

EXHIBIT D

DENNIS J. LAWSON

dennis.lawson@dechert.com
+1 202 261 3343 Direct
+1 202 261 3043 Fax

July 11, 2018

Certified Mail Return Receipt Requested

U.S. Department of Justice
Office of Information Policy, Director
1425 New York Avenue, N.W.
Suite 11050
Washington, DC 20530-0001

Tel: (202) 708-3815

RE: Freedom of Information Act Appeal – Request No. FOI/PA 18-00208-F

Dear FOIA Appeals Officer:

On March 20, 2018, The Protect Democracy Project (“Protect Democracy”) submitted a request (the “FOIA Request”)¹ via email to the Civil Rights Division of the Department of Justice (“DOJ/CRT”) pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, for the following documents and information for the period October 1, 2017 through the date that searches were conducted for records responsive to the request:

1. All records, including but not limited to emails, notes, and memoranda, reflecting communications between Department of Justice and the following individuals, or the Department of Justice and employees or representatives of the following entities, discussing or otherwise relating to the 2020 Census or the inclusion of a citizenship question in the 2020 Census.
 - a. Donald Trump for President (including but not limited to emails in which the domains donaldjtrump.com, trump.com, trumporg.com, ptt.gov, or donaldtrump.com are in the email address in the to, from, cc, bcc, subject, or body fields of the email)

¹ A copy of the FOIA Request is attached as Exhibit 1.

- b. The Republican National Committee (including but not limited to emails in which the domains gop.com or RNCHQ.org are in the email address in the to, from, cc, bcc, subject, or body fields of the email)
 - c. America First Action (including but not limited to emails in which the domain a1apac.org is in the email address in the to, from, cc, bcc, subject, or body fields of the email)
 - d. Great America
 - e. Future 45
 - f. Brad Parscale
 - g. Michael Glassner
 - h. John Pence
 - i. Steve Bannon
 - j. Breitbart (including but not limited to emails in which the domain breitbart.com is in the email address in the to, from, cc, bcc, subject, or body fields of the email)
 - k. Fox News (including but not limited to emails in which the domain foxnews.com is in the email address in the to, from, cc, bcc, subject, or body fields of the email)
2. All communications, including but not limited to emails, notes, and memoranda, between the Department of Justice and the Executive Office of the President, reflecting, discussing, or otherwise relating to the determination of the questions for the 2020 Census, including but not limited to emails in which the domain eop.gov is in the email address in the to, from, cc, bcc, subject, or body fields of the email.
 3. All records, including but not limited to emails, notes, and memoranda, reflecting, discussing, or otherwise relating to communications between the Department of Justice and Thomas Brunell.
 4. In addition to the records requested above, we also request records describing the processing of this request, including records sufficient to identify search terms used and locations and custodians searched, and any tracking sheets used to track the processing of this request. If

your agency uses FOIA questionnaires or certifications completed by individual custodians or components to determine whether they possess responsive materials or to describe how they conducted searches, we also request any such records prepared in connection with the processing of this request.

On March 30, 2018, Protect Democracy received from DOJ/CRT via electronic mail an acknowledgement of receipt of the FOIA Request (the “Acknowledgement of Receipt”) assigning the Request FOI/PA number 18-00208-F.² The Acknowledgment of Receipt confirmed that DOJ/CRT received the FOIA request on March 20, 2018. The Acknowledgement of Receipt stated that, due to the “large number of [FOIA] requests received by the Civil Rights Division, some delay may be encountered in processing your request.” The Acknowledgement of Receipt also noted that “[i]n an attempt to treat each requester fairly, we have adopted a policy of processing requests in the approximate order of receipt.” The Acknowledgement of Receipt characterized the FOIA Request as seeking “[a]ll communication between the Department of Justice and specific individuals relating to the 2020 Census or the inclusion of a citizenship question in the 2020 Census.”

