate--

WELCH:
--All right--

DILLINGHAM:
--That message, and our partnerships are doing a lot in that effort in that we will have, you know, a half million people for--where we haven't received the responses--

WELCH:
--Right--

DILLINGHAM:
--Knocking on the doors. But we have more than that in our partnerships.

WELCH:
Thank you.

DILLINGHAM:
Yes. Thank you.

WELCH:
And I yield back. Thank you, Madam Chair.

MALONEY:
We thank you. And we now recognize Congressman Roy, I believe by WebEx. Congressman Roy?

ROY:
Yes, ma'am. Thank you, Chairwoman, appreciate it. Dr. Dillingham, thank you for your stamina here. I think this hearing has been going for a little while. I was present for the first panel. Now I'm dialing in for the second one, but appreciate your presence in your service to our country.

I had a--just a couple of questions. You know, I asked some questions to some of your predecessors earlier. I just want to make sure I understand this correctly. With--am I right in my understanding that--and--and kind of leading off of Mr. Welch's questions, that when you don't actually come in contact with a person, you don't get a response, go to house, don't find it, that there are systems in place in the Census Bureau--for better or worse, right?

We can debate the efficacy--where you have imputation, essentially where you go through count imputation, whether that status count imputation for--you know, you--literally you can't find the address where the house, or occupancy imputation where you find the house but you can't find the person, or, you know, household size imputation where you don't have any people are there, and that it--that it is practice to impute the--the numbers or, you know, the--what you find at one house in a neighborhood to the house you don't mind, or to the individuals you don't find, and that there's a second category of characteristic imputation, where you're imputing the characteristics of people in the neighborhood.

Say there are five white folks in a house over here, we're going to--we're going to say that there are five white folks in this house by imputation. Am I roughly right--I mean, just a short yes or no and a brief explanation if you need it. Am I roughly right that that is something that you carry out and engage in for a not statistically insignificant number of the people you're "counting?"

DILLINGHAM:
Congressman, I would have to qualify my answer to that. We do use and imputation process when we've exhausted all efforts in counting the individuals at that residence, as--as you pointed out. So, there is a process. The numbers are low and we hope they remain extremely low. But there are times when we have reason to believe, evidence, that someone is living in that household but we are unable to communicate with them, that in fact we do have an imputation accepted method that has been accepted by the courts.

ROY:
Dr.--Dr.--yeah, I'm sorry to interrupt because we have limited time. I--I hate this. I'd rather have just a nice long conversation.

DILLINGHAM:
Sure.

ROY:
But do we have a rough estimate of how many that we're talking about here? Are we talking about hundreds of thousands? Are we talking about millions? And we're talking about counting the uncountable, right? That's a phrase I've heard used in the senses world, community, and so forth. What--what are we talking about here on the rough numbers?

DILLINGHAM:
Well, I--I can get you more precise numbers, but we're not talking millions. We--we are talking about those where we've exhausted our efforts and we have reason to believe people are living in that household. And then--and--and in those instances, there is an imputation option.

ROY:
Okay. I would appreciate a response to that about how many numbers, and broken down, to the extent possible--

DILLINGHAM:
--Sure--

ROY:
--Between count imputation and characteristic imputation and, you know, the various methods--

DILLINGHAM:
--Sure--

ROY:
--You all use to fill in those holes. Another question is--is in my--Dr. John Abboud is he--am I correct that that is the individual overseeing the special tabulation for redistricting?

DILLINGHAM:
I'm not sure if he has direct management of that, but he's over our research and methodology section that contributes to that process.

ROY:
Did Mr. Abboud testify against the efforts by the administration to count or to ask the question of citizenship on the census last year when it was in litigation?

DILLINGHAM:
I--I am aware that he was a witness in that case, yes.

ROY:
And he testified against inclusion of that question?

DILLINGHAM:
I--I--I have not reviewed his testimony, but I--I think it was considered by many to be that it raised questions.

ROY:
Okay. I just think it's--merits noting that if--if he's got an intimate involvement in how we're overseeing the tabulation for redistricting and he was testifying against inclusion of the question, which is an administrative decision, it I think it bears some questioning as to how this process is being carried out.

And I don't how much time I have left, probably not a lot. I'll go and end with that. I would appreciate your response to that question generally, and--and I--and I do appreciate your taking time and being here. Thank you.

DILLINGHAM:
Thank you, Congressman.

MALONEY:
Thank you. I now recognize the vice chair of the committee, Congressman Gomez, from--by remote.

GOMEZ:
Thank you, Madam Chair. Mr. Dillingham, thank you for being here with us.

DILLINGHAM:
Thank you.

GOMEZ:
There's a lot of uncertainty, but one thing is definitely clear. That is if the Census Bureau is not allowed to continue its count through October and--and has time to produce the data, and they--as you requested, there is going to be a significant undercount when it comes to the population of the United States. So, I'm going to ask you a series of questions that I--I need answers to.

Mr.--Dr. Dillingham, it is my understanding that OMB sent language to the appropriators requesting an additional $448 million in funding, but not writing your request to extend the statutory deadline for the data. Did you see the OMB language before was that?

DILLINGHAM:
No--no, I did not, but I am aware. We've put in a request for a--

GOMEZ:
--All right. Thank--

DILLINGHAM:
--A billion dollars, and I got approximately half of that in--in the Senate bill, I guess.

GOMEZ:
Okay, good to know. So, you didn't see it, so therefore you did not approve it, correct?

DILLINGHAM:
Let me--let me ask you one again. Will you describe what it is? I--I--I am aware that we were requesting additional funds as part of the appropriations process. It would--I wasn't involved--

GOMEZ:
--Correct, and then also--

DILLINGHAM:
--In the discussions, negotiations--

GOMEZ:
--Your request--hold on. Your request was also to extend the statutory deadlines for the data, and the Senate without including that language. So, you're saying that you never saw the language before it was sent, so I will take it as--

DILLINGHAM:
--I--I will--

GOMEZ:
--As the record--

DILLINGHAM:
--Let me--let me--let me--

GOMEZ:
--I have to go to the next question,

DILLINGHAM:
Sure.

GOMEZ:
Have you discussed with Leader McConnell--

DILLINGHAM:
--Let--let me correct--

GOMEZ:
--The need for extension?

DILLINGHAM:
Let me correct. There have been discussions about the schedule and our--and our ability to continually assess it. There have--so I'm aware of that topic.

GOMEZ:
Yeah, but you--you did not see the language before it was sent, as you stated. Have you discussed with Leader McConnell the need for the extension?

DILLINGHAM:
Have I--have I discussed with who? Excuse me?

GOMEZ:
Leader Mitch McConnell in the Senate, the need for--

DILLINGHAM:
--Oh, I--I have--

GOMEZ:
--The extension--

DILLINGHAM:
--I--I have not discussed with House or Senate leadership any specifics about that.

GOMEZ:
In this new plan is it the--the idea of career census officials that are pulling back the enumeration date like not granting the extension to do the numer--in person enumeration through October and to ask for--originally requested for a four month extension to get the data to Congress by April 2021. Is the new deadlines and new plans, is that the idea of career census officials?

DILLINGHAM:
I can certainly say that in discussions we have made assessments along the way and they have bus--discussed with--with the House and Senate staffs who--who we have briefed on a weekly basis. And I'm sure probably the--I am not privy to those discussions but I'm sure the topic of extension time and a shift in schedule were discussed.

GOMEZ:

Is the--the new schedule one prepared by career census officials?

DILLINGHAM:
I--I--I will say that we make assessments and--in certainly our career officials are in--involved in that with those recommendations. Ab--Absolutely. The--we--we listen to our career people as to where we--we have--their assessment as to where we are.

GOMEZ:
So are you still sticking to the--the Bureau's request for Congress to--for a four month extension to April 2021 out of the December 31st statutory deadline for delivering the President the populations total required to reapportion the House of Representatives?

DILLINGHAM:
Con--Congressman to be clear--someone asked me earlier am I aware that discussions ha--have been held between the administration and Congress--

GOMEZ:
--Okay. Let me--le me ask you again. Is (INAUDIBLE)--

DILLINGHAM:
--I am, but I'm not party to those--

GOMEZ:
--I yie--I--reclaim my time.

DILLINGHAM:
Yes, Congressman.

GOMEZ:
Do you support your original request--the Bureau's which you're in charge of--

DILLINGHAM:
--Yes, correct--

GOMEZ:
--Request to Congress to extend the delivery of the data to April 2021.

DILLINGHAM:
Congressman, all requests I--as my understanding go through the Office of Management and Budget--

GOMEZ:
--Okay. I'm--I'm asking you do you still stand by the original request--

DILLINGHAM:
--We--we do not directly--

GOMEZ:
--I yield ba--I reclaim my time. Do you re--do you still by--stand by that extension deadline request that you made--the Bureau made?

DILLINGHAM:
We have for planning purposes made assessments and continue to do so.

GOMEZ:
Yes, sir. The--I'm looking for yes or no. It seems like there's a--there's an obvious pattern that you are not in control of the Census Bureau and that the political appointees of this Administration are. You know your name will go down in history if this is the worst census ever conducted by the United States government.

You're not gonna run away and just bo--and say that this was only because of the Trump administration later on. You will be responsible. Your name will be associated with it. So we're gonna keep pushing until we have accountability and a complete and accurate count of every person in the United States. With that I yield back.

DILLINGHAM:
That is our mission, congressman. And let me say that I am not involved directly with the Hill negotiations on--on these--on revising the schedule.

MALONEY:
I thank the gentleman for his question and his passion. And now I recognize Congresswoman Miller.

MILLER:
(INAUDIBLE). And thank you Ranking Member Comer. And Dr. Dillingham I want to personally thank you for what you're undertaking to do that's a Herculean effort to complete the census this year in the midst of a pandemic. I wish you all the best of luck and Congress stands ready to support you any way we can. In any essential information or mandate once this is completed.

My district is a representation of how difficult the census can be to compete. Four of my 18 counties in my district have 100 percent of their population living in hard to count neighborhoods.

I spent last year making sure that I visited each one of these counties and I can tell you from firsthand experience how rural my community in West Virginia is. And this has only been exacerbated by the Coronavirus and the pandemic but actually in a way it helped us with this, because we were very slow to get the pandemic and we haven't had it to the proportion that has gone on in the country.

It's critical that we count each of our constituents and then once we have that count that we are apportioning Congressional seats to each of the states fairly. As an American citizen, the representation you have in the federal government should always be fair and accurate. Counting people living in the United States illegally in apportionment is an attack on our democratic institutions and seeks to take away the vote--the voice of the American people.

I strongly support President Trump's actions to protect the sanctity of our con--constitutionally mandated process for apportionment and protecting the voice and the representation of the American people in Congress. Is the first 2020 census counting of all the people in the United States regardless of legal residency status? Yes or no.

DILLINGHAM:
Congresswoman I--I don't want to get into the details of people that may be not establishing residency, maybe temporary. We--there was another discussion with a congressman. But your question I think goes to the heart also of the last question and comment.

We are absolutely dedicated to a complete and accurate count of the people residing in the United States. And I do think that we are poised--we were poised I think not not have one of the worst but in fact to have the very best census ever. And that remains our goal.

So we have not only embraced all sorts of innovations, all sorts of technologies, but our goal is to have the very best count possible, a complete and accurate count of everyone.

MILLER:
Thank you. Does the apportionment process play any role in how the census is conducted or is Congressional apportionment only tabulated once the census count has been concluded?

DILLINGHAM:
We do the complete census count of everyone and then we are looking particularly as pointed out at other data sources to determine whether we can identify a group that the President has recommended to subtract from the apportionment count. It's a tabulation. So we will have a complete and accurate count. But we also working to determine the data and methodologies that might supply that additional information.

Again, we're a statistical agency and a data producing agency. Not a policy agency.

MILLER:
And that is how you will be able to implement the apportionment memorandum, correct?

DILLINGHAM:
That is the way we are proceeding. You are correct, Congresswoman.

MILLER:
Alright. Thank you. I yield back my time.

MALONEY:
Congressman Lynch is recognized via remote. Congressman Lynch--

LYNCH:
--Thank you Madam Chair.

MALONEY:

Okay.

LYNCH:
Yeah, can you hear me? Can you hear me?

DILLINGHAM:
Yes I can--

MALONEY:
--Yes we can. Yes we can.

LYNCH:
Okay. Alright. Thank you. Dr. Dillingham back in June--so--so I represent along with Congresswoman Pressley I represent the Boston area--

DILLINGHAM:
--Sure.

