UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FAIR LINES AMERICA FOUNDATION, INC., Plaintiff, v. UNITED STATES DEPARTMENT OF COMMERCE and UNITED STATES BUREAU OF THE CENSUS, Defendants.	Case No. 1:21-cv-1361-ABJ **PLAINTIFF'S REPLY IN SUPPORT OF CROSS-MOTION FOR SUMMARY JUDGMENT**

Despite the scores of pages submitted (both from the lawyers in this case and the experts working alongside of them), the issues in this case distill to three. Each is straightforward. The resolution of each favors Fair Lines. And taken as a collective, they compel the conclusion that a grant of summary judgment in favor of Fair Lines is warranted.

First, the Freedom of Information Act ("FOIA") "mandates broad disclosure of government records," and the U.S. Supreme Court has "commanded" not only "that FOIA exemptions are to be narrowly construed," *Wolf v. CIA*, 473 F.3d 370, 374 (D.C. Cir. 2007), but also that "full agency disclosure" must occur "unless information is exempted under clearly delineated *statutory* language." *Dep't of Air Force v. Rose*, 425 U.S. 352, 360-61 (1976) (emphasis added). FOIA Exemption 3, in turn, allows the Census Bureau to withhold if a statute "requires" withholding "in such a manner as to leave no discretion on the issue" for the agency. 5 U.S.C. § 552(b)(3)(A)(i). Do these universally recognized principles leave the Census Bureau with any discretion whatsoever to withhold information that is *not* "exempted under clearly delineated *statutory* language"? *Id*. (emphasis added).

Second, for purposes of this case, Title 13 only prohibits the Census Bureau from disclosing "the information reported by, or on behalf of, any particular respondent,"13 U.S.C. § 8(b), and "the data furnished by any particular establishment or individual," *id*. § 9(a)(2). Elementary rules of grammar dictate that, when Congress said that "*the* information" from a particular person or "*the* data furnished" by a particular individual may not be disclosed, it meant that the Census Bureau may not turn over information received *directly* from an individual. Does the Census Bureau have any discretion whatsoever to expand this statutory language by withholding *other* information that, in its sole judgment, might affect the way in which it processes census data?

Third, even taking as a given the Census Bureau's expansive interpretation of Title 13, Title 13 only blocks disclosure of information relating to a "*particular*" "respondent," "entity," or "individual." *Id*. §§ 8(b), 9(a)(2) (emphasis added). Imputed data (*i.e.*, the only information now sought by Fair Lines), by definition and its very nature, is an artificial placeholder created by the Census Bureau to account for a situation in which they have no data from a particular "respondent," "entity," or "individual." *Id*. §§ 8(b), 9(a)(2). Even though this indisputably is what it means to "impute" data, can the Census Bureau nonetheless withhold this data under provisions that bar disclosure of information relating to a "*particular*" "respondent," "entity," or "individual"? *Id*. §§ 8(b), 9(a)(2) (emphasis added).

To ask these questions is to answer them in favor of Fair Lines. For that reason, summary judgment in favor of Fair Lines is appropriate. But if the Court agrees with the Census Bureau's read of the governing statutes (*i.e.*, that it may withhold based on worries about a hypothetical, far-fetched data hack that might someday force it to rethink the way in which in processes data), the dispute over whether release of this data would actually (or even likely) harm any of the Census

Bureau's operations becomes a disputed material fact that precludes a grant of summary judgment in favor of the Census Bureau.

ARGUMENT

This case is far more straightforward than it might appear; indeed, it is little more than a straightforward application of unambiguous statutory text and the English language. As an indisputable legal matter, the Census Bureau has no discretion to flip on its head the statutory presumption of robust government data disclosure and narrow construction of FOIA's exemptions. Nor may it read into Title 13 any additional prohibition beyond disclosure of information from a particular "respondent," "entity," or "individual." 13 U.S.C. §§ 8(b), 9(a)(2). Finally, it has no ability to change the nature of "imputed" data (*i.e.*, placeholder data that it uses *only* when it has *no data* from a "particular" "respondent," "entity," or "individual"), to instead mean data from a "particular" "respondent," "entity," or "individual." 13 U.S.C. §§ 8(b), 9(a)(2). And even if the Census Bureau's data-processing concerns could warp the statutes that govern disclosure of information (and those concerns most certainly cannot do so), those worries are entirely specious. For all these reasons, Fair Lines is entitled to summary judgment.