On May 31, 2018, Protect Democracy received from DOJ/CRT via electronic mail a response (the “Denial Letter”). The Denial Letter provided two reasons for denying Protect Democracy’s FOIA Request. First, it states that “all responsive records are exempt from disclosure pursuant to 5 U.S.C. § 552(b)(7)(A) since disclosure thereof could reasonably be expected to interfere with law enforcement proceedings regarding the review of this issue by the Civil Rights Division’s Voting Section.”³ In apparent support for this assertion, the Denial Letter explains that “[t]he Department of Justice is currently in active litigation regarding the Census issues” and cites three pending cases: *New York v. DOC*, 1:18-cv-02921 (S.D.N.Y. filed Apr. 3, 2018) [hereinafter *New York Complaint*]⁴; *California v. Ross*, 3:18-cv-01865 (N.D. Cal. filed Mar. 26, 2018) [hereinafter *California Complaint*]⁵; and *Kravitz v. DOC*, 8:18-cv-01041 (D. Md. filed Apr. 11, 2018) [hereinafter *Kravitz Complaint*].⁶ Notably, DOJ/CRT is not a party in any of the three referenced cases. None of the cases concern the enforcement (or defense) of the “vote dilution” prohibitions

² A copy of the Acknowledgement of Receipt is attached as Exhibit 2.

³ A copy of the Denial Letter is attached as Exhibit 3.

⁴ A copy of the *New York Complaint* is attached as Exhibit 4.

⁵ A copy of the *California Complaint* is attached as Exhibit 5.

⁶ A copy of the *Kravitz Complaint* is attached as Exhibit 6.

under Section 2 of the Voting Rights Act.⁷ Moreover, each of the referenced cases was actually filed *after* the FOIA Request was submitted and, therefore, *after* documents responsive to the FOIA Request would have been created.⁸

Second, and without identifying any particular documents or categories of documents, the Denial Letter asserts that “certain information within these records that is exempt from disclosure pursuant to 5 U.S.C. § 552(b)(7)(A) should also be denied pursuant to 5 U.S.C. § 552(b)(5), since records consist of attorney work product, and pre-decisional deliberative material and attorney client material.”

In closing, without defining the term “matter,” the Denial Letter states that “[y]ou may resubmit your request once the Justice Department has closed this matter, and we will be happy to provide you with any documents that may be released which will not jeopardize the Department’s currently active enforcement interest in this matter.”

As discussed further below, DOJ/CRT does not, and cannot, meet its burden of demonstrating that the requested materials have been properly withheld. Accordingly, we ask that the blanket denial of the FOIA Request be reversed and that DOJ/CRT be required to immediately produce responsive documents not properly the subject of an exemption. We ask further that DOJ/CRT provide a Vaughn Index for any responsive documents withheld.

⁷ DOJ has asserted, and Census has agreed, that information in response to a citizenship question in the decennial census “is critical to the Department’s enforcement of Section 2 of the Voting Rights Act and its important protections against racial discrimination in voting.” See Letter from Arthur E. Gary, Gen. Counsel, Justice Mgmt. Div., U.S. Dep’t of Justice, to Ron Jarmin, Performing the Non-Exclusive Functions and Duties of the Director, U.S. Census Bureau, U.S. Dep’t of Commerce (Dec. 12, 2017), available at <https://www.documentcloud.org/documents/4340651-Text-of-Dec-2017-DOJ-letter-to-Census.html>. But whether citizenship data is relevant and/or necessary to the enforcement of Section 2 is not relevant here. The FOIA Request does not seek data on citizenship procured through the decennial census. Moreover, DOJ/CRT does not assert, nor could it, that any responsive documents concern any such enforcement efforts.

⁸ The Denial Letter, perhaps as the result of a typographical error, incorrectly states that the *Kravitz Complaint* was filed on March 11, 2018, before the date that the FOIA Request was submitted. The complaint was actually filed on April 11, 2018, *after* the FOIA Request was submitted.

1. Exemption 7(A) is inapplicable to the requested records.

Reliance by DOJ/CRT upon Exemption 7(A) is misplaced. Exemption 7(A) is applicable to “records or information compiled for law enforcement purposes, but only to the extent that production of such law enforcement records or information . . . could reasonably be expected to interfere with enforcement proceedings.” 5 U.S.C. § 552(b)(7)(A). There are three reasons Exemption 7(A) does not apply in this case.

a. The requested records were not compiled for law enforcement purposes.