LYNCH:
And we've got hundreds of thousands of students that normally attend school within my district and Ms. Pressley's district as well. And so Boston is traditionally one of the more difficult (INAUDIBLE) cities to count, I think partly because of the influx of students.

You sent a letter back in June to the college presidents asking them for their cooperation in--in tendering the roles--the--the role of students--the list of students that are--are attending and their addresses as of April of 2020. I--I just would like to get some--some update on--on how that's going.

I'm a bit concerned because we--we're experiencing right now an undercount in the process. I've been working with our fantastic Secretary of State Bill Galvin who--this is his third census. He's been around a while like me. He does a great job on this, but we got running behind our historic count levels compared to previous census operations.

And I'm just wondering how we are making out on the student assessment in terms of tracking them--you know--a lot of the students are learning remotely so they may not be in their intended location. Some of them their schools have closed down. They're--they're not even in the same city. How are we dealing with that?

DILLINGHAM:
Co--Congressman that's an excellent question. Let--let me say this. I--I thought I might have the facts and figures with me. I--I can't put my hands on them. But we are making progress. But as I said in my opening statement, we--we want to do that as accurately, as efficiently and as soon as possible.

So even though we're making progress, there's still some confusion among the colleges and universities because there are some special provisions for protecting student information.

So there is a--a grouping of--of--of colleges or some colleges. And I understand. I think you have the most colleges per geographical area in the country. And we want, we want to get that information, at least in roster

form, and it will save millions of dollars. We can get it accurately and efficiently, particularly the students that are living off campus.

The House passed a bill with a provision in it, and I'll bring that to your attention. But that's--that's--we're making progress. I--I seem--I seem to recall that maybe 60 percent of the colleges, but I--I--I will check the record on that. And we want all the colleges and we will.

And the concern is that perhaps that we wouldn't protect the information. We protect the data better than anyone in the country that I'm aware of. We understand colleges do a lot, but I think we protect it as well, if not better. And we have federal law on our side, and we have all the safeguards for that information. We want it, and we'd like to get it efficiently. We appreciate your interest and other members of Congress.

LYNCH:
Well, Dr. Dillingham, if I could just ask you, you know, we can't solve everything on--on this call.

DILLINGHAM:
Sure.

LYNCH:
But if I could get the commitment that my colleagues from the Boston--from the Massachusetts delegation that are interested in this and we've got a ton of--time of colleges and universities. Myself and Ms. Pressley and--and Secretary, (INAUDIBLE), if we could talk with you and your office--

DILLINGHAM:
Absolutely.

LYNCH:
--just to get an assessment on that, because time is short, as you know.

DILLINGHAM:
Absolutely.

LYNCH:
So that as possible?

DILLINGHAM:
You'll get get some assessment this week.

LYNCH:
Okay.

DILLINGHAM:
Yes, congressman.

LYNCH:
All right.

DILLINGHAM:
Thank you.

LYNCH:
All right. Thank you so much.

And I--I'll yield back the balance of my time. Thank you, Madam Chair.

MALONEY:
Thank you very much.

And I now recognize Congresswoman Porter.

PORTER:
Thank you very much.

Mr. Dillingham, is the Census Bureau using state administrative records to conduct the 2020 census operations?

DILLINGHAM:
We do use administrative data for some of our purposes of--of trying to discover whether there's duplication in the management of the census. I can't tell you exactly which data sets.

PORTER:
Super.

Is the Census Bureau using these records, or going to be using these records to determine the citizenship status of individuals?

DILLINGHAM:
We do have administrative records that will be used for us to looking at the numbers of--of citizens and non-citizens. That is correct.

PORTER:
Okay.

Under the Privacy Act, there should be a System of Records Notice. It's called an SORN, explaining what these administrative records will be used for. Have you published an SORN, a System of Record Notice?

DILLINGHAM:

It is my understanding we have--we have complied with all the regulatory needs, but I will double check. We can get back to you on specifics.

PORTER:
Okay.

So you don't--do you know if that SORN explains what the records will be used for as required by the Office of Management and Budget?

DILLINGHAM:
Are you talking about our administrative records?

PORTER:
Yes.

DILLINGHAM:
Are we--are we sharing that information with the Office of Management Budget?

PORTER:
Yes.

DILLINGHAM:
We--we actually have to have their permission to do that.

PORTER:
Great.

Does that--that statement that you gave to the Office of Management and Budget and that System of Records Notice, does it say anything? Does it disclose to the American public that you'll be using administrative records to determine if someone is a citizen?

DILLINGHAM:
Well, we--the--the executive order is quite transparent and--and points that out, and it's actually the agencies, too, that will be providing us data. So--

PORTER:
But respectfully, sir--respectively, sir, the--the--you have an obligation to comply with the Privacy Act and to file that System of Records Notice and to require the statement of purpose with the Office of Management and Budget. And so I am asking you, do those statements, which you are responsible for, advise the American public, as required in Congress, as required in OMB, as required, that the administrative records will be used to determine citizenship steps?

DILLINGHAM:
Congresswoman, I will double check on that, but I--it would certainly be my understanding.

PORTER:
Okay.

I actually have it in front of me. Madam Chairwoman, I ask to enter the System of Record Notice and the OMB Purpose Statement into the record.

MALONEY:
Without objection.

PORTER:
So, Mr. Dillingham, is no. These disclosures don't make any mention that you will be using administrative records for citizenship. And since you are going to be using these records for federal administrative records to help determine citizenship, you should have submitted a request to the Office of Management and Budget. You should have submitted supporting statements explaining exactly how those federal records would be used.

The notices are very clear. They say--indicate how, by whom, and for what purpose the information is to be used. The president's executive order doesn't wave or relieve you of the requirement to be transparent. Will you commit to filing a new System of Record Notice that clearly advises that the administrative records will be used to determine citizenship status?

DILLINGHAM:
I'm not sure I understood that last part of your question. Would I be--what I be assured that I do what?

PORTER:
Will you please commit to following the law--

DILLINGHAM:
We--we will follow--

PORTER:
--With regard the Privacy Act and filing a new System of Record Notice and a new Statement of Purpose to the OMB. If in fact, I am correct that your existing statement makes no--no mention of using the administrative records for the purpose of determining citizenship, when that, in fact, is you have--testify is your intent.

DILLINGHAM:
Congresswoman, I will certainly ask our legal counsel to look in the Statement of Records Notice to see if we're in compliance.

PORTER:
Thank you very much.

My last question for you is, will you count every person regardless of citizenship because that is what is required by the Constitution?

DILLINGHAM:
As I have said here today, we're going to count everyone living in this nation.

PORTER:
Okay.

So the Constitution says that representatives shall be apportioned among the several states according to their respective numbers, which shall be determined by adding the whole number of free persons. In the Constitution, what do you think person means in that context?

DILLINGHAM:
Congresswoman, that was a topic of the first panel here. And as I said in--in my opening remarks, discussing the policies and history and particularly the legal analysis, it isn't one of the--it wouldn't be prudent for me at this time.

The--as the director of the Census Bureau, we have to get the work done, and I'm not going to engage. And quite frankly, I'm not prepared to engage in--in the legal analysis or the policy debate. We are a statistical agency producing statistical products, and if they're legal, we--we will produce them. And it will be the best available data that we have.

PORTER:
Well, Mr. Dillingham, I--I appreciate that. But you can't wax on about your faithful execution of your constitutional duty and then dodge questions about the Constitution in the same hearing. But I do appreciate your following up on the Systems of Record Notice and the Privacy Act. And I'll--I'll follow-up with you directly about that.

I yield back.

DILLINGHAM:
Thank you so much.

MALONEY:
I thank the gentlelady for her questions.

And before I recognize Representative Ranking Member Comer, for his closing remarks, I--I want to seek clarity on one thing if I could, Mr. Director.

DILLINGHAM:
Sure.

MALONEY:
I asked you earlier if you would send this committee the results of the Bureau's analysis under the president's memo, and--and you responded that the Bureau would be transparent.

DILLINGHAM:

That's correct.

MALONEY:
So can I take that as a yes that you will share the results of the Bureau's analysis?

DILLINGHAM:
It is the policy and practice of the Bureau to share with the world any final decisions we make on that. But in the discussions of it and that--I cannot pledge that. I can say that as--as we--as the decisions are made, they will be transparent, and for everyone, particularly the users of the data.

MALONEY:
Okay.

I now recognize the Ranking Member Comer for his closing remarks.

COMER:
Thank you, Chairman Maloney. I appreciate, again, you calling this hearing today on the 2020 Census.

I want to reiterate what I said at the beginning of this hearing this morning by saying that everyone should complete their census form and engage with census enumerators if they come to your door. It's very important that every single American is counted.

I support the president's action last week to exclude illegal immigrants from the apportionment count, as do a majority of Americans. Including illegal immigrants in the count for representation in Congress only dilutes the representation of all Americans who vote in elections and makes a mockery of our basic principle of one person, one vote.

I just want to make some points to correct the record about some things that we have heard today. Democrats have made some very misleading or incorrect statements that I would like to take this opportunity to correct.

First, we have heard from Democrats that the president's memorandum means that illegal immigrants are not counted for purposes of the 2020 census. This is not correct. Illegal immigrants are still counted for purposes of the 2020 census. The presidential memorandum does not direct the Census Bureau not to count illegal immigrants, it only affects the subsequent use of census data to conduct the apportionment of congressional seats and electoral college votes among the states.

Illegal immigrants, while counted for the census will be excluded from the apportionment base. Second, we have heard from Democrats that the President's memorandum will divert funding or actual federal funding flowing to states as a result of the 2020 census. This is also incorrect.

The president's memorandum does not direct or diverged in the federal funding or exclude illegal immigrants from being considered in future funding decisions. Complete census 2020 data once tabulated will be available for Congress, federal agency, state legislatures and municipalities to use when making funding decisions.

We have also heard from Democrats that the Supreme Court ruled that asking whether someone is a citizen is unconstitutional. That is not correct. In fact, the Supreme Court actually held that asking whether someone is a U.S. citizen on the census is lawful.

The justices said that quote in light of the early understanding of and long practice under the enumeration clause, we conclude that it permits Congress and, by extension, the Secretary of Commerce to inquire about

citizenship on the census questionnaire. Although the administration had failed to comply with some procedural requirements in reinstating the question which had appeared on previous census forms, the question itself was not ruled to be unconstitutional.

We have also heard that the president's memorandum is unconstitutional. Not so says the constitutional law expert Dr. Eastman who testified here this morning. We heard from him that the proper understanding of the Constitution is that we should only apportion seats based on the citizenry and not for inhabitants, especially those who are here illegally.

They are here illegally. Counting those unlawfully present creates perverse incentives, dilutes representation of voters in states with fewer illegal immigrants, and undermines the principle of one person one vote. Representation should matter to everyone. It is a simple question of fairness. I yield back.

MALONEY:
I want to thank the Ranking Member and all of the participants today, all of our panelist and especially you director. I think you for your service in the military and for your public service and for voluntarily coming here today to be with us. I--I want to close by saying that it is an undisputed fact that the coronavirus has changed everything in our country. It has changed everything the way we do things and I would say that the coronavirus has changed the census because of the tremendous challenges, the concern for your enumerators health, the enumeration was put off from your testimony today you say the enumeration for the hard to count will begin August 10 and when you put this off you also or rather Secretary Ross ask us to put off the date for collecting the information and also for sending the apportionment to the states from October 20, 22 to the end of April 2021.

And our Congress, our members of our Democratic Caucus we passed a bill in the coronavirus and we included the day change that you requested so it is against this backdrop of all of these challenges that you are confronting with the hard to count, with the coronavirus and I would call it a disruptive and historic disease that has really overburdened the Census Bureau and created more challenges not just with the Census Bureau but to all of government and it is against this backdrop that President Trump issued.

What I considered an illegal memorandum last week and the purpose that we call this hearing, this emergency hearing is in response to that memorandum and this memo would dramatically change the manner in which the census count is reported. I agree with my colleague that you have testified, and I applaud you that everyone will be counted.

We will all work hard to get undocumented every one counted in the census but on Monday I want to point out that the Bureau posted on its website that the Census Bureau is working toward the plan to complete field data collection by October 31, 2020, yet I noticed today that this notice has been removed from your website yet it hasn't been replaced with a new data or with any date on when the field data collection is supposed to happen.

Now I believe we should do what the census professionals say they need, that they need this postponement to get the field data by October 31 and to report it later in April 2021, but it has been reported in the press that the administration is trying to rush the apportionment count and trying to push it back to December 30 (INAUDIBLE) for President Trump would leave the White House if he possibly we don't know what the outcome of the election is but he would be leaving the house before the election results if he loses the election.