I. THE CENSUS BUREAU HAS NO DISCRETION WHATSOEVER TO EXPAND FOIA'S STATUTORY LANGUAGE OR THE CASELAW INTERPRETING IT.

Despite the Census Bureau's best attempts to force *Chevron*'s agency-discretion square peg into FOIA's round hole, *Chevron, U.S.A., Inc. v. NRDC, Inc.*, 467 U.S. 837, 844 (1984), the fundamental principle at work here is that "courts must presume that a legislature says in a statute what it means and means in a statute what it says there." *Connecticut Nat. Bank v. Germain*, 503 U.S. 249, 253-54 (1992). "[I]f the statutory language is unambiguous and the statutory scheme is coherent and consistent," the court's inquiry—and the agency's—ends there. *Barnhart v. Sigmon Coal Co.*, 534 U.S. 438, 450 (2002); *see also Germain*, 503 U.S. at 254 (holding that the "judicial

inquiry is complete" where the words of a statute are unambiguous). In this case, the statutory text is the alpha and the omega of this Court's inquiry.

The textual inquiry, of course, begins with FOIA itself. "Without question," FOIA "is broadly conceived." *EPA v. Mink*, 410 U.S. 73, 80 (1973), *superseded by statute on other grounds*, FOIA, Pub. L. No. 93-502, § 2(a), 88 Stat. 1563 (1973). By its terms, "[i]t seeks to permit access to official information long shielded unnecessarily from public view and attempts to create a judicially enforceable public right to secure such information from *possibly unwilling* official hands." *Mink*, 410 U.S. at 80 (emphasis added). "To make crystal clear the congressional objective— . . . pierce the veil of administrative secrecy and to open agency action to the light of public scrutiny . . . —Congress provided . . . that nothing in [FOIA] should be read to 'authorize withholding of information or limit the availability of records to the public, except *as specifically stated* . . . .'" *Dep't of the Air Force v. Rose*, 425 U.S. 352, 361 (1976) (quoting 5 U.S.C. § 552(c)) (emphasis added).

Although FOIA contains exemptions, each is "limited" and none "obscure[s] the basic policy that disclosure, not secrecy, is the dominant objective of" FOIA. *Id*. FOIA's statutory text "explicitly" makes these exemptions "exclusive," *see* 5 U.S.C. § 552(c), and the Supreme Court has commanded that they "must be narrowly construed," *Rose*, 425 U.S. at 361. Not one Court (to the best of our knowledge) has ever called into question or implicitly watered down the "narrow construction" mandate when interpreting or applying FOIA's exemptions.

The only exemption at issue here is Exemption 3. Exemption 3, in turn, allows the Census Bureau to decide against "disclos[ing] matters specifically exempted from disclosure by statute." 5 U.S.C. § 552(b)(3). This exemption applies, however *only* when a different statute "*requires* that

the matters be withheld from the public in such a manner as to leave no discretion on the issue."[1] *Id*. § (b)(3)(A)(i) (emphasis added).

Taken together, these points are indisputable:

- Congress created FOIA with the specific and explicit intent to guarantee public access to information "from possibly unwilling official hands." *Mink*, 410 U.S. at 80;

- Understanding that officials "possibly unwilling" to turn over information might try to interpret FOIA's exemptions expansively, the Supreme Court (as well as the D.C. Circuit, *see Jurewicz v. United States Dep't of Agric*., 741 F.3d 1326, 1330 (2014)) have held that all exemptions "must be narrowly construed," *Rose*, 425 U.S. at 361; and,

- FOIA Exemption 3, which must be "narrowly construed" does not apply unless a withholding is "*require[d]*" by the plain terms of a different statute in a way that leaves the agency with "*no discretion*" to turn over the material. 5 U.S.C. § 552(b)(3)(A)(i) (emphasis added).