Under the first prong of the Exemption 7(A) analysis, the government must show that the responsive documents were “compiled for law enforcement purposes.” 5 U.S.C. § 552(b)(7)(A). “Agency records are considered compiled for law enforcement purposes . . . if the investigatory activity that gave rise to the documents is related to the enforcement of federal laws, and there is a rational nexus between the investigation at issue and the agency’s law enforcement duties.” *Stein v. U.S. Sec. & Exch. Comm’n*, 266 F. Supp. 3d 326 (D.D.C. 2017) (internal quotations omitted) (quoting *Judicial Watch v. Rossotti*, 285 F. Supp. 2d 17, 24 (D.D.C. 2003)). In this case, the requested documents were not “compiled” for law enforcement purposes. To be clear, the FOIA Request does not seek any “compilations” of documents that have been, or may have been, compiled by DOJ/CRT for investigatory purposes. Rather, the requested records exist independently of, and were created prior to, the referenced litigations. Moreover, none of the records requested concern the enforcement of (or defense to) any claimed violations of the prohibition against “vote dilution” in Section 2 of the Voting Rights Act. Indeed, the DOJ request to include a citizenship question states that the data *to be* collected from the individual responses to the citizenship question in the 2020 Census is what is “critical to the Department’s enforcement of Section 2 of the Voting Rights Act. . . .” See Letter from Arthur E. Gary, Gen. Counsel, Justice Mgmt. Div., U.S. Dep’t of Justice, to Ron Jarmin, Performing the Non-Exclusive Functions and Duties of the Director, U.S. Census Bureau, U.S. Dep’t of Commerce (Dec. 12, 2017), *available at* <https://www.documentcloud.org/documents/4340651-Text-of-Dec-2017-DOJ-letter-to-Census.html>. At present, no such data has been collected, and it is clearly not something sought in the FOIA Request.

Instead, the FOIA Request seeks, among other things, correspondence between the Department of Justice and certain enumerated third-party individuals, employees, or representatives of certain enumerated third-party entities concerning the 2020 Census or the inclusion of a citizenship question in the 2020 Census from the period October 1, 2017 through at least March 20, 2018 (the date of the FOIA Request). No “investigatory activity” gave rise to the requested documents

between October 1, 2017 and March 20, 2018. A review of the three referenced cases in the Denial Letter is instructive. A cursory review of the complaints in those cases makes clear that each case is predicated upon action taken on March 26, 2018, when “U.S. Secretary of Commerce Wilbur L. Ross, Jr., ordered the U.S. Census Bureau . . . to add a question to the 2020 decennial census . . . questionnaire that requires respondents to report to the government whether they and their household members are United States citizens.” *Kravitz Complaint*, at ¶ 1. *See also California Complaint* at ¶ 4; *New York Complaint* at ¶ 3. Because the predicate act giving rise to these three cases did not occur until March 26, 2018, any “investigatory activity” relating to the three referenced cases could not have *given rise* to documents created prior to March 20, 2018.

Additionally, DOJ/CRT has failed to provide support for the proposition that all of the requested records are contained in an investigatory file, let alone compiled for law enforcement purposes. Moreover, if it were the case that all of the requested records were contained in an investigatory file and were being excluded as such, that would more likely be the result of “impermissible ‘commingling’ by an agency’s placing in an investigatory file material that did not legitimately have to be kept confidential.” *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 230 (1974).

b. The Denial Letter fails to establish that disclosure of the requested information could reasonably be expected to interfere with enforcement proceedings.

Second, even if it were determined that all of the responsive documents were “compiled for law enforcement,” which they were not, there is no basis upon which to conclude that disclosure of the information “could reasonably be expected to interfere with enforcement proceedings.” The Denial Letter includes only a conclusory statement that “disclosure thereof could reasonably be expected to interfere with law enforcement proceedings regarding the review of this issue by the Civil Rights Division’s Voting Section.” *See Bagwell v. U.S. Dep’t of Justice*, 2018 WL 1440177 at *6 (D.D.C. Mar. 22, 2018) (finding that the agency failed to meet its burden under Exemption 7(A) where the agency provided “only a conclusory statement that interference would occur without any discussion of how it would occur”). Moreover, rather than providing categories of responsive information, the Denial Letter includes only one category – “all” – and makes no attempt to explain how the release of responsive information could somehow harm this ongoing “law enforcement proceeding.” *See Juarez v. DOJ*, 518 F.3d 54, 58-59 (D.C. Cir. 2008).

c. The active litigation cited in the Denial Letter does not constitute an enforcement proceeding.