So I am can learn that the administration is seeking to rush the process and sacrifice the accuracy of these senses for political gain, that the presidents intent is to have all of this done before he leaves office so that he can do what I believe is an illegal action, so I hope that you all live up to the standards of professionalism, stand by the request of Secretary Ross.

I did check with the professionals in New York who were working on the census, and they are working with the numbers that Secretary Ross requested that the data is completed by October 2020 and that is translated to

the states by April 2021, and I also want to say that without objection all members will have five legislative days with which to submit additional written questions for the witnesses to the chair which will be forwarded to the witnesses for their response and I ask our witnesses to please respond as promptly as they are able, and I now say that this hearing is adjourned.

List of Panel Members and Witnesses

PANEL MEMBERS:

REP. CAROLYN B. MALONEY (D-N.Y.), CHAIRWOMAN

DEL. ELEANOR HOLMES NORTON (D-D.C.)

REP. WILLIAM LACY CLAY (D-MO.)

REP. STEPHEN F. LYNCH (D-MASS.)

REP. JIM COOPER (D-TENN.)

REP. GERALD E. CONNOLLY (D-VA.)

REP. RAJA KRISHNAMOORTHI (D-ILL.)

REP. JAMIE RASKIN (D-MD.)

REP. HARLEY ROUDA (D-CALIF.)

REP. RO KHANNA (D-CALIF.)

REP. KWEISI MFUME (D-MD.)

REP. DEBBIE WASSERMAN SCHULTZ (D-FLA.)

REP. JOHN SARBANES (D-MD.)

REP. PETER WELCH (D-VT.)

REP. JACKIE SPEIER (D-CALIF.)

REP. ROBIN KELLY (D-ILL.)

REP. MARK DESAULNIER (D-CALIF.)

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REP. RASHIDA TLAIB (D-MICH.)

REP. KATIE PORTER (D-CALIF.)

REP. JAMES R. COMER (R-KY.), RANKING MEMBER

REP. JIM JORDAN (R-OHIO)

REP. PAUL GOSAR (R-ARIZ.)

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REP. CLAY HIGGINS (R-LA.)

REP. RALPH NORMAN (R-S.C.)

REP. CHIP ROY (R-TEXAS)

REP. CAROL MILLER (R-W.VA.)

REP. MARK E. GREEN (R-TENN.)

REP. KELLY ARMSTRONG (R-N.D.)

REP. GREG STEUBE (R-FLA.)

REP. FRED KELLER (R-PA.)

WITNESSES:
FORMER CENSUS BUREAU DIRECTOR VINCENT BARABBA

CENSUS BUREAU DIRECTOR STEVEN DILLINGHAM

CLAREMONT INSTITUTE SENIOR FELLOW JOHN EASTMAN

FORMER CENSUS BUREAU DIRECTOR KENNETH PREWITT

FORMER CENSUS BUREAU DIRECTOR JOHN THOMPSON

FORMER CENSUS BUREAU DIRECTOR ROBERT M. GROVES

Source: **CQ Transcripts**

From: Christine Burton (CENSUS/POP FED) [christine.burton@census.gov]
Sent: 7/30/2020 6:18:06 PM
To: Christine Flanagan Borman (CENSUS/POP FED) [christine.flanagan.borman@census.gov]
CC: Jason Devine (CENSUS/POP FED) [Jason.E.Devine@census.gov]
Subject: Re: DCMD Request for Additional Information - Tracker Funding
Attachments: TRC Detailed Guide FEUC thru HDF Review Dec 9, 2010_v2.docx

Hi Christine,

DCMD approved the funds for the tracker enhancements. I'm waiting for guidance from Karen and Jason on the next steps in communicating the charging to DSD. I'll let you know if any other updates arise.

Also, the 2010 Traditional Count Review manual I mentioned at yesterday's 2pm is attached. I thought it was on the POP_Scan/Count Review drive but I actually located it in *M:\Adc-cp\Phpb\Count Review\Count Review 2010* with a few other 2010 materials.

Christine Burton, Special Assistant
Census Programs ADC Area
Population Division
U.S. Census Bureau
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From: Christine Flanagan Borman (CENSUS/POP FED) <christine.flanagan.borman@census.gov>
Sent: Wednesday, July 22, 2020 8:53 AM
To: Christine Burton (CENSUS/GTMD FED) <christine.burton@census.gov>
Cc: Jason Devine (CENSUS/POP FED) <Jason.E.Devine@census.gov>
Subject: Re: DCMD Request for Additional Information - Tracker Funding

Hi Christine,

Thanks for calling in this morning. Your original statement is great. I've made minor updates below:

(b) (5)

Christine Flanagan Borman, 2020 Decennial Census Count Review
Count Review Office, Population Division
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From: Christine Burton (CENSUS/GTMD FED) <christine.burton@census.gov>
Sent: Wednesday, July 22, 2020 8:22 AM
To: Christine Flanagan Borman (CENSUS/POP FED) <christine.flanagan.borman@census.gov>
Cc: Jason Devine (CENSUS/POP FED) <Jason.E.Devine@census.gov>
Subject: Re: DCMD Request for Additional Information - Tracker Funding

Good morning Christine,

The user story we discussed yesterday about the funding request from DSD is below.

Details:

- Count Review Issue Tracker POC wants to be able to add the Record identifiers field to the home grid display. Currently, the home grid display does not have an option to decrypt records. This option should be added
- Count Review Issue Tracker POC requested that when a report is exported to Excel and CSV, encrypted data appear in the exported report as unencrypted.

Plan of implementation for Report Export

- Add menu item for any column which is an encrypted field
- This item will toggle between encrypt and decrypt
- Doing this give the user full control over the decryption process and also means we do not have to change the export functionality for the grid in any way.

Testing

- Clicking on the context menu for an encryption column **which is currently encrypted** shows a menu item labeled "Decrypt Column Values"
- Clicking on the context menu for an encryption column **which is currently decrypted** shows a menu item labeled "Encrypt Column Values"
- Clicking on the column menu item to decrypt converts all column data to plain text. (**NOTE**: This only applies to the current view as the decryption is called for the currently filtered and sorted items.)
- Clicking on the column menu item to encrypt causes columns to display "click to decrypt."
- Clicking on column decryption **while one or more cells is already decrypted** does not cause any errors in console and results in all columns showing plain text
- The opposite of the last test works as expected as well: with all columns decrypted, encrypt one or more cells, then encrypt the entire column
- When a column is decrypted, exporting to CSV shows plain text
- When a column is decrypted, exporting to Excel shows plain text
- Clicking on a encryption column in home grid decrypts the field.

Christine Burton, Special Assistant
Census Programs ADC Area
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From: Lauren Medina (CENSUS/POP FED) [lauren.medina@census.gov]
Sent: 7/31/2020 3:04:51 PM
To: Matthew Spence (CENSUS/POP FED) [Matthew.Spence@census.gov]
CC: Christine Flanagan Borman (CENSUS/POP FED) [christine.flanagan.borman@census.gov]; Colleen Hughes Keating (CENSUS/POP FED) [colleen.hughes.keating@census.gov]; Erin M Hutcheson (CENSUS/POP FED) [erin.m.hutcheson@census.gov]
Subject: Re: DRF and CUF Specs
Attachments: 2020 DRF Spec v1.4.docx; 2020 Decennial Census Count Imputation Specification 1.61 [DSSD 07062020].docx; 2020 PCUF_Spec_V1.3.1.docx

Hi Matt,

Here ya go!

DRF location -- M:\Adc-cp\Dpcb\2020 Census\Specifications\2020 DRF
CUF location -- M:\Adc-cp\Dpcb\2020 Census\Specifications\2020 PCUF-Count Imputation

Lauren Medina, Statistician (Demography)
Decennial Programs Branch
Population Division, U.S. Census Bureau
Phone: 301-763-5062

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From: Colleen Hughes Keating (CENSUS/POP FED) <colleen.hughes.keating@census.gov>
Sent: Friday, July 31, 2020 10:48 AM
To: Lauren Medina (CENSUS/POP FED) <lauren.medina@census.gov>; Erin M Hutcheson (CENSUS/POP FED) <erin.m.hutcheson@census.gov>
Cc: Christine Flanagan Borman (CENSUS/POP FED) <christine.flanagan.borman@census.gov>; Matthew Spence (CENSUS/POP FED) <Matthew.Spence@census.gov>
Subject: DRF and CUF Specs

Please send DRF and CUF specs to Matt Spence. Also send him the M-drive location

Colleen Keating, Chief of Decennial Programs Branch
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From: Michael B Hawes (CENSUS/CED FED) (b) (6) [redacted]
(b) (6) [redacted]
Sent: 7/31/2020 6:04:34 PM
To: Robert Sienkiewicz (CENSUS/CED FED) [robert.sienkiewicz@census.gov]
Subject: Groshen paper
Attachments: Goroff-Groshen for HSDR v1_Census comments.docx

Rob,

Here are the combined comments on the document, including mine, Jane's, and Mike C.'s.

Michael B. Hawes
Senior Advisor for Data Access and Privacy
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301.763.1960 (office)
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From: Christopher M Denno (CENSUS/ADDC FED) [christopher.m.denno@census.gov]
Sent: 8/2/2020 6:20:20 PM
To: Albert E Fontenot (CENSUS/ADDC FED) [Albert.E.Fontenot@census.gov]
Subject: Re: Slides
Attachments: Operational and Processing Options to meet September 30 Final NOTES.pptx; Operational and Processing Options to meet September 30 Final NOTES.pdf

Do you want to take a quick look, and then I'll send to the group?

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From: Albert E Fontenot (CENSUS/ADDC FED) <Albert.E.Fontenot@census.gov>
Sent: Sunday, August 2, 2020 2:17 PM
To: Christopher M Denno (CENSUS/ADDC FED) <christopher.m.denno@census.gov>
Subject: Re: Slides

PM 2nd and Com last.

Al

Albert E. Fontenot Jr.
Associate Director, Decennial Census Programs
United States Department of Commerce
Bureau of the Census
Office (b) (6)
Office 301-763-4668
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Sent from my iPhone

On Aug 2, 2020, at 2:16 PM, Christopher M Denno (CENSUS/ADDC FED) <christopher.m.denno@census.gov> wrote:

Ok, here we go. Also, where in the deck do you think the Comm and PM slide should go?

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From: Albert E Fontenot (CENSUS/ADDC FED) <Albert.E.Fontenot@census.gov>
Sent: Sunday, August 2, 2020 2:15 PM
To: Christopher M Denno (CENSUS/ADDC FED) <christopher.m.denno@census.gov>
Cc: Deborah Stempowski (CENSUS/ADDC FED) <Deborah.M.Stempowski@census.gov>
Subject: Re: Slides

Let's eliminate the first methodology

Al

Albert E. Fontenot Jr.
Associate Director, Decennial Census Programs
United States Department of Commerce
Bureau of the Census
Office (b) (6) [redacted]
Office 301-763-4668
Cell (b) (6) [redacted]

Sent from my iPhone

On Aug 2, 2020, at 2:13 PM, Christopher M Denno (CENSUS/ADDC FED) <christopher.m.denno@census.gov> wrote:

How is this? I dropped the first "feasibility". Now we have methodology and method, but I think it works. Alternatively, we could just drop "a methodology", and it could read:

> A team has been established and is tasked with deriving a process utilizing sound statistical methods and meeting tests of operational feasibility, to achieve....

Christopher Denno, Special Assistant
Decennial Census Programs
U.S. Census Bureau
Room (b) (6) [redacted] Office: 301.763.4092| Mobile: (b) (6) [redacted]
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From: Deborah Stempowski (CENSUS/ADDC FED) <Deborah.M.Stempowski@census.gov>
Sent: Sunday, August 2, 2020 2:05 PM
To: Albert E Fontenot (CENSUS/ADDC FED) <Albert.E.Fontenot@census.gov>; Christopher M Denno (CENSUS/ADDC FED) <christopher.m.denno@census.gov>
Subject: Re: Slides

I think that works

Deborah Stempowski, PMP
Assistant Director for Decennial Programs, Operations and Schedule Management
U.S. Census Bureau
Office 301 763 1417
Cell (b) (6) [redacted]
deborah.m.stempowski@census.gov
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From: Albert E Fontenot (CENSUS/ADDC FED) <Albert.E.Fontenot@census.gov>
Sent: Sunday, August 2, 2020 1:55 PM
To: Christopher M Denno (CENSUS/ADDC FED) <christopher.m.denno@census.gov>
Cc: Deborah Stempowski (CENSUS/ADDC FED) <Deborah.M.Stempowski@census.gov>
Subject: Re: Slides

Is there an expression we can use in the place of "in terms of". I was thinking of "a process utilizing sound statistical Methods and Meeting tests of operational feasibility..."