And these points, taken together, eviscerate the two fundamental arguments that the Census Bureau has made throughout this entire case—that the Court should employ "an *expansive* interpretation that favors confidentiality over disclosure," ECF No. 13-1, at 19, and that the Census Bureau has "discretion" to determine which data it may or may not want to share with the public, ECF No. 13-1, at 21, 27. The former runs afoul of *every* case holding that FOIA exemptions must be "narrowly construed." *See, e.g.*, *Rose*, 425 U.S. at 361; *Jurewicz*, 741 F.3d at 1330; *Pub. Citizen,*

[1] The other basis for withholding information under Exemption 3 is when a statute "establishes particular criteria for withholding or refers to particular types of matters to be withheld," 5 U.S.C. § 552(b)(3)(A)(ii). As explained in Fair Lines' Opposition to Defendants' Motion for Summary Judgment, *see* ECF No. 15-1 at 23, this basis is inapplicable here because Title 13 says nothing about particular criteria to be used by the agency in determining when to withhold any "publication whereby the data furnished by any particular establishment or individual under this title can be identified," 13 U.S.C. § 9(a)(2), nor does Title 13 refer to "particular types of matters to be withheld" beyond those that Title 13 explicitly requires to be withheld from the public, which fall under Exemption 3(A)(i). Although Defendants suggest for the first time in their reply brief that Exemption 3(A)(ii) may apply here, *see* ECF No. 18 at 10, their repeated failure to explain how it applies only bolsters Fair Lines' argument that it is indeed not applicable in this case.

Inc. v. OMB, 598 F.3d 865, 869 (D.C. Cir. 2009); *Mayer Brown LLP v. IRS*, 562 F.3d 1190, 1194 (D.C. Cir. 2009); *Pub. Citizen, Inc. v. Rubber Mfrs. Ass'n*, 533 F.3d 810, 813 (D.C. Cir. 2008). The latter is flatly contradicted by the text of Exemption 3, which only permits withholding if the agency has "*no discretion*" to do anything but withhold. 5 U.S.C. § 552(b)(3)(A)(i).

These points frame the rest of the Court's analysis. Kept in mind, they gut the entirety of the Census Bureau's objections to turning over the statewide tabulations of imputed data sought by Fair Lines. For these reasons (and the forthcoming ones), summary judgment in favor of Fair Lines is warranted.

II. The Census Bureau has no discretion whatsoever to expand Title 13's statutory language to foreclose disclosure of information *not* provided by a "*particular*" "respondent," "entity," or "individual."

Given the aforementioned points, the only remaining question for the Court to decide is whether Title 13 clearly and unequivocally forbids the Census Bureau from turning over "the total population imputed statewide by the Census Bureau for each state's group quarters." *See* ECF No. 14-3. Based on (1) Title 13's plain text and (2) the plain meaning of "imputed," "statewide data," the answer is no. The Census Bureau's contrary arguments, in turn, are all mistaken.

A. In support of its withholdings, the Census Bureau relies on two provisions of Title 13. Consistent with FOIA's preference in favor of disclosure, the first is written as an affirmative grant of what the Bureau *should* provide: specifically, it "may furnish copies of tabulations and other statistical materials," so long as the copies or materials "do not disclose the information reported by, or on behalf of, any particular respondent." 13 U.S.C. § 8(b). The second prohibits the Bureau from "mak[ing] any publication whereby the data furnished by any particular establishment or individual . . . can be identified." *Id.* § 9.

In both instances, the data exempt from disclosure is unequivocally that which is provided by unique, ascertainable, and—critically—*existing* individuals. The first does not apply unless the

information sought was "reported by, or on behalf of, a particular respondent." *Id*. § 8(b). The second does not apply unless the data sought can be identified with a "particular individual." *Id*. § 9. In both instances, Title 13's text is plain, and it must be applied accordingly—personally identifiable information and other raw data reported by particular respondents must not be disclosed, but tabulations and macro-level compilations *without* such information must be turned over if sought via FOIA.

The Census Bureau has no authority whatsoever to rewrite Title 13 to suit its preferences. Nor may it structure its operations in a way that allows it to stack speculation and conjecture about a hypothetical attack by a supercomputer, and then use that fear to contort its way into Title 13 applicability. And this point is critical. Lost among the Bureau's machinations regarding differential privacy, invariants, and its ever-evolving "Disclosure Avoidance System" is a straightforward legal principle that controls the outcome here: the Census Bureau may not *choose* to process its data in a way that undermines FOIA.