Finally, the three cases referenced in the Denial Letter do not constitute “enforcement proceeding[s]” for the purposes of Exemption 7(A). Exemption 7(A) has been construed broadly to apply to many different types of proceedings, such as criminal actions, civil actions, and regulatory proceedings. *See, e.g., Manna v. U.S. Dep’t of Justice*, 51 F.3d 1158, 1165 (3d Cir. 1995) (stating that disclosure would interfere with contemplated civil proceedings); *Judicial Watch v. Rossotti*, 285 F. Supp. 2d 17, 29 (D.D.C. 2003) (concluding that the “documents in question relate to an on-going civil investigation by IRS and are exempt under Exemption 7(A)”). The vast majority of the proceedings giving rise to this exemption are initiated by agencies.

The U.S. Court of Appeals for the District of Columbia has construed Exemption 7(A) to include “cases in which the agency has the initiative in bringing an enforcement action and those . . . in which it must be prepared to respond to a third party’s challenge.” *Mapother v. Dep’t of Justice*, 3 F.3d 1533, 1540 (D.C. Cir. 1993). In this case, DOJ/CRT has not brought any enforcement proceeding and is not even a party to any of the three cases upon which Denial Letter relies. DOJ/CRT’s apparent position that the cited complaints constitute “enforcement proceedings” is inconsistent with the courts’ interpretation of, and Congress’s purpose in enacting, Exemption 7(A). The Denial Letter’s statement that “[t]he Department of Justice is currently in active litigation regarding the Census issues” is manifestly insufficient to invoke Exemption 7(A).

2. Exemption 5 is inapplicable to the requested records.

Exemption 5 protects only “inter-agency or intra-agency memorandums or letters that would not be available by law to a party other than an agency in litigation with the agency.” 5 U.S.C. § 552(b)(5). Exemption 5—work product, pre-decisional deliberative material, and attorney client material—also cannot serve as a basis for withholding all of the documents responsive to the FOIA Request. This is so for three reasons.

a. Exemption 5 is inapplicable to communications from third-parties.

First, because a government agency is not the source of much of the requested information, Exemption 5 is inapplicable to “all” of the requested documents. Whether the documents are “inter-agency or intra-agency memorandums” is a threshold consideration under Exemption 5. It is well established that Exemption 5 requires that the “source [of withheld documents] must be a [g]overnment agency.” *Dep’t of the Interior v. Klamath Water Users Protective Ass’n*, 532 U.S.

1, 2 (2001). Because the Denial Letter fails to identify even a single document potentially (and properly) subject to Exemption 5, the DOH/CRT's reliance on this exemption fails.

b. DOJ/CRT concedes that responsive information requested is not privileged.

Second, to the extent information responsive to the FOIA request would include any inter-agency or intra-agency memorandums or letters, DOJ/CRT has already conceded that they are not of the type that “would not be available by law to a party other than an agency in litigation with the agency.” *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 149 (1975). Courts have interpreted the language of Exemption 5 to “exempt those documents, and only those documents [that are] normally privileged in the civil discovery context.” *Id.* DOJ/CRT states that responsive information would be provided pursuant to a refiled FOIA request “once the Justice Department has closed this matter”—but the attorney-client privilege and work product doctrine are not durational. An admission that responsive documents would be provided at the conclusion of an undefined “matter” is a concession that those documents were not privileged to begin with. *See, e.g., Shapiro v. U.S. Dep’t of Justice*, 969 F. Supp. 2d 18, 29 (D.D.C. 2013) (“[U]nder Exemption 5, attorney work-product is exempt from mandatory disclosure without regard to the status of the litigation for which it was prepared. . . . As a consequence, work product materials may enjoy protection not only when the litigation with regard to which the work product was prepared is still in progress, but also when that claim has been resolved.”) (internal quotations omitted).

c. The requested documents include, among other things, third party communications not subject to the deliberative process privilege.