Al

Albert E. Fontenot Jr.
Associate Director, Decennial Census Programs
United States Department of Commerce
Bureau of the Census
Office (b) (6) [redacted]
Office 301-763-4668
Cell (b) (6) [redacted]

Sent from my iPhone

On Aug 2, 2020, at 1:51 PM, Christopher M Denno (CENSUS/ADDC FED) <christopher.m.denno@census.gov> wrote:

Agreed. How about just striking the first one:

A team has been established and is tasked with deriving a ~~feasible~~ methodology, in terms of statistical methods and operational feasibility, to achieve....

Christopher Denno, Special Assistant
Decennial Census Programs
U.S. Census Bureau
Room (b) (6) [redacted] Office: 301.763.4092| Mobile: (b) (6) [redacted]
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From: Albert E Fontenot (CENSUS/ADDC FED) <Albert.E.Fontenot@census.gov>
Sent: Sunday, August 2, 2020 1:49 PM
To: Christopher M Denno (CENSUS/ADDC FED) <christopher.m.denno@census.gov>
Cc: Deborah Stempowski (CENSUS/ADDC FED) <Deborah.M.Stempowski@census.gov>
Subject: Re: Slides

Except for using feasible & feasibility in the same sentence- I think it works.

Al

Albert E. Fontenot Jr.
Associate Director, Decennial Census Programs
United States Department of Commerce
Bureau of the Census
Office (b) (6) [redacted]
Office 301-763-4668
Cell (b) (6) [redacted]

Sent from my iPhone

On Aug 2, 2020, at 1:47 PM, Christopher M Denno (CENSUS/ADDC FED) <christopher.m.denno@census.gov> wrote:

Al,

How does this look for the PM slide?

Christopher Denno, Special Assistant
Decennial Census Programs
U.S. Census Bureau
Room (b) (6) [redacted] Office: 301.763.4092| Mobile: (b) (6) [redacted]
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From: Albert E Fontenot (CENSUS/ADDC FED) <Albert.E.Fontenot@census.gov>
Sent: Sunday, August 2, 2020 1:30 PM
To: Christopher M Denno (CENSUS/ADDC FED) <christopher.m.denno@census.gov>
Cc: Deborah Stempowski (CENSUS/ADDC FED) <Deborah.M.Stempowski@census.gov>
Subject: Fwd: Slides

Chris

See Enrique and my interchange & take a shot at a 3 /4 point slide.

Al

Albert E. Fontenot Jr.

Associate Director, Decennial Census Programs
United States Department of Commerce
Bureau of the Census
Office (b) (6) [redacted]
Office 301-763-4668
Cell (b) (6) [redacted]

Sent from my iPhone

Begin forwarded message:

From: "Enrique Lamas (CENSUS/DEPDIR FED)" <Enrique.Lamas@census.gov>
Date: August 2, 2020 at 1:26:08 PM EDT
To: "Albert E Fontenot (CENSUS/ADDC FED)" <Albert.E.Fontenot@census.gov>
Subject: Re: Slides

Sweet spot is in the middle. Deb or Denno can cut down. I think the important points are that (1) we will expand the work we have already done based on EO 13880, (2) we will use all admin recs to the extent they are available and (3) we are incorporating it into the schedule to meet legal mandates.

Enrique Lamas
Senior Advisor
Director's Office
U.S. Census Bureau
Office: 301-763-3811

From: Albert E Fontenot (CENSUS/ADDC FED) <Albert.E.Fontenot@census.gov>
Sent: Sunday, August 2, 2020 1:21 PM
To: Enrique Lamas (CENSUS/DEPDIR FED) <Enrique.Lamas@census.gov>
Cc: Deborah Stempowski (CENSUS/ADDC FED) <Deborah.M.Stempowski@census.gov>; Michael T Thieme (CENSUS/ADDC FED) <Michael.T.Thieme@census.gov>; Christopher M Denno (CENSUS/ADDC FED) <christopher.m.denno@census.gov>; Ron S Jarmin (CENSUS/DEPDIR FED) <Ron.S.Jarmin@census.gov>; Timothy P Olson (CENSUS/ADFO FED) <Timothy.P.Olson@census.gov>; James T Christy (CENSUS/LA FED) <James.T.Christy@census.gov>; Ali Mohammad Ahmad (CENSUS/ADCOM FED) <ali.m.ahmad@census.gov>; Christa D Jones (CENSUS/DEPDIR FED) <Christa.D.Jones@census.gov>
Subject: Re: Slides

My slide is probably too little but yours is too much (this is for one slide not a full presentation.)

Al

Albert E. Fontenot Jr.
Associate Director, Decennial Census Programs
United States Department of Commerce
Bureau of the Census
Office (b) (6) [redacted]
Office 301-763-4668
Cell (b) (6) [redacted]

Sent from my iPhone

On Aug 2, 2020, at 1:14 PM, Enrique Lamas (CENSUS/DEPDIR FED) <Enrique.Lamas@census.gov> wrote:

Here is some language for the PM Slide. Too much info but you can

The Census Bureau will build upon its work supporting Executive Order 13880, "Collecting Information about Citizenship Status in Connection with the Decennial Census". In their support of this Executive Order, the Census Bureau is using administrative records from multiple agencies to produce estimates of citizenship or non-citizen status for each respondent to the 2020 Census.

To support the Secretary's instructions regarding the Presidential Memorandum, the Census Bureau is expanding the EO work using selected Department of Homeland Security administrative records in combination with selected records from other agencies and data from the 2020 Census. Using those records in combination with other data already obtained regarding citizenship status, the Census Bureau will further refine the non-citizen category into legal, illegal or unknown. The planned output of this project will be state-level tallies.

The administrative data include: Enforcement and Removal Operations (ICE), Deferred Action for Childhood Arrival (CIS), Arrival and Departure Information Systems (CBP), Legal Permanent Resident denials (CIS), Incident Management Analysis Reporting System (Department of Interior), and Law Enforcement Management Information System (Department of Interior).

The Census Bureau is now incorporating this work into the schedule to meet the current legal mandates.

Enrique Lamas
Senior Advisor
Director's Office
U.S. Census Bureau
Office: 301-763-3811

From: Deborah Stempowski (CENSUS/ADDC FED) <Deborah.M.Stempowski@census.gov>
Sent: Sunday, August 2, 2020 1:02 PM
To: Michael T Thieme (CENSUS/ADDC FED) <Michael.T.Thieme@census.gov>; Christopher M Denno (CENSUS/ADDC FED) <christopher.m.denno@census.gov>
Cc: Ron S Jarmin (CENSUS/DEPDIR FED) <Ron.S.Jarmin@census.gov>; Albert E Fontenot (CENSUS/ADDC FED) <Albert.E.Fontenot@census.gov>; Timothy P Olson (CENSUS/ADFO FED) <Timothy.P.Olson@census.gov>; James T Christy (CENSUS/LA FED) <James.T.Christy@census.gov>; Ali Mohammad Ahmad (CENSUS/ADCOM FED) <ali.m.ahmad@census.gov>; Christa D Jones (CENSUS/DEPDIR FED) <Christa.D.Jones@census.gov>; Enrique Lamas (CENSUS/DEPDIR FED) <Enrique.Lamas@census.gov>
Subject: Re: Slides

Denno has something from Ali on the communications, who is the right person for the PM slide? If we are only acknowledging that work is under way and is not yet merged in with the post collection replan, I think that is straight forward. We could also add that a team was formed last week and they have met?

Deborah Stempowski, PMP
Assistant Director for Decennial Programs, Operations and Schedule Management
U.S. Census Bureau
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From: Michael T Thieme (CENSUS/ADDC FED) <Michael.T.Thieme@census.gov>
Sent: Sunday, August 2, 2020 12:59 PM
To: Christopher M Denno (CENSUS/ADDC FED) <christopher.m.denno@census.gov>
Cc: Ron S Jarmin (CENSUS/DEPDIR FED) <Ron.S.Jarmin@census.gov>; Albert E Fontenot (CENSUS/ADDC FED) <Albert.E.Fontenot@census.gov>; Deborah Stempowski (CENSUS/ADDC FED) <Deborah.M.Stempowski@census.gov>; Timothy P Olson (CENSUS/ADFO FED) <Timothy.P.Olson@census.gov>; James T Christy (CENSUS/LA FED) <James.T.Christy@census.gov>; Ali Mohammad Ahmad (CENSUS/ADCOM FED) <ali.m.ahmad@census.gov>; Christa D Jones (CENSUS/DEPDIR FED) <Christa.D.Jones@census.gov>; Enrique Lamas (CENSUS/DEPDIR FED) <Enrique.Lamas@census.gov>
Subject: Re: Slides

Do we need a call to discuss?

Michael T. Thieme
Assistant Director Decennial Census Programs, Systems and Contracts,
U.S. Census Bureau
(301) 763-9062 (Office)
(b) (6) [redacted] (Mobile)

On Aug 2, 2020, at 12:22 PM, Christopher M Denno (CENSUS/ADDC FED) <christopher.m.denno@census.gov> wrote:

I've updated slide three (the "to" Ron mentioned as well as one other minor change). If people can get me the words on the two items Ron mentioned below, I can create the two slides and drop them into the full deck.

Christopher Denno, Special Assistant
Decennial Census Programs
U.S. Census Bureau
Room (b) (6) [redacted] Office: 301.763.4092| Mobile: (b) (6) [redacted]
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From: Ron S Jarmin (CENSUS/DEPDIR FED) <Ron.S.Jarmin@census.gov>
Sent: Sunday, August 2, 2020 11:58 AM
To: Albert E Fontenot (CENSUS/ADDC FED) <Albert.E.Fontenot@census.gov>; Deborah Stempowski (CENSUS/ADDC FED)

<Deborah.M.Stempowski@census.gov>; Timothy P Olson (CENSUS/ADFO FED) <Timothy.P.Olson@census.gov>; James T Christy (CENSUS/LA FED) <James.T.Christy@census.gov>; Ali Mohammad Ahmad (CENSUS/ADCOM FED) <ali.m.ahmad@census.gov>
Cc: Christopher M Denno (CENSUS/ADDC FED) <christopher.m.denno@census.gov>; Christa D Jones (CENSUS/DEPDIR FED) <Christa.D.Jones@census.gov>; Enrique Lamas (CENSUS/DEPDIR FED) <Enrique.Lamas@census.gov>
Subject: Slides

We met with KDK and Walsh. We need two additional slides. One would say work on the PM and incorporating that work into the schedule continues. The other would speak to announcing the replanned operational schedule. There was talk of doing that as early as tomorrow afternoon. Note that the Director and folks from DOC will be briefing the WH on this tomorrow.

Walsh said there were some typos on p3. Only one I say was missing "to" in the last bullet.

The Director was wondering what the impact of going from 6 to 2 rather than 6 to 1 visits for self reported vacants on p7.

He would also like a call that I will set up. Can we have revisions by 3?

Ron S Jarmin, PhD., Deputy Director
U.S. Census Bureau
o: 301-763-1858 | m: (b) (6) [redacted]
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<Replan PM Slide.pptx>
<Replan PM Slide.pdf>

<replan pm slide.pdf>
<Replan PM Slide.pptx>

<replan pm slide.pdf>

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(b) (5)

(b) (5)

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(b) (5)

(b) (5)

(b) (5)

From: Emily Moore (CENSUS/ADEP FED) [Emily.Moore@census.gov]
Sent: 8/3/2020 4:37:35 PM
To: Roberto Ramirez (CENSUS/POP FED) [Roberto.R.Ramirez@census.gov]
Subject: Re: A lot has happened in the last two weeks...

(b) (5) [redacted]

Emily Moore, QDM/COMET Business Team
Innovation & Technology Office/ADEP/Headquarters
U.S. Census Bureau
O: 301-763-9594 | M: (b) (6) [redacted]
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On Aug 3, 2020, at 12:07 PM, Roberto Ramirez (CENSUS/POP FED) <Roberto.R.Ramirez@census.gov> wrote:

FYI

Roberto Ramirez
Assistant Division Chief, Special Population Statistics
Population Division
U.S. Census Bureau
O: 301.763.6044
census.gov | @uscensusbureau
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From: Karen Battle (CENSUS/POP FED) <karen.battle@census.gov>
Sent: Monday, August 3, 2020 11:48 AM
To: POP All Staff <(b) (6) [redacted]
Subject: A lot has happened in the last two weeks...