That, however, is the power that the Census Bureau asks the Court to bestow upon it. This attempted power grab is inherent in the Bureau's contradictory argument that, despite the plain text of the Exemption it claims (Exemption 3, which allows withholding when "required" by a statute that leaves it with "no discretion," 5 U.S.C. § 552(b)(3)(A)(i)), Congress nonetheless "afford[ed] [it] discretion . . . to release certain data." ECF No. 17, at 7. It is also inherent in the way in which it asks the Court to examine its exemption claim. In the Bureau's view, it is at liberty to (1) *choose* to employ differential privacy (a process it has never fully explained to the public), (2) *choose* how to "quantify the precise disclosure risk" (a quantification that is not explained anywhere it its briefing), (3) *choose* which data will be "invariant" (a choice that it never justifies); and then (4) *choose* that providing the data sought by Fair Lines "would undermine that sensitive

balance *the Census Bureau* has drawn" and "render[] . . . the privacy-loss budget" that *it* has "allocated meaningless." ECF No. 13-1, at 10 (emphasis added).

Fair Lines agrees that "[d]ifferential privacy is a hugely complex and technical statistical process." ECF No. 13-1, at 9. But the Bureau's *choice* to use it, and the *choices* that follow from its use of it, however complex and difficult to explain they might be, cannot be metamorphosed into a brand-new, never-before-seen FOIA exception that the Bureau gets to mold whenever it decides to kick the tires on a new statistical tool. Acceding to the Bureau's request would, instead, confer unprecedented confidentiality discretion on a federal agency. Because FOIA, and in particular FOIA's exceptions, were "plainly intended" by Congress "to set up concrete, workable standards for determining whether particular material may be withheld or must be disclosed," *Mink*, 410 U.S. at 79, the Court should decline the Bureau's invitation.

B. Applied correctly, then, there is no conceivable way that the data sought by Fair Lines is exempt from disclosure by Title 13 (and via Exemption 3). At this point in the litigation, Fair Lines only seeks "documents identifying the total population (number of individuals) imputed statewide by the Census Bureau for group quarters" for each U.S. state. ECF No. 8-4, at 7 (emphases in original). In plainer terms, Fair Lines wants a number for each state indicating how many times the Census Bureau had to create data to account for information it did not have about individuals living in certain facilities (*e.g.*, prisons, college dormitories, etc.). The question, then is whether turning over the number of times the Census Bureau had to create data for missing individuals would either "disclose the information reported by, or on behalf of, any particular respondent," 13 U.S.C. § 8(b), or allow Fair Lines to identify the "data furnished by any particular establishment or individual," *id*. § 9.

Plainly, the answer is no. As an initial matter, Fair Lines is asking for a *top-line, aggregate number* for each of the fifty states. Whether that number for any particular state is 10, 100, 1,000, 10,000, or 100,000, the number says absolutely nothing about "any particular respondent," establishment," or "individual. 13 U.S.C. § 8(b), 9. And as a more fundamental matter, the top-line, aggregate numbers sought by Fair Lines are the number of times that the Census Bureau had to *make up* information about "a[] particular respondent" or "individual". 13 U.S.C. §§ 8(b), 9. Under any rational perusal of the statutes cited by the Bureau to argue for withholding, this information cannot be withheld.

As discussed at greater length below, *see infra* at 11, the hand wringing by Census Bureau's expert about data-processing supercomputer attacks rings quite hollow. *See also* Second Declaration of Steven Ruggles. More fundamentally, however, FOIA disclosure does not, nor has it ever, turned on a stack of speculation regarding "death by a thousand FOIA cuts," *see* ECF No. 13-1, at 3, an agency-concocted "mosaic effect," *see* ECF No. 13-1, at 28, or an agency's unilateral designation of which data it has ordained as "invariant," *see* ECF No. 13-1, at 28. And it certainly has never turned on an agency's concern that disclosure in one case might result in additional FOIA requests, although the Census Bureau has nonetheless trotted that out as an excuse. *See* ECF No. 13-1, at 28 (arguing that "the Census Bureau's disclosure avoidance system will be utterly exposed to all manner of FOIA requests").