Finally, as noted above, much of the requested information concerns communications with third parties. These are not inter-agency or intra-agency memorandums or letters. Moreover, “correspondence with an outside party . . . d[oes] not fall within the ambit of the FOIA’s deliberative process privilege.” *Levy v. U.S. Postal Service*, 567 F. Supp. 2d 162, 167 (D.D.C. 2008) (citing *Mead Data Central, Inc. v. U.S. Dep’t of the Air Force*, 566 F.2d 242, 257 (D.C. Cir. 1977)). Further, to the extent any inter-agency or intra-agency documents or information concern those communications, documents created at or before the FOIA Request was made could not have been prepared in connection with, or reasonably in anticipation of, the referenced litigation. *See, e.g., Shapiro*, 969 F. Supp. 2d at 34 (“if the agency were allowed to withhold any document prepared by any person in the government with a law degree simply because litigation might someday occur, the policies of the FOIA would be largely defeated.”) (internal quotations omitted).

CONCLUSION

For the reasons expressed above, we ask that DOJ/CRT's denial of Protect Democracy's FOIA Request be reversed; that DOJ/CRT immediately produce responsive documents not properly subject to an exemption, including all reasonably segregable materials; and that DOJ/CRT immediately provide a Vaughn Index⁹ for any documents withheld.

Pursuant to 15 C.F.R. § 4.10(b)(1), we request an acknowledgement letter confirming receipt of this appeal. Pursuant to 15 C.F.R. §§ 4.6(b), 4.10(e), we request a response to this appeal within 20 working days. Please let us know if you require any additional information.

Thank you for your timely consideration of this appeal and we look forward to hearing from you very soon.

Sincerely,



Dennis J. Lawson

cc: Matthew Larrabee, Esq.
Jamila Benkato, Esq.

Enclosures

⁹ If the intention is to use categories, then DOJ/CRT could alternatively provide a description of these categories and the basis for how disclosure of each category of information could reasonably be expected to interfere with law enforcement.

Freedom of Information Act Appeal
Request No. FOI/PA 18-00208-F

EXHIBITS

July 11, 2018

EXHIBIT 1



March 20, 2018

Via FOIAonline Portal (<https://foiaonline.regulations.gov>)

Laurie Day
Chief, Initial Request Staff
Office of Information Policy
U.S. Department of Justice
Suite 11050, 1425 New York Avenue, N.W.
Washington, D.C. 20530-0001

Via Email (CRT.FOIArequests@usdoj.gov)

Nelson D. Hermilla, Chief
FOIA/PA Branch
Civil Rights Division
Department of Justice
BICN Bldg., Room 3234
950 Pennsylvania Avenue, NW

Re: Freedom of Information Act request

To Whom It May Concern:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, The Protect Democracy Project hereby requests that your office produce within 20 business days the following records (see below for clarity on the types of records sought):

1. All records, including but not limited to emails, notes, and memoranda, reflecting communications between Department of Justice and the following individuals, or the Department of Justice and employees or representatives of the following entities, discussing or otherwise relating to the 2020 Census or the inclusion of a citizenship question in the 2020 Census.
 - a. Donald Trump for President (including but not limited to emails in which the domains donaldjtrump.com, trump.com, trumporg.com, ptt.gov, or donaldtrump.com are in the email address in the to, from, cc, bcc, subject, or body fields of the email)
 - b. The Republican National Committee (including but not limited to emails in which the domains gop.com or RNCHQ.org are in the email address in the to, from, cc, bcc, subject, or body fields of the email)