Hello Everyone -

A lot has happened in the last two weeks.

(b) (5) [redacted]

(b) (5)

[redacted]

Thanks!

Karen Battle
Division Chief
Population Division
U.S. Census Bureau

karen.battle@census.gov
Office 301.763.2071

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Office of the Press Secretary
FOR IMMEDIATE RELEASE
July 21, 2020

July 21, 2020

MEMORANDUM FOR THE SECRETARY OF COMMERCE

SUBJECT: Excluding Illegal Aliens From the Apportionment Base Following the 2020 Census

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. Background. In order to apportion Representatives among the States, the Constitution requires the enumeration of the population of the United States every 10 years and grants the Congress the power and discretion to direct the manner in which this decennial census is conducted (U.S. Const. art. I, sec. 2, cl. 3). The Congress has charged the Secretary of Commerce (the Secretary) with directing the conduct of the decennial census in such form and content as the Secretary may determine (13 U.S.C. 141(a)). By the direction of the Congress, the Secretary then transmits to the President the report of his tabulation of total population for the apportionment of Representatives in the Congress (13 U.S.C. 141(b)). The President, by law, makes the final determination regarding the "whole number of persons in each State," which determines the number of Representatives to be apportioned to each State, and transmits these determinations and accompanying census data to the Congress (2 U.S.C. 2a(a)). The Congress has provided that it is "the President's personal transmittal of the report to Congress" that "settles the apportionment" of Representatives among the States, and the President's discretion to settle the apportionment is more than "ceremonial or ministerial" and is essential "to the integrity of the process" (*Franklin* v. *Massachusetts*, 505 U.S. 788, 799, and 800 (1992)).

The Constitution does not specifically define which persons must be included in the apportionment base. Although the Constitution requires the "persons in each State, excluding Indians not taxed," to be enumerated in the census, that requirement has never been understood to include in the apportionment base every individual physically present within a State's boundaries at the time of the census. Instead, the term "persons in each State" has been interpreted to mean that only the "inhabitants" of each State should be included. Determining which persons should be considered "inhabitants" for the purpose of apportionment requires the exercise of judgment. For example, aliens who are only temporarily in the United States, such as for business or tourism, and certain foreign diplomatic personnel are "persons" who have been excluded from the apportionment base in past censuses. Conversely, the Constitution also has never been understood to exclude every person who is not physically "in" a State at the time of the census. For example, overseas Federal personnel have, at various times, been included in and excluded from the populations of the States in which they maintained their homes of record. The discretion delegated to the executive branch to determine who qualifies as an "inhabitant" includes authority to exclude from the apportionment base aliens who are not in a lawful immigration status.

In Executive Order 13880 of July 11, 2019 (Collecting Information About

Citizenship Status in Connection With the Decennial Census), I instructed executive departments and agencies to share information with the Department of Commerce, to the extent permissible and consistent with law, to allow the Secretary to obtain accurate data on the number of citizens, non-citizens, and illegal aliens in the country. As the Attorney General and I explained at the time that order was signed, data on illegal aliens could be relevant for the purpose of conducting the apportionment, and we intended to examine that issue.

Sec. 2. Policy. 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 under the Immigration and Nationality Act, as amended (8 U.S.C. 1101 *et seq.*), to the maximum extent feasible and consistent with the discretion delegated to the executive branch. Excluding these illegal aliens from the apportionment base is more consonant with the principles of representative democracy underpinning our system of Government. Affording congressional representation, and therefore formal political influence, to States on account of the presence within their borders of aliens who have not followed the steps to secure a lawful immigration status under our laws undermines those principles. Many of these aliens entered the country illegally in the first place. Increasing congressional representation based on the presence of aliens who are not in a lawful immigration status would also create perverse incentives encouraging violations of Federal law. States adopting policies that encourage illegal aliens to enter this country and that hobble Federal efforts to enforce the immigration laws passed by the Congress should not be rewarded with greater representation in the House of Representatives. 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.

I have accordingly determined that respect for the law and protection of the integrity of the democratic process warrant the exclusion of illegal aliens from the apportionment base, to the extent feasible and to the maximum extent of the President's discretion under the law.

Sec. 3. Excluding Illegal Aliens from the Apportionment Base. In preparing his report to the President under section 141(b) of title 13, United States Code, the Secretary shall take all appropriate action, consistent with the Constitution and other applicable law, to provide information permitting

the President, to the extent practicable, to exercise the President's discretion to carry out the policy set forth in section 2 of this memorandum. The Secretary shall also include in that report information tabulated according to the methodology set forth in *Final 2020 Census Residence Criteria and Residence Situations*, 83 Fed. Reg. 5525 (Feb. 8, 2018).

Sec. 4. General Provisions. (a) Nothing in this memorandum shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This memorandum shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

DONALD J. TRUMP

###

From: Karen Battle (CENSUS/POP FED) [karen.battle@census.gov]
Sent: 8/3/2020 4:43:29 PM
To: Redouane Betrouni (CENSUS/POP FED) [Redouane.Betrouni@census.gov]
Subject: Re: A lot has happened in the last two weeks...

Thank you Redouane for your message. A team has been formed to address the presidential memo - and whatever approach/method is used will be made transparent to the public.

Karen Battle
Division Chief
Population Division
U.S. Census Bureau

karen.battle@census.gov
Office 301.763.2071

census.gov
Connect with us on Social Media

From: Redouane Betrouni (CENSUS/POP FED) <Redouane.Betrouni@census.gov>
Sent: Monday, August 3, 2020 12:07 PM
To: Karen Battle (CENSUS/POP FED) <karen.battle@census.gov>
Subject: Re: A lot has happened in the last two weeks...

Hi Karen,
I just wanted to share this with you:
Speaking of impact and risks:
It is surprising to me to learn that some how, some where some system is able to and using the census for checking/finding out/discovering undocumented immigrants.
I know it is possible and not technically difficult to do by doing some record linkage analysis comparing for example Census 2020 and SSA file+IRS1014+IRS1099+Medicar File+ other files such as Selective service as an example.
(b) (5)
[redacted]

Best Regards,

Redouane Betrouni

POP-Health Studies Branch 301-763-2489
redouane.betrouni@census.gov
https://www.census.gov/data.html

From: Karen Battle (CENSUS/POP FED) <karen.battle@census.gov>
Sent: Monday, August 3, 2020 11:48 AM
To: POP All Staff <pop.all.staff@census.gov>
Subject: A lot has happened in the last two weeks...

Hello Everyone -

A lot has happened in the last two weeks.

(b) (5)

[redacted]

Thanks!

Karen Battle
Division Chief
Population Division
U.S. Census Bureau

karen.battle@census.gov
Office 301.763.2071

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Office of the Press Secretary

FOR IMMEDIATE RELEASE
July 21, 2020

July 21, 2020

MEMORANDUM FOR THE SECRETARY OF COMMERCE

SUBJECT: Excluding Illegal Aliens From the Apportionment Base Following the 2020 Census

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. Background. In order to apportion Representatives among the States, the Constitution requires the enumeration of the population of the United States every 10 years and grants the Congress the power and discretion to direct the manner in which this decennial census is conducted (U.S. Const. art. I, sec. 2, cl. 3). The Congress has charged the Secretary of Commerce (the Secretary) with directing the conduct of the decennial census in such form and content as the Secretary may determine (13 U.S.C. 141(a)). By the direction of the Congress, the Secretary then transmits to the President the report of his tabulation of total population for the apportionment of Representatives in the Congress (13 U.S.C. 141(b)). The President, by law, makes the final determination regarding the "whole number of persons in each State," which determines the number of Representatives to be apportioned to each State, and transmits these determinations and accompanying census data to the Congress (2 U.S.C. 2a(a)). The Congress has provided that it is "the President's personal transmittal of the report to Congress" that "settles the apportionment" of Representatives among the States, and the President's discretion to settle the apportionment is more than "ceremonial or ministerial" and is essential "to the integrity of the process" (*Franklin* v. *Massachusetts*, 505 U.S. 788, 799, and 800 (1992)).

The Constitution does not specifically define which persons must be included in the apportionment base. Although the Constitution requires the "persons in each State, excluding Indians not taxed," to be enumerated in the

census, that requirement has never been understood to include in the apportionment base every individual physically present within a State's boundaries at the time of the census. Instead, the term "persons in each State" has been interpreted to mean that only the "inhabitants" of each State should be included. Determining which persons should be considered "inhabitants" for the purpose of apportionment requires the exercise of judgment. For example, aliens who are only temporarily in the United States, such as for business or tourism, and certain foreign diplomatic personnel are "persons" who have been excluded from the apportionment base in past censuses. Conversely, the Constitution also has never been understood to exclude every person who is not physically "in" a State at the time of the census. For example, overseas Federal personnel have, at various times, been included in and excluded from the populations of the States in which they maintained their homes of record. The discretion delegated to the executive branch to determine who qualifies as an "inhabitant" includes authority to exclude from the apportionment base aliens who are not in a lawful immigration status.

In Executive Order 13880 of July 11, 2019 (Collecting Information About Citizenship Status in Connection With the Decennial Census), I instructed executive departments and agencies to share information with the Department of Commerce, to the extent permissible and consistent with law, to allow the Secretary to obtain accurate data on the number of citizens, non-citizens, and illegal aliens in the country. As the Attorney General and I explained at the time that order was signed, data on illegal aliens could be relevant for the purpose of conducting the apportionment, and we intended to examine that issue.

Sec. 2. Policy. 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 under the Immigration and Nationality Act, as amended (8 U.S.C. 1101 *et seq.*), to the maximum extent feasible and consistent with the discretion delegated to the executive branch. Excluding these illegal aliens from the apportionment base is more consonant with the principles of representative democracy underpinning our system of Government. Affording congressional representation, and therefore formal political influence, to States on account of the presence within their borders of aliens who have not followed the steps to secure a lawful immigration status under our laws undermines those principles. Many of these aliens entered the country illegally in the first place. Increasing congressional representation based on the presence of aliens who are not in a lawful immigration status would

also create perverse incentives encouraging violations of Federal law. States adopting policies that encourage illegal aliens to enter this country and that hobble Federal efforts to enforce the immigration laws passed by the Congress should not be rewarded with greater representation in the House of Representatives. 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.

I have accordingly determined that respect for the law and protection of the integrity of the democratic process warrant the exclusion of illegal aliens from the apportionment base, to the extent feasible and to the maximum extent of the President's discretion under the law.

Sec. 3. Excluding Illegal Aliens from the Apportionment Base. In preparing his report to the President under section 141(b) of title 13, United States Code, the Secretary shall take all appropriate action, consistent with the Constitution and other applicable law, to provide information permitting the President, to the extent practicable, to exercise the President's discretion to carry out the policy set forth in section 2 of this memorandum. The Secretary shall also include in that report information tabulated according to the methodology set forth in *Final 2020 Census Residence Criteria and Residence Situations*, 83 Fed. Reg. 5525 (Feb. 8, 2018).

Sec. 4. General Provisions. (a) Nothing in this memorandum shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This memorandum shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

DONALD J. TRUMP

###

From: Karen Battle (CENSUS/POP FED) [karen.battle@census.gov]
Sent: 8/3/2020 5:20:21 PM
To: Aaron Matthew Dixon (CENSUS/POP FED) [aaron.matthew.dixon@census.gov]
Subject: Re: A lot has happened in the last two weeks...

Thank you Aaron for sending this message. (b) (5) [redacted]

(b) (5) [redacted]

Karen Battle
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From: Aaron Matthew Dixon (CENSUS/POP FED) <aaron.matthew.dixon@census.gov>
Sent: Monday, August 3, 2020 1:07 PM
To: Karen Battle (CENSUS/POP FED) <karen.battle@census.gov>
Subject: Re: A lot has happened in the last two weeks...

Karen,

According to the memo, "the Constitution requires the enumeration of the population of the United States every 10 years," with *enumeration* being the key word. (b) (5) [redacted]

(b) (5) [redacted]

Thank,
Aaron

Aaron Dixon, Survey Statistician
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Shape your future. START HERE > 2020census.gov

From: Karen Battle (CENSUS/POP FED) <karen.battle@census.gov>
Sent: Monday, August 3, 2020 11:48 AM
To: POP All Staff <pop.all.staff@census.gov>
Subject: A lot has happened in the last two weeks...

Hello Everyone -

A lot has happened in the last two weeks.