The only question before this Court is whether ordering the Census Bureau *in this case* to turn over "total population (number of individuals) imputed statewide by the Census Bureau for group quarters" for each U.S. state, ECF No. 8-4, at 7 (emphases in original), would either disclose information "reported by, or on behalf of, a particular respondent," 13 U.S.C. § 8(b), or would

allow Fair Lines to identify "data furnished by any particular establishment or individual," *Id*. § 9. The answer is no. The rest is a distraction, and the Court should treat it as such.

C. Lest there be any doubt, the case law cited by the Census Bureau confirms, rather than contradicts, Fair Lines' argument. *Baldrige v. Shapiro*, for instance, makes clear that imputed data is *not* covered by Title 13. In that case, the Supreme Court clarified that Title 13 protects the identity of actual census respondents and the raw data collected from them (including a list of vacant addresses, which was the data point at issue in that case). But it did so because those addresses were "part of the raw census data" that the Bureau collects directly from certain people. In other words, those addresses were "reported by, or on behalf of, a particular respondent," 13 U.S.C § 8(b), and therefore fell directly under Title 13's express terms. *Baldrige* said nothing to limit the scope of the "tabulations and other statistical materials" that the Census Bureau "may furnish" to Fair Lines.

Similarly, *Seymour v. Barraba*, remains entirely consistent with Fair Lines' position and offers no support for the Bureau's. *Barraba* held that Title 13 permits disclosure of "numerical statistical data which does not identify any person, corporation, or entity in any way." 559 F.2d 806, 809 (D.C. Cir. 1977). Here, Fair Lines seeks "numerical statistical data which does not identify any person, corporation, or entity in any way," *id.*; *e.g.*, a number for each state indicating how many times the Census Bureau had to create data to account for information it did not have regarding individuals living in certain facilities (*e.g.*, prisons, college dormitories, etc.). As noted above, these numbers could not conceivably "identify any person, corporation, or entity in any way" because they represent the number of times the Census Bureau used made-up data because *it* could not identify a specific person. Nothing in *Barraba* supports the Bureau's view that it may withhold any statistic that might conceivably, when combined with "a thousand FOIA cuts" and a

supercomputer, *see* ECF No. 13-1, at 3, raise a conjectural concern about a "mosaic effect." *See* ECF No. 18 at 17.

* * *

For all these reasons, the Court should grant summary judgment in favor of Fair Lines.

III. PRODUCING STATEWIDE TABULATIONS OF IMPUTED DATA WILL NOT, AND CANNOT, RESULT IN THE PARADE OF HORRIBLES TROTTED OUT BY THE CENSUS BUREAU.

For all the reasons stated above, the Census Bureau is not at liberty to reconfigure its data processing systems and use the complexity it has created and the unilateral choices it has made to deny Fair Lines its right to access material that is otherwise plainly disclosable under FOIA. But even if the Census Bureau *could* rely on its own choices and the purported vulnerabilities those choices created, they have failed to demonstrate that withholding this information is warranted. Summary judgment in favor of Fair Lines remains warranted.

In the Census Bureau's view, release of the "<u>total population</u> (number of individuals) <u>imputed statewide</u> by the Census Bureau <u>for group quarters</u>" for each U.S. state," ECF No. 8-4, at 7 (emphases in original), "would undermine the 2020 Census's disclosure avoidance system . . . , which in turn would put in jeopardy the Census Bureau's ability to protect the confidentiality of *all census data disclosed by the public*," ECF No. 17, at 1, 17. On its face, this argument rings implausible; we're talking about a *top-line, aggregate number* for each of the fifty states, not the last-known addresses for 350 million individuals. And whatever little credence this posit may have fades into the ether the more that it is scrutinized.