2020 Pennsylvania Avenue NW, #163, Washington, DC 20006 • FOIA@protectdemocracy.org

- c. America First Action (including but not limited to emails in which the domain alapac.org is in the email address in the to, from, cc, bcc, subject, or body fields of the email)
 - d. Great America
 - e. Future 45
 - f. Brad Parscale
 - g. Michael Glassner
 - h. John Pence
 - i. Steve Bannon
 - j. Breitbart (including but not limited to emails in which the domain breitbart.com is in the email address in the to, from, cc, bcc, subject, or body fields of the email)
 - k. Fox News (including but not limited to emails in which the domain foxnews.com is in the email address in the to, from, cc, bcc, subject, or body fields of the email)
2. All communications, including but not limited to emails, notes, and memoranda, between the Department of Justice and the Executive Office of the President, reflecting, discussing, or otherwise relating to the determination of the questions for the 2020 Census, including but not limited to emails in which the domain eop.gov is in the email address in the to, from, cc, bcc, subject, or body fields of the email.
 3. All records, including but not limited to emails, notes, and memoranda, reflecting, discussing, or otherwise relating to communications between the Department of Justice and Thomas Brunell.
 4. In addition to the records requested above, we also request records describing the processing of this request, including records sufficient to identify search terms used and locations and custodians searched, and any tracking sheets used to track the processing of this request. If your agency uses FOIA questionnaires or certifications completed by individual custodians or components to determine whether they possess responsive materials or to describe how they conducted searches, we also request any such records prepared in connection with the processing of this request.

The timeframe for this request is October 1, 2017 through the date that searches are conducted for records responsive to this FOIA request.

We ask that you search for records from all components of the Department of Justice that may be reasonably likely to produce responsive results, including but not limited to the Office of the Attorney General and the Civil Rights Division.

FEE WAIVER

FOIA provides that any fees associated with a request are waived if “disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii). The core mission of The Protect Democracy Project, a 501(c)(3) organization, is to inform public understanding on operations and activities of the government. This request is submitted in consort with the organization’s mission to gather and disseminate information that is likely to contribute

significantly to the public understanding of executive branch operations and activities. The Protect Democracy Project has no commercial interests.

In addition to satisfying the requirements for a waiver of fees associated with the search and processing of records, The Protect Democracy Project is entitled to a waiver of all fees except “reasonable standard charges for document duplication.” 5 U.S.C. § 552(a)(4)(A)(ii)(II). Federal law mandates that fees be limited to document duplication costs for any requester that qualifies as a representative of the news media. *Id.* The Protect Democracy Project operates in the tradition of 501(c)(3) good government organizations that qualify under FOIA as “news media organizations.” Like those organizations, the purpose of The Protect Democracy Project is to “gather information of potential interest to a segment of the public, use its editorial skills to turn the raw materials into distinct work, and distribute that work to an audience.” *Nat’s Sec. Archive v. Dep’t of Defense*, 880 F.2d 1381, 1387 (D.C. Cir. 1989). As the District Court for the District of Columbia “easily” determined in recent litigation in a separate FOIA request, The Protect Democracy Project is “primarily engaged in disseminating information.” *Protect Democracy Project, Inc. v. U.S. Dep’t of Def.*, 263 F. Supp. 3d 293, 298 (D.D.C. 2017). Indeed, The Protect Democracy Project has routinely demonstrated the ability to disseminate information about its FOIA requests to a wide audience.¹ The Protect Democracy Project will disseminate information and analysis about this request – and any information obtained in response – through its website (protectdemocracy.org); its Twitter feed (<https://twitter.com/protectdemocracy>), which has more than 10,000 followers; its email list of approximately 20,000 people; and sharing information with other members of the press.

RESPONSIVE RECORDS

We ask that all types of records and all record systems be searched to discover records responsive to our request. We seek records in all media and formats. This includes, but is not limited to: agendas, manifests, calendars, schedules, notes, and any prepared documentation for meetings, calls, teleconferences, or other discussions responsive to our request; voicemails; e-mails; e-mail attachments; talking points; faxes; training documents and guides; tables of contents and contents of binders; documents pertaining to instruction and coordination of couriers; and any other materials. However, you need not produce press clippings and news articles that are unaccompanied by any commentary (e.g., an email forwarding a news article with no additional commentary in the email thread).