(b) (5)

[redacted]

Thanks!

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Office of the Press Secretary
FOR IMMEDIATE RELEASE
July 21, 2020

July 21, 2020

MEMORANDUM FOR THE SECRETARY OF COMMERCE

SUBJECT: Excluding Illegal Aliens From the Apportionment Base Following the 2020 Census

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. Background. In order to apportion Representatives among the States, the Constitution requires the enumeration of the population of the United States every 10 years and grants the Congress the power and discretion to direct the manner in which this decennial census is conducted (U.S. Const. art. I, sec. 2, cl. 3). The Congress has charged the Secretary of Commerce (the Secretary) with directing the conduct of the decennial census in such form and content as the Secretary may determine (13 U.S.C. 141(a)). By the direction of the Congress, the Secretary then transmits to the President the report of his tabulation of total population for the apportionment of Representatives in the Congress (13 U.S.C. 141(b)). The President, by law, makes the final determination regarding the "whole number of persons in each State," which determines the number of Representatives to be apportioned to each State, and transmits these determinations and accompanying census data to the Congress (2 U.S.C. 2a(a)). The Congress has provided that it is "the President's personal transmittal of the report to Congress" that "settles the apportionment" of Representatives among the States, and the President's discretion to settle the apportionment is more than "ceremonial or ministerial" and is essential "to the integrity of the process" (*Franklin* v. *Massachusetts*, 505 U.S. 788, 799, and 800 (1992)).

The Constitution does not specifically define which persons must be included in the apportionment base. Although the Constitution requires the "persons in each State, excluding Indians not taxed," to be enumerated in the census, that requirement has never been understood to include in the apportionment base every individual physically present within a State's boundaries at the time of the census. Instead, the term "persons in each

State" has been interpreted to mean that only the "inhabitants" of each State should be included. Determining which persons should be considered "inhabitants" for the purpose of apportionment requires the exercise of judgment. For example, aliens who are only temporarily in the United States, such as for business or tourism, and certain foreign diplomatic personnel are "persons" who have been excluded from the apportionment base in past censuses. Conversely, the Constitution also has never been understood to exclude every person who is not physically "in" a State at the time of the census. For example, overseas Federal personnel have, at various times, been included in and excluded from the populations of the States in which they maintained their homes of record. The discretion delegated to the executive branch to determine who qualifies as an "inhabitant" includes authority to exclude from the apportionment base aliens who are not in a lawful immigration status.

In Executive Order 13880 of July 11, 2019 (Collecting Information About Citizenship Status in Connection With the Decennial Census), I instructed executive departments and agencies to share information with the Department of Commerce, to the extent permissible and consistent with law, to allow the Secretary to obtain accurate data on the number of citizens, non-citizens, and illegal aliens in the country. As the Attorney General and I explained at the time that order was signed, data on illegal aliens could be relevant for the purpose of conducting the apportionment, and we intended to examine that issue.

Sec. 2. Policy. 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 under the Immigration and Nationality Act, as amended (8 U.S.C. 1101 *et seq.*), to the maximum extent feasible and consistent with the discretion delegated to the executive branch. Excluding these illegal aliens from the apportionment base is more consonant with the principles of representative democracy underpinning our system of Government. Affording congressional representation, and therefore formal political influence, to States on account of the presence within their borders of aliens who have not followed the steps to secure a lawful immigration status under our laws undermines those principles. Many of these aliens entered the country illegally in the first place. Increasing congressional representation based on the presence of aliens who are not in a lawful immigration status would also create perverse incentives encouraging violations of Federal law. States adopting policies that encourage illegal aliens to enter this country and that hobble Federal efforts to enforce the immigration laws passed by the Congress

should not be rewarded with greater representation in the House of Representatives. 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.

I have accordingly determined that respect for the law and protection of the integrity of the democratic process warrant the exclusion of illegal aliens from the apportionment base, to the extent feasible and to the maximum extent of the President's discretion under the law.

Sec. 3. Excluding Illegal Aliens from the Apportionment Base. In preparing his report to the President under section 141(b) of title 13, United States Code, the Secretary shall take all appropriate action, consistent with the Constitution and other applicable law, to provide information permitting the President, to the extent practicable, to exercise the President's discretion to carry out the policy set forth in section 2 of this memorandum. The Secretary shall also include in that report information tabulated according to the methodology set forth in *Final 2020 Census Residence Criteria and Residence Situations*, 83 Fed. Reg. 5525 (Feb. 8, 2018).

Sec. 4. General Provisions. (a) Nothing in this memorandum shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This memorandum shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

DONALD J. TRUMP

# # #

Coverage of Director Dillingham's Statement

This report documents coverage of Director Dillingham's statement on the Census Bureau's new operational plan designed to deliver data collection and apportionment counts by the statutory deadline of December 31, 2020. As of 9 am, there have been an estimated 14 articles on this subject.

National News

[HYPERLINK "https://www.npr.org/2020/08/03/898548910/census-cut-short-a-month-rushes-to-finish-all-counting-efforts-by-sept-30" \h]
NPR – Hansi Lo Wang, August 3

The U.S. Census Bureau is ending all counting efforts for the 2020 census on Sept. 30, a month sooner than previously announced, the bureau's director confirmed Monday in [HYPERLINK "https://www.census.gov/newsroom/press-releases/2020/delivering-complete-accurate-count.html"]. That includes critical door-knocking efforts and [HYPERLINK "https://my2020census.gov/"], [HYPERLINK "https://2020census.gov/en/ways-to-respond/responding-by-phone.html"] and by mail.

The latest updates to the bureau's plans are part of efforts to "accelerate the completion of data collection and apportionment counts by our statutory deadline of December 31, 2020, as required by law and directed by the Secretary of Commerce" who oversees the bureau, Director Steven Dillingham said in the [HYPERLINK "https://www.census.gov/newsroom/press-releases/2020/delivering-complete-accurate-count.html"].

These last-minute changes to the constitutionally mandated count of every person living in the U.S. threaten the accuracy of population numbers used to determine the distribution of political representation and federal funding for the next decade.

With roughly [HYPERLINK "https://twitter.com/hansilowang/status/1290354793639301127"], and already delayed by the coronavirus pandemic, the bureau now has less than two months left to try to reach people of color, immigrants, renters, rural residents and other members of historically undercounted groups who are not likely to fill out a census form on their own.

The bureau's announcement comes after [HYPERLINK "https://www.npr.org/2020/07/30/896656747/when-does-census-counting-end-bureau-sends-alarming-mixed-signals"] that the agency had decided to cut short [HYPERLINK "https://www.npr.org/2020/07/16/891894280/early-census-door-knocking-to-expand-to-hawaii-puerto-rico-and-other-areas"] for the 2020 census. Those in-person interviews with unresponsive households started last month in [HYPERLINK "https://public.tableau.com/profile/us.census.bureau" \l "!/vizhome/StatusofCurrentOperations/ACOMap"] and are set to expand nationwide on Aug. 11.

For days, the bureau has been sending mixed signals about its plans by [HYPERLINK "https://twitter.com/hansilowang/status/1289942574661165061"]references to Oct. 31 — the previously announced end date for all counting efforts — from its website.

Before the pandemic hit, counting for the 2020 census was originally supposed to be finished by the end of July. But in April, with [HYPERLINK "https://www.youtube.com/watch?v=_XBmxj2mKjM&feature=youtu.be&t=2834"], the bureau announced that it needed to extend its timeline, including pushing back the end of counting to Oct. 31.

But during a hearing last week before the House Oversight and Reform Committee, Dillingham signaled a shift in plans by [HYPERLINK "https://www.youtube.com/watch?v=SKXS8e1Ew7c&feature=youtu.be&t=13909"] that "the Census Bureau and others really want us to proceed as rapidly as possible."

The bureau also asked Congress to push back by four months the legal deadline of Dec. 31 for reporting the latest state population counts to the president. Delaying that deadline would allow the bureau to keep counting through Oct. 31 to "ensure the completeness and accuracy of the 2020 Census," Dillingham and Commerce Secretary Wilbur Ross said in [HYPERLINK "https://2020census.gov/en/news-events/press-releases/statement-covid-19-2020.html?linkId=100000011751624"].

Democrats in Congress and many census advocates have become increasingly concerned that the White House is pressuring the bureau to stop counting soon in order to benefit Republicans when House seats are reapportioned and voting districts are redrawn.

As early as May, [HYPERLINK "https://www.documentcloud.org/documents/7007573-July-8-2020-Census-Bureau-Transcript-of-2020.html" \l "document/p21/a573697" \h] said the bureau had already "[HYPERLINK "https://www.youtube.com/watch?v=F6IyJMtDDgY&feature=youtu.be&t=4689" \h]" of meeting the current census deadlines.

As [HYPERLINK "https://www.npr.org/2020/08/03/898381129/still-a-long-ways-to-go-for-a-new-coronavirus-relief-package"] continue, there is a window for lawmakers to include a provision that would give the bureau more time.

So far, however, only Democrats have introduced legislation that would extend deadlines, and [HYPERLINK "https://www.npr.org/2020/07/28/895744449/republicans-signal-theyre-willing-to-cut-short-census-counting"].

[HYPERLINK "https://www.washingtonpost.com/local/census-bureau-says-counting-will-end-a-month-earlier-than-planned/2020/08/03/16990c5e-d5fb-11ea-930e-d88518c57dcc_story.html" \h]
The Washington Post – Frederick Kunkle, August 3

The Census Bureau announced late Monday that door-knocking and other field activities for the 2020 Census will cease a month earlier than planned.

The agency had given indications last week that field activities would cease Sept. 30 instead of Oct. 31, to submit the population count to the president by Dec. 31.

The deadline for field activities, including online and telephone reporting, had been adjusted earlier this year in anticipation that the decennial tally would be extended because of complications arising from the coronavirus pandemic.

Plans to shut down the count earlier drew fierce criticism from Democrats and civil rights groups, which have pushed back against a broader effort by the Trump administration to change how the population is counted and how the data is used. New York's census director denounced Monday's announcement by the bureau that field activities would be terminated Sept. 30.

"This is nothing but a disgusting power grab from an Administration hell-bent on preserving its fleeting political power at all costs," New York state's census director, Julie Menin, said in a statement. "From day one, it has been abundantly clear that Donald Trump is going to try everything possible to stop New Yorkers from filling out the census, and now, amid a global pandemic that's severely impacted outreach, they are straight-up trying to steal it."

Last month, President Trump issued a memorandum saying undocumented immigrants should not be factored into congressional apportionment, which legal experts say would be unconstitutional. Civil rights groups and congressional Democrats have also said an earlier deadline would lead to an inaccurate census that undercounts harder-to-tally populations, including minorities, immigrants and low-income people.

The Census Bureau's director, Steven Dillingham, issued a statement about 9 p.m. Monday announcing the earlier cessation of field activities, including the self-response option. He also said that monetary incentives would be offered to census takers to encourage them to work at maximum efficiency, and that additional staff would be hired and trained to accelerate data collection and processing apportionment counts ahead of Dec. 31, the statutory deadline.

"Of course, we recognize that events can still occur that no one can control, such as additional complications from severe weather or other natural disasters," Dillingham said.

By law, a count of the U.S. population must be delivered to the president by Dec. 31 of the census year. But field activities for the constitutionally mandated count were disrupted this year by the coronavirus pandemic. Under a plan designed to extend data collection, the bureau resumed field activities on June 1 and moved the deadline for data collection from July 31 to Oct. 31.

[HYPERLINK "https://www.nytimes.com/2020/08/04/us/elections/primary-election-michigan-arizona-kansas.html" \l "link-4696b81d" \h]
The New York Times – Staff Writer, August 4

Abruptly reversing its stated schedule, the Census Bureau confirmed late Monday that it would end its count of the nation's 330 million residents by Sept. 30, a month earlier than it had stated only this spring.

The four-week acceleration sounds small, but census experts have said it would wreak havoc with efforts to reach the very hardest-to-count households — immigrants, minorities, young people and others — that have long been flagged as most likely to be missed in this year's tally.

Critics of the sped-up schedule pounced on the announcement, casting it as an unvarnished attempt by the administration to twist the nation's population count to exclude groups that, by and large, tended to support Democrats.

“This is a whole systemic attack on the census for political gain,” Julie Menin, the census director for New York City, said in an interview. “There’s an intentional attempt here to basically steal the census — to politicize this census to gain Republican seats across the country.”

The bureau has offered no explanation for the change posted on its website. But outside experts said the explanation was clearly rooted in politics — in particular, in a demand by Mr. Trump last month to exclude undocumented immigrants from the population totals that are used every 10 years to reallocate House seats among the states.