The claim that releasing the number of imputed cases in each state would allow the identification of data furnished by particular establishments or individuals—let alone "every census respondent"—is absurd. *See* Ruggles Second Decl. at ¶ 5. The requested counts pertain to entire states and refer only to the total number of cases that were imputed. *Id.* The imputed group

quarters numbers are ultimately guesses, not true counts of an actual population, and even the Census Bureau has no information about the particular individuals involved. *Id.* at ¶¶ 8, 9. The Census Bureau now maintains that such guesses were not drawn "out of thin air," ECF No. 18 at 6, but rather were informed by bits of information derived from various sources, such that the imputed numbers should be understood as information collected from particular census respondents. *See* Ruggles Second Decl. at ¶ 8. Given that the Census Bureau does not know who those particular respondents were, however, or indeed if they ever actually existed, it is not remotely possible that the requested numbers pose a disclosure risk under Title 13. *Id.* All the data reflecting characteristics of respondents remains noise-infused and therefore protected from reidentification. *Id.* at ¶ 5.

The Bureau's expert opines that release of the requested data would carry substantial "additional disclosure risk" due to the addition of "invariants." *See* ECF No. 18-1, Decl. of John Abowd at ¶ 22. The 2020 Census data include over 22 million "invariants"—counts without noise infusion—including the total number of housing units at the census block level and the number of group quarters facilities by type at the census block level. Ruggles Second Decl. at ¶ 10. Even if the number of imputed group quarters cases are viewed as "invariants"—which is highly questionable given that they are not true counts of anything in the population—it is simply preposterous that adding 52 additional invariants to the 22 million already published would have any detectible impact on the credibility of the Census Bureau's privacy guarantees. *Id.*

CONCLUSION

For the foregoing reasons, the Court should grant Fair Lines' motion for summary judgment. Alternatively, the Court should deny the Census Bureau's motion for summary judgment due to the disputed issues of material fact that remain.

Dated: November 23, 2021

Respectfully submitted,

/s/ Jason Torchinsky
Jason Torchinsky (D.C. Bar No. 976033)
jtorchinsky@holtzmanvogel.com
Jonathan P. Lienhard (D.C. Bar No. 474253)
jlienhard@holtzmanvogel.com
HOLTZMAN VOGEL BARAN TORCHINSKY &
JOSEFIAK PLLC
15405 John Marshall Highway
Haymarket, VA 20169
Phone: (540) 341-8808
Fax: (540) 341-8809
Counsel for Plaintiff

CERTIFICATE OF SERVICE

I do hereby certify that, on this 23rd day of November 2021, the foregoing Plaintiff's Reply in Support of Cross-Motion for Summary Judgment was filed electronically with the Clerk of Court using the CM/ECF system. The system instantaneously generated a Notice of Electronic Filing which served all counsel of record.

/s/ Jason Torchinsky___________

Jason Torchinsky (D.C. Bar No. 976033)
jtorchinsky@holtzmanvogel.com
Jonathan P. Lienhard (D.C. Bar No. 474253)
jlienhard@holtzmanvogel.com
HOLTZMAN VOGEL BARAN TORCHINSKY & JOSEFIAK PLLC
15405 John Marshall Highway
Haymarket, VA 20169
Phone: (540) 341-8808
Fax: (540) 341-8809
Counsel for Plaintiff

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FAIR LINES AMERICA FOUNDATION, INC., Plaintiff, v. UNITED STATES DEPARTMENT OF COMMERCE and UNITED STATES BUREAU OF THE CENSUS, Defendants.	Case No. 1:21-cv-1361-ABJ **SECOND DECLARATION OF DR. STEVEN RUGGLES**

I, Dr. Steven Ruggles, make the following Declaration pursuant to 28 U.S.C. § 1746, and declare that under penalty of perjury the following is true and correct to the best of my knowledge:

1. This is my second declaration in this lawsuit. My first declaration supported the Plaintiff's combined cross motion for summary judgment and opposition to Defendants' motion for summary judgment. I incorporate my previous declaration herein by reference. In this second declaration, I do not repeat the material in my prior declaration, rather I respond to the opinions set forth in John M. Abowd's third declaration, which was provided along with Defendants' combined reply in support of summary judgment and opposition to Plaintiff's cross motion for summary judgment.

2. Because of the pandemic, census fieldwork was delayed in 2020, and it was sometimes difficult or impossible to conduct in-person enumeration. The problem was especially pronounced for group quarters residents of college dormitories, prisons, military barracks, homeless shelters, group homes and nursing homes. Especially in the case of dormitories, many of the people present on census day (April 1) had gone home by the time census data collection resumed in July. In the end, the Census Bureau had 43,000 "unresolved" group quarters units, which were

units believed to be occupied but with no usable person count. This represents approximately one in five of the nation's group quarters units.