¹ See, e.g., Lisa Rein, *Watchdog group, citing “integrity of civil service,” sues Trump to find out if feds are being bullied*, Wash. Post (Apr. 27, 2017), <https://www.washingtonpost.com/news/powerpost/wp/2017/04/27/watchdog-group-citing-integrity-of-civil-service-sues-trump-to-find-out-if-feds-are-being-bullied/>; Ben Berwick, *Going to Court for Civil Servants*, Take Care (April 28, 2017), <https://takecareblog.com/blog/going-to-court-for-civil-servants>; Charlie Savage, *Watchdog Group Sues Trump Administration, Seeking Legal Rationale Behind Syria Strike*, N.Y. Times (May 8, 2017), <https://nytimes.com/2pX82OV>; Justin Florence, *What’s the Legal Basis for the Syria Strikes? The Administration Must Acknowledge Limits on its Power to Start a War*, Lawfare (May 8, 2017), <https://www.lawfareblog.com/whats-legal-basis-syria-strikes-administration-must-acknowledge-limits-its-power-start-war>; Allison Murphy, *Ten Questions for a New FBI Director*, Take Care (June 6, 2017), <https://takecareblog.com/blog/ten-questions-for-a-new-fbi-director>.

We ask that you search all systems of record, including electronic and paper, in use at your agency, as well as files or emails in the personal custody of your employees, such as personal email accounts, as required by FOIA and to the extent that they are reasonably likely to contain responsive records. The Protect Democracy Project would prefer records in electronic format, saved as PDF documents, and transmitted via email or CD-ROM.

If you make a determination that any responsive record, or any segment within a record, is exempt from disclosure, we ask that you provide an index of those records at the time you transmit all other responsive records. In the index, please include a description of the record and the reason for exclusion with respect to each individual exempt record or exempt portion of a record, as provided by *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), cert. denied, 415 U.S. 977 (1974). When you deem a portion of a record exempt, we ask that the remainder of the record to be provided, as required by 5 U.S.C. § 552(b).

Given the 20-day statutory deadline, we hope to be as helpful as possible in clarifying or answering questions about our request. Please contact me at Jamila.Benkato@protectdemocracy.org or (202) 945-2157 if you require any additional information. We appreciate your cooperation, and look forward to hearing from you very soon.

Sincerely,



Jamila Benkato
Counsel
The Protect Democracy Project

EXHIBIT 2



NDH:ANF:AKL

*Freedom of Information/Privacy Acts Branch -BICN
950 Pennsylvania Ave., NW
Washington, DC 20530*

Via Electronic Mail

Jamila Benkato, Esq.
The Protect Democracy Project
2020 Pennsylvania Avenue NW, #163
Washington, DC 20006
jamila.benkato@protectdemocracy.org

March 30, 2018

Date Received: March 20, 2018

FOI/PA No.18-00208-F

Subject of Request: All communication between the Department of Justice and specific individuals relating to the 2020 Census or the inclusion of a citizenship question in the 2020 Census

Dear Ms. Benkato:

This is to inform you that your request for records from the files of the Civil Rights Division was received by the Division's Freedom of Information/Privacy Acts (FOI/PA) Branch on the date indicated above. Your request has been assigned the FOI/PA number shown above. Please refer to this number in any future correspondence concerning this request. In connection with review of your FOI/PA request, the following paragraph(s) are applicable:

_____ In searching its file for records responsive to your request,_____

_____ located records that originated with the Civil Rights Division. These records were referred to the Civil Rights Division as the originating component for review and release determination. Upon completion of our review, the releasable document(s) will be sent directly to you.

XX As a result of the large number of Freedom of Information and Privacy Acts requests received by the Civil Rights Division, some delay may be encountered in processing your request. In an attempt to treat each requester fairly, we have adopted a policy of processing requests in the approximate order of receipt. Please be assured that your request is being handled as equitably as possible. We appreciate your patience and will provide you with a response at the earliest possible date.

Please note that the Civil Rights Division utilizes multi-track processing in which processing ranges from faster tracks for requests (seeking access to documents already processed for prior requests) to much slower tracks for complex requests involving voluminous amounts of responsive documents or extensive consultation. At your option, you may wish to call the number below and limit the scope of your request to enable your request to be handled in the most expeditious manner available to fulfill your interests.