Slammed by the pandemic, the Census Bureau had said earlier that it wanted to delay its final delivery of population totals to April 2021, rather than the statutory deadline of December 31. The speedup announced late Monday reverses that request and assures that the totals will be delivered to the White House by year’s end — before any new president or Congress might take office.

That gives the White House its best opportunity to act on Mr. Trump’s effort to remove undocumented immigrants from the reapportionment totals.

The announcement on Monday by the Census Bureau speeds up the last counts of some 60 million households that have failed to respond to requests to turn in census forms. The pandemic-delayed schedule called for that count to be completed by October 31. The plan announced on Monday, which had been reported last week, will move that deadline up by one month, to September 30.

[HYPERLINK "https://www.cnn.com/2020/08/03/politics/2020-census-field-collection-end-early/index.html" \h]
CNN – Paul LeBlanc and Gregory Wallace, August 3

The Census Bureau announced Monday evening that field data collection will end a full month earlier than originally planned.

it's a sign that the Trump administration has abandoned its plan to extend the window for counting the nation's population, which it earlier said needed to be longer because of the coronavirus pandemic. To be counted, households must complete the survey by September 30, rather than October 31, as the Census Bureau had announced when it adjusted plans due to the virus. The bureau will also end its labor-intensive efforts to knock on the doors of households that have not filled out the survey online, by paper form, or by phone.

The shift is part of an effort to "accelerate the completion of data collection and apportionment counts" by the end of the year deadline, Census Bureau Director Steven Dillingham said in a statement.

"The Census Bureau's new plan reflects our continued commitment to conduct a complete count, provide accurate apportionment data, and protect the health and safety of the public and our workforce," he said.

But the truncated timeline is likely to fuel fresh scrutiny about the accuracy of the bureau's US population count that has already been disrupted by the ongoing coronavirus pandemic.

The pandemic hit just as the massive once-a-decade effort to count the US population was getting underway and scrambled the agency's plans. It suspended field operations for a time, although field work has resumed in some areas and is set to be underway nationwide by later this month.

The census, which happens every 10 years, determines how many representatives each state gets in Congress, and how billions of dollars in federal funding is spent. Schools, roads, and other important things in your community will gain -- or lose -- funding over the next 10 years depending on this official population tally.

And while this year's census has relied more heavily on collecting responses by phone, mail or online, the operation will still need a robust field operation in the coming weeks to reach minority communities as well as of students on college campuses, seniors in assisted living facilities and people experiencing homelessness.

Not only are these groups at high risk for infection, they're also among those most in need of in-person outreach. With many senior facilities on lockdown and college students living at home, an accurate count may become increasingly difficult under a tighter deadline.

Still, Dillingham maintained Monday evening that the bureau is "committed to a complete and accurate 2020 Census."

"Building on our successful and innovative internet response option, the dedicated women and men of the Census Bureau, including our temporary workforce deploying in communities across the country in upcoming weeks, will work diligently to achieve an accurate count," he said.

Last week, Dillingham declined to say whether the bureau needed additional time to complete the 2020 census while testifying before the House Oversight Committee.

The Trump administration this spring requested Congress extend the completion deadlines by four months, but several House Democrats said they are concerned the administration has since backed away from that request.

The conversation about extending the timeframe "wasn't at my level," Dillingham testified. He said his focus is moving "as rapidly as possible and to get a complete and accurate count as soon as possible." But the possibility of less time to count the population concerned advocates for minority groups that have historically been under-counted in the census.

"This new deadline allows Trump to cheat hard-to-count communities of color out of the resources needed for everything from health care and education to housing and transportation for the next 10 years," said Asian Americans Advancing Justice, one of the groups that successfully sued over the administration's plan to ask a citizenship question to the census.

The Lawyers' Committee for Civil Rights Under Law said it condemned the plan to shorten collection "in no uncertain terms" because it could lead to "missing millions in Black and immigrant communities."

[HYPERLINK "https://www.usatoday.com/story/news/health/2020/08/04/covid-updates-hawaii-travel-quarantine-florida-cases-census-end-early/5578158002/" \h]

USA Today – Jessica Flores and John Bacon, August 4

Census Bureau to end all counting operations a month early

The Census Bureau plans to end all counting operations by Sept. 30, a month earlier than planned, the bureau's director announced Monday. The bureau delayed its original date to complete the census from July 31 to Oct. 31 because of the coronavirus pandemic. The announcement comes after President Donald Trump signed a memorandum on July 21 asking the bureau to not count undocumented immigrants to decide how many members of Congress are apportioned to each state.

[HYPERLINK "https://www.latimes.com/politics/story/2020-08-03/census-will-rush-to-complete-its-count-by-sept-30-a-month-earlier-than-planned" \h]
Los Angeles Times – Sarah Wire, August 3

The Census Bureau is ending efforts to count the country's population on Sept. 30, a month sooner than planned, the bureau's director announced Monday.

Only 63% of the nation's estimated 121 million households have responded to the 2020 Census by mail or phone or online. The last-minute change to the timeline raise concerns about the accuracy of the count, which is used to determine representation in Congress and state legislatures.

The statistical information collected every 10 years is also the bedrock for federal and local policy decisions such as how much federal money states and cities receive, where to build water and sewer systems, where to locate fire departments, even such minutiae as how many first-grade teachers a school district should hire. Businesses and nonprofit groups use it to determine where to expand or contract.

Door-knocking by census takers will end Sept. 30, as will the option to respond by other methods. In order to obtain as many responses as possible by that date, the bureau will be hiring additional census takers and provide incentives for those who work the maximum hours possible.

The agency needs time to process and verify the count by Dec. 31, the deadline set under federal law, said Steven Dillingham, the Census Bureau director.

"We will improve the speed of our count without sacrificing completeness," he said in the statement. "Under this plan, the Census Bureau intends to meet a similar level of household responses as collected in prior censuses, including outreach to hard-to-count communities."

In April, Commerce Secretary Wilbur Ross, who oversees the bureau, asked Congress to allow four extra months to finish the count and present the results to the president.

The COVID-19 outbreak has delayed much of its outreach, including the scheduled knocking on millions of doors to gather information about people who have not already responded and entreaties into traditionally difficult-to-count populations, including college students, the homeless and people living in rural areas.

Door knocking that was supposed to begin in April and end in July has just recently begun in a handful of communities and will expand nationwide Aug. 11.

In 2010, when online response was not an option, about 75% of households responded to the Census by mail or phone.

The Democrat-led House passed legislation to allow the agency additional time, but the Republican-led Senate has not followed, and the administration appears to have withdrawn its request. Congress could delay the deadline in the current coronavirus economic aid package being considered, but it is unclear if that is being considered.

In a congressional hearing last week, four former Census directors raised concerns that without extra time to follow up in person with households that don't respond and to visit traditionally hard-to-contact communities, many people won't be counted, lowering the federal and state funds tied to their regions' populations and lessening their political representation.

"The chances of having a census accurate enough to use is unclear — very, very much unclear," said Kenneth Prewitt, who was director from 1998 to 2001.

The agency had sent mixed signals for several days about whether it would continue to push for the additional time and when door knocking would end.

Beltway/Other Online News

[HYPERLINK "https://www.politico.com/news/2020/08/03/census-bureau-data-trump-391146?nname=playbook&nid=0000014f-1646-d88f-a1cf-5f46b7bd0000&nrid=00000168-e6fa-d9b6-abfd-eefa0df40000&nlid=630318" \h]
Politico – Steven Shepard, August 4

[HYPERLINK "https://www.politico.com/playbook" \h]

The Census Bureau said late on Monday that it would finish collecting data for the decennial count next month and work to deliver population tallies to President Donald Trump that meet his constitutionally questionable order to exclude undocumented immigrants for the purpose of congressional apportionment.

The agency, which is part of the Commerce Department, had said this spring that it would require more time to complete its data collection because of the coronavirus pandemic. But amid a renewed push by Trump to remove those in the country without documentation from the count, Census Bureau Director Steven Dillingham now says the data will be sent to the president by the end of the year — and not next spring, when Joe Biden could be in the Oval Office.

In a statement on Monday, Dillingham — who declined to tell Congress last week whether an extension was still necessary — announced measures meant "to accelerate the completion of data collection and apportionment counts by our statutory deadline of December 31, 2020, as required by law and directed by the Secretary of Commerce."

In order to meet that deadline, Dillingham said, "field data collection" will conclude by Sept. 30. Professional staff at the bureau has said that finishing the count by the end of next month is not possible after a pandemic-prompted delay in operations earlier this year.

Dillingham also said the bureau "continues its work on meeting the requirements" of two Trump orders: a July 2019 executive order that asked administrative agencies to collect data on undocumented immigrants in order to provide counts that states could use to draw state legislative maps that did not include those people; and a presidential memorandum from last month instructing the Census Bureau

to calculate apportionment counts — the number of congressional seats each state will have in the next decade — without undocumented immigrants included.

"A team of experts are examining methodologies and options to be employed for this purpose," Dillingham said.

Excluding these immigrants would likely benefit Republicans in future elections for Congress and the presidency. According to the University of Virginia Center for Politics, a count that did not include undocumented immigrants would mean California would lose two House seats, not the one seat the state is projected to lose in the next decade. Fast-growing Texas, increasingly a competitive state, would gain two seats instead of three. New Jersey would lose a seat.

Alabama and Ohio, meanwhile, would each gain a seat under a count that excluded undocumented immigrants — though they are not currently projected to gain seats under a conventional count.

Democrats and other groups have already moved to challenge Trump's recent order, arguing that the Constitution does not allow the census to count some people in the country for the purposes of House apportionment and not others based on immigration status. The 14th Amendment says the House seats should be divided among the states "according to their respective numbers, counting the whole number of persons in each state, excluding Indians not taxed."

In his memorandum last month, Trump wrote that the Constitution "has never been understood to include in the apportionment base every individual physically present within a State's boundaries at the time of the census. Instead, the term 'persons in each State' has been interpreted to mean that only the 'inhabitants' of each State should be included. Determining which persons should be considered 'inhabitants' for the purpose of apportionment requires the exercise of judgment."

Eric Holder, a former attorney general under President Barack Obama who leads the National Democratic Redistricting Committee and its affiliated nonprofit, said last month that Trump's order "clearly" violated the Constitution.

"This latest scheme is nothing more than a partisan attempt at manipulating the census to benefit the president's allies, but it plainly violates the U.S. Constitution and federal laws, and cannot stand," said Holder, whose nonprofit group is supporting a lawsuit seeking to halt the administration's move.

Trump has made numerous efforts to exclude undocumented immigrants from the count for the purposes of political representation. After the Supreme Court smacked down a move to add a citizenship question to the census last year, Trump's 2019 order asked other government agencies to provide data on citizenship that could be used to create a count of noncitizens.

At the time, administration officials said citizenship data could be used by the states to draw state legislative districts of equal population of citizens instead of all people — which would likely shift power from more densely populated cities to rural areas.

Like many aspects of public- and private-sector organizations, the coronavirus outbreak has roiled the Census Bureau's operations. In April, the bureau asked Congress to delay the requirement to submit apportionment data until the end of April 2021. But since then — as Trump's poll numbers have faltered — the administration has pushed to meet its original deadlines.

At a hearing last week before the Democratic-controlled House Oversight and Government Reform Committee, Dillingham repeatedly declined to say whether the bureau stood by its original request for an extension.

The House has already approved a provision extending the deadline. But the Republican coronavirus relief proposal in the Senate, on which the chamber has not acted, did not include an extension.

According to Dillingham's statement, "nearly 63 percent of all households" have completed the census thus far.

"We will improve the speed of our count without sacrificing completeness," Dillingham said, adding that the bureau would "provide awards" to employees "in recognition of those who maximize hours worked."

[HYPERLINK "https://thehill.com/homenews/administration/510386-census-bureau-confirms-plans-to-end-data-collection-early" \h]
The Hill – John Bowden, August 3

The Census Administration said Monday that it would speed up its acquisition of data ahead of the end of September, when it says it will end all collection efforts nationwide.

The Census Administration said Monday that it would speed up its acquisition of data ahead of the end of September, when it says it will end all collection efforts nationwide.

In a statement, the Census Bureau said that it would accelerate efforts to collect data in person and through self-reporting efforts, both of which it said would now end on Sept. 30. Census officials said in the announcement that the administration planned to collect a similar amount of data as has been collected in previous censuses.