3. To correct for the missing information, the Census Bureau developed new imputation techniques to guess the population of each unit with missing information. Although imputation has previously been used to correct for nonresponse of persons residing in households, the imputation of group quarters populations is unprecedented. Details of the method are undisclosed, but it is clear that the group quarters count imputation works very differently from the household imputation used in previous censuses.
4. The Census Bureau now insists that it is impossible to reveal the overall number of imputed group quarters cases in each state. According to the Defendants, "the publication of such data … would put in jeopardy the confidentiality of all 2020 census data."
5. The Census Bureau is prohibited from making "any publication whereby the data furnished by any particular establishment or individual under this title can be identified." 13 U.S.C. § 9(a)(2). The claim that releasing the number of imputed cases in each state would allow the identification of data furnished by particular establishments or individuals is absurd.
6. In my previous declaration, I argued that "[t]here is no possible means by which the number of imputed cases could be used in combination with other statistics to allow for identification of an individual (Motion, p. 4-5)." In response, the Census Bureau now claims that this statement is "mathematically false, and the incorrectness of his statement has been known since 1972" (Abowd Decl. ¶ 18). To support this claim, Abowd cites a 2011 textbook and a working paper produced by the Federal Committee on Statistical Methodology, a committee organized by Abowd himself. Close readings of both sources reveal no explanations of how the number of imputed cases in a state could possibly be used to identify the responses of any particular real individual in the 2020 census. Both sources point out that combining information from multiple cross-classified tables can potentially reveal individual responses, especially when cell counts are very small. That is indisputable but is completely irrelevant in the present case.

7. This is an entirely different situation. The requested counts pertain to entire states and refer only to the total number of cases that were imputed. All the data reflecting *characteristics* of respondents remains noise-infused and therefore, according to the Census Bureau, protected from reidentification.
8. In my previous declaration, I further argued that the imputed totals were not subject to Title 13 confidentiality provisions because the data were not "furnished by any particular establishment or individual," as the law specifies. The numbers are guesses, and even the Census Bureau has no information about the particular individuals involved. The Census Bureau now argues that the guesses were not drawn out of thin air but are guesses informed by bits of information derived from various sources, and therefore can be viewed as information collected "on behalf of" a particular respondent. Given that the Census Bureau does not know who that particular respondent is, or indeed if they ever actually really existed, it is not remotely possible that these numbers pose a disclosure risk under Title 13.
9. Finally, the Defendants argue that providing the imputed counts would weaken the "privacy guarantees" of the disclosure avoidance system. The counts of imputed cases are guesses and are not true counts of an actual population. The imputed counts include no respondent characteristics, and the amount of noise in the data reported by respondents would be completely unaffected by the release of the imputed counts.
10. Abowd (Decl. ¶ 22) writes "Some uncertainty may remain, but it would not be easily quantified, and unlike with carefully structured differentially private noise, it would not be possible to promise that the additional disclosure risk from the published statistics remained small and controlled." In reality, however, the uncertainty in the released 2020 data already cannot be quantified because the existing noise-infused census data are not formally private. The 2020 Census data include over 22 million "invariants"—counts without noise infusion—including the total number of housing units at the census block level and the number of group quarters facilities by type at the census block level. As JASON pointed out in 2020, releasing any counts

without noise infusion is "a complete violation of the DP guarantee."[1] Accordingly, the 2020 census does not meet the basic standard of differential privacy, and the Census Bureau currently cannot make formal privacy guarantees. Even if the number of imputed group quarters cases are viewed as "invariants"—which is highly questionable given that they are not true counts of anything in the population—it is preposterous that adding 52 additional invariants to the 22 million already published would have any detectible impact on the credibility of the Census Bureau's privacy guarantees.

Dated: November 23, 2021

/s Steven Ruggles

Dr. Steven Ruggles

[1] JASON, 2020. Formal Privacy Methods for the 2020 Census. JSR-19-2F. The MITRE Corporation, McLean, VA., p. 56 https://www2.census.gov/programs-surveys/decennial/2020/program-management/planning-docs/privacy-methods-2020-census.pdf