"We will end field data collection by September 30, 2020," reads the announcement. "Self-response options will also close on that date to permit the commencement of data processing. Under this plan, the Census Bureau intends to meet a similar level of household responses as collected in prior censuses, including outreach to hard-to-count communities."

The plan marks a two-month extension of the self-reporting period, which was initially intended to end on July 31. Some communities with low levels of internet access complete online census forms at far lower rates than more affluent communities, necessitating in-person data collection efforts as well. Those efforts have been made more difficult by the ongoing coronavirus pandemic.

"We will improve the speed of our count without sacrificing completeness," the agency continued. "As part of our revised plan, we will conduct additional training sessions and provide awards to enumerators in recognition of those who maximize hours worked. We will also keep phone and tablet computer devices for enumeration in use for the maximum time possible."

Some employees of the bureau were skeptical that the plan would allow the agency to collect enough information in interviews with NPR, pointing to the possibility of some communities being

undercounted. The census determines critical information about communities across the nation that is used at the federal level for funding purposes as well as for drawing up congressional maps.

"It's going to be impossible to complete the count in time," one Census Bureau employee told NPR. "I'm very fearful we're going to have a massive undercount."

[HYPERLINK "https://www.washingtontimes.com/news/2020/aug/3/2020-census-offer-bonuses-speed-hiring-finish-coun/" \h]
The Washington Times – Stephen Dinan, August 3

The Census Bureau announced Monday that it will hire more employees and offer bonuses to those who put in extra time in order to speed up the count and finish this year.

“We will improve the speed of our count without sacrificing completeness,” Director Steven Dillingham said in a statement.

He and his agency have been under fire from Democrats who say they fear the 2020 count is spiraling out of control with the pressures of coronavirus and demands from President Trump.

Mr. Trump last month signed an executive order directing the bureau, in addition to the full count of all persons residing in the U.S., to produce a count without illegal immigrants. The president wants that latter count to be used to dole out seats in the House of Representatives.

Mr. Dillingham said his agency is still trying to figure out how to do that, but vowed “a team of experts” is on the case.

He insisted, though, that the bureau is “committed to a complete and accurate 2020 census.”

Nearly 63% of households have responded to initial overtures for the census, leaving nearly two in five that have not self-reported yet. Many of those will require an in-person visit.

Mr. Dillingham said speeding up operations will allow them to complete the field collection by Sept. 30, and to have the final count by Dec. 31.

[HYPERLINK "https://www.huffpost.com/entry/census-count-deadline-moved-up_n_5f28b89fc5b6a34284be7c76"]
HuffPost – Josephine Harvey, August 3

The Census Bureau will end its counting efforts for the 2020 census on Sept. 30, a month earlier than planned, the bureau’s director announced Monday.

The bureau had expected to continue field data collection, which includes door-knocking, phone calls and online responses, until Oct. 31. The date had been pushed back from a July 31 deadline after the coronavirus pandemic complicated field operations.

To help meet the earlier deadline, the bureau will include "enumerator awards and the hiring of more employees to accelerate the completion of data collection and apportionment counts by our statutory deadline of December 31, 2020, as required by law and directed by the Secretary of Commerce," Census Bureau Director Steven Dillingham said in a statement.

Ending the data collection earlier might help the bureau meet its legal deadline of providing information to Congress and the White House by the end of the year, but some officials have questioned whether that will be possible now given the setbacks already caused by the pandemic.

"We are past the window of being able to get those counts by those dates at this point," Albert Fontenot, the bureau's associate director for decennial census programs, said in a July press briefing.

To date, about 63% of households have responded to the 2020 census.

Rumblings of the date change first reported by NPR cited three anonymous Census Bureau employees, one of whom expressed fears of a "massive undercount" as a result of the "impossible" task of completing the count by the new deadline.

Democrats and civil rights advocates have questioned whether rushing to meet the December deadline will produce an unfair and incorrect count. Concerns have also been raised about President Donald Trump's order to exclude undocumented immigrants from the count, despite the fact that the census is intended to count every person living in the United States.

In an op-ed published in The Washington Post on Monday, Vanita Gupta, the president and CEO of the Leadership Conference on Civil and Human Rights, called on Congress to intervene. Reducing the time for census takers to get in touch with households that didn't participate in the self-response phase of the count has a disproportionate effect on people living in marginalized communities, she said.

"The Trump administration is doing everything it can to sabotage the 2020 census so that it reflects an inaccurate and less diverse portrait of America. Its latest effort involves quietly compressing the census timeline to all but guarantee a massive undercount," she wrote. "Rushing census operations, as the administration is attempting to do, ensures the bureau won't count millions of people — especially those hit hardest by the pandemic."

[HYPERLINK "https://www.thedailybeast.com/census-bureau-to-wrap-up-count-early-and-will-meet-trumps-order-to-exclude-undocumented-migrants" \h]
The Daily Beast – Jamie Ross, August 4

The Census Bureau will finish collecting data next month so it can deliver population tallies to President Donald Trump by the end of the year, and will meet his order to exclude undocumented immigrants. In a statement late Monday reported by Politico, Census Bureau Director Steven Dillingham announced measures intended "to accelerate the completion of data collection and apportionment counts" by Dec. 31 and will stop "field data collection" by Sept. 30. Dillingham also said the bureau "continues its work on meeting the requirements" of Trump's order to calculate the number of congressional seats each state will have in the next decade without taking undocumented immigrants into account. Census results are used to calculate federal funding and evaluate the number of seats each state has in the House of Representatives, and the exclusion of undocumented migrants will likely help Republicans in

future elections. But it's unclear how they can be excluded, as the Census questionnaires were distributed back in March without a citizenship question.

[HYPERLINK "https://www.newsweek.com/census-bureau-cut-counting-bid-short-sparking-fears-many-will-left-out-1522609"]
Newsweek – Chantal Da Silva – August 4

The Census Bureau has announced plans to cut its 2020 counting efforts short by a full month, sparking fears that many, including people of color and immigrants, could be left out this year.

In a statement published on Monday evening, the Census Bureau said it would be ending its field data collection by September 30, a month earlier than had been expected.

Prior to the coronavirus pandemic, counting for the 2020 census had been set to wrap up by the end of July. However, in the midst of the outbreak, the bureau said it would need more time. It pushed the deadline back to October 31, with the public support of President Donald Trump.

The decision to end the extension early, the Census Bureau said, was made to ensure that apportionment, which sees the 435 seats in the House of Representatives divvied up according to population sizes, was completed ahead of the statutory deadline of December 31.

But while the Census Bureau maintained that it still "intends to meet a similar level of household responses as collected in prior censuses, including outreach to hard-to-count communities," many responded to the announcement with skepticism and concerns that the change could see people across the country left out.

"This is a massive scandal," Ari Berman, the author of Give Us the Ballot: The Modern Struggle for Voting Rights, wrote in a tweet.

"If you haven't already, fill out 2020 census NOW. It takes 5 min, you can do online [and the] future of American democracy depends on it."

ProPublica journalist Dara Lind also expressed concerns, telling followers to "make sure you have submitted your census information" and "make sure everyone you know has submitted their census information."

"Participation is important," Lind said. "And you have less time than expected."

As it stands, roughly 4 out of 10 households have yet to be counted in the 2020 Census, according to NPR, which had first reported the possibility of data-collection efforts ending early.

Democratic lawmakers and census advocates have repeatedly expressed fears the White House is pressuring the Census Bureau to curtail counting efforts so Republicans can benefit when House seats are reapportioned and voting districts are redrawn.

Meanwhile, immigration and civil rights advocates have further accused the Trump administration of seeking to rush the census to block immigrants, people of color and other marginalized groups from being counted, with the government already having sought to have undocumented immigrants excluded from the census.

"The Trump administration is doing everything it can to sabotage the 2020 Census so that it reflects an inaccurate and less diverse portrait of America," Vanita Gupta, the president and chief executive officer of the Leadership Conference on Civil and Human Rights, wrote in an opinion piece published on Monday by The Washington Post. "Its latest effort involves quietly compressing the census timeline to all but guarantee a massive undercount."

"Rushing census operations, as the administration is attempting to do, ensures the bureau won't count millions of people—especially those hit hardest by the pandemic," Gupta said. "It will leave the country with inaccurate numbers that deprive communities of resources, political power and the federal assistance necessary to recover from the pandemic for the next 10 years."

"The 2020 Census is the largest, most complex population count in the nation's history—one made more difficult by the emergence of COVID-19 and the Trump administration's ongoing efforts to undermine a decade of careful planning by the Census Bureau," Gupta asserted.

However, she said, "because the census determines funding for resources such as hospitals and health care, public schools, and infrastructure—as well as the number of seats in Congress each state receives and how legislative districts are drawn—it is imperative to get the count right."

Newsweek has contacted the Census Bureau and the White House for comment.

[HYPERLINK "https://www.upi.com/Top_News/US/2020/08/04/Census-Bureau-to-end-counting-a-month-early/3901596513638/" \h]
United Press International – Darryl Coote, August 4

The U.S. Census Bureau announced it will end all data collection efforts on Sept. 30, a month earlier than planned.

In a statement on Monday, U.S. Census Bureau Director Steven Dillingham said door-to-door counting efforts and self-response filings would stop by the end of September instead of Oct. 31 in order to accelerate the completion of the decennial tally of every person residing in the country by the statutory deadline of Dec. 31.

Despite the truncated schedule, Dillingham said through hiring more employees and offering enumerator awards "we will improve the speed or our count without sacrificing completeness."

The bureau, he said, intends to still have a similar level of household responses as previous years.

"The Census Bureau's new plan reflects our continued commitment to conduct a complete count, provide accurate apportionment data and protect the health and safety of the public and our workforce," Dillingham said.

The announcement came as 37% of households have yet to be counted in the tally, according to data from the Census Bureau.

The massive decennial effort is mandated by the Constitution and provides data that determines the number of seats each state is allocated in the U.S. House of Representatives as well as the disbursement of federal funds, according to the bureau's website.

However, this decade's count began on Jan. 21, the same day the United States reported its first case of COVID-19.

The pandemic, which has caused mass shutdowns throughout the country, forced the bureau in April to suspend field data collection and push the deadline from the end of July to Oct. 31.

Last week, the House committee on oversight and reform held an emergency hearing on the 2020 census, partially over reports that the Trump administration was seeking to cut its extended deadline.

Dillingham refused to comment as to the reason why President Donald Trump would want to compress the schedule, stating, "I am not directly involved with the Hill negotiations on extending the schedule."

Kenneth Prewitt, a former census director, expressed concern in the hearing over the reports, saying he was "very much worried" as those numbers are consequential to hospital, school and emergency preparation planning.

The Asian Americans Advancing Justice, a nonprofit in Washington, D.C., advocating for equality, issued a statement late last week following reports of that the Trump administration was to cut the deadline, chastising the move as it would hurt minorities.

"This new deadline allows Trump to cheat hard-to-count communities of color out of the resources needed for everything from healthcare and education to housing and transportation for the next 10 years," John C. Yang of Advancing Justice at the AAJC said in a statement. "The fate of our country's well-being and resources for the next 10 years is in jeopardy if Trump forces the U.S. Census Bureau to provide poor quality data to satisfy his political schemes."

[HYPERLINK "https://www.easttexasmatters.com/news/top-stories/census-bureau-ending-counting-effort-1-month-early/" \h]
Nextstar Media Group – Sue Necessary, August 4

The U.S. Census Bureau will end its effort to count every person in this country one month before previously announced.

Counting for the 2020 census will end September 30, according to a statement on the Census Bureau website.

That includes critical door-knocking efforts and collecting responses online, over the phone and by mail.

The earlier deadline and other updates to the bureau's plan are intended "to accelerate the completion of data collection and apportionment counts by our statutory deadline of December 31, 2020, as required by law and directed by the Secretary of Commerce," according to the statement.

This means those who have not yet answered the census have a shorter time to do so.

The census is a Constitutionally-mandated "headcount" of every person in the U.S. used to determine the distribution of political representation and federal funding for the next decade.

An under-count could lead populations to lose money and Congressional representatives.

If you have not yet filled out your census packet, you can do so online.

From: Van N Hoad (CENSUS/ADSD FED) [Van.N.Hoad@census.gov]
Sent: 8/5/2020 3:06:36 PM
To: Danielle Ringstrom (CENSUS/ADSD FED) [danielle.ringstrom@census.gov]
Subject: AdRec and SRQA Documents
Attachments: AdRec_Outline_V1.3a_draft012918-26-49.docx; AR Processing 030617.docx; diagram notes.txt; CAES Person Matching Flow.pdf

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