_____ Since your letter did not include authorization or a certification of identity, we will close your file for now. We will re-open your request on receipt of the required authorization forms. The Privacy Act, and the Department of Justice Privacy Act regulation, 28 C.F.R. §16.41, require each person requesting records indexed or maintained under his or her name or another person's name, to furnish the Department with proof of identity/consent to disclosure. Please complete the enclosed form and return it directly to the Freedom of Information/Privacy Acts Branch, Civil Rights Division, US Department of Justice, Washington, D.C. 20530.

Should you wish to appeal the identification/consent requirement, you may do so by writing to the Director, Office of Information Policy (OIP), United States Department of Justice, 1425 New York Avenue, N.W. Building, Suite 11050, Washington, D.C. 20530. Your appeal must be received by OIP within sixty (60) days from the date of this letter in order to be considered timely. The envelope should be marked "FOI/PA Appeal." You may also submit your appeal via OIP's electronic portal (at <http://www.justice.gov/oip/efoia-portal.html>). Following review by the Department, judicial review of the decision of the Attorney General is available in the United States District Court in the judicial district in which you reside, in which you have your principal place of business, or in the District of Columbia.

If you have any further questions, contact this office by calling (202) 514-4210.

Sincerely,

April N. Freeman

for

Nelson D. Hermilla, Chief
Freedom of Information/Privacy Acts Branch
Civil Rights Division

EXHIBIT 3



U.S. Department of Justice
Civil Rights Division

NDH:ANF:DKH
18-00208-F

Freedom of Information/Privacy Acts Branch - PHB
950 Pennsylvania Ave., NW
Washington, DC 20530

May 31, 2018

Via Electronic Mail Only

Jamila Benkato, Esq.
The Protect Democracy Project
2020 Pennsylvania Avenue NW, #163
Washington, DC 20006
jamila.benkato@protectdemocracy.org

Dear Ms. Benkato:

This is in further response to your March 20, 2018 Freedom of Information Act request, received by the Civil Rights Division on March 20, 2018, seeking access to:

1. All records, including but not limited to emails, notes, and memoranda, reflecting communications between Department of Justice and the following individuals, or the Department of Justice and employees or representatives of the following entities, discussing or otherwise relating to the 2020 Census or the inclusion of a citizenship question in the 2020 Census.
 - a. Donald Trump for President (including but not limited to emails in which the domains donaldjtrump.com, trump.com, trumporg.com, ptt.gov, or donaldtrump.com are in the email address in the to, from, cc, bcc, subject, or body fields of the email)
 - b. The Republican National Committee (including but not limited to emails in which the domains gop.com or RNCHQ.org are in the email address in the to, from, cc, bcc, subject, or body fields of the email)
 - c. America First Action (including but not limited to emails in which the domain a1apac.org is in the email address in the to, from, cc, bcc, subject, or body fields of the email)
 - d. Great America
 - e. Future 45
 - f. Brad Parscale
 - g. Michael Glassner
 - h. John Pence
 - i. Steve Bannon

- j. Breitbart (including but not limited to emails in which the domain *breitbart.com* is in the email address in the to, from, cc, bcc, subject, or body fields of the email)
 - k. Fox News (including but not limited to emails in which the domain *foxnews.com* is in the email address in the to, from, cc, bcc, subject, or body fields of the email)
2. All communications, including but not limited to emails, notes, and memoranda, between the Department of Justice and the Executive Office of the President, reflecting, discussing, or otherwise relating to the determination of the questions for the 2020 Census, including but not limited to emails in which the domain *eop.gov* is in the email address in the to, from, cc, bcc, subject, or body fields of the email.
 3. All records, including but not limited to emails, notes, and memoranda, reflecting, discussing, or otherwise relating to communications between the Department of Justice and Thomas Brunell.
 4. In addition to the records requested above, we also request records describing the processing of this request, including records sufficient to identify search terms used and locations and custodians searched, and any tracking sheets used to track the processing of this request. If your agency uses FOIA questionnaires or certifications completed by individual custodians or components to determine whether they possess responsive materials or to describe how they conducted searches, we also request any such records prepared in connection with the processing of this request.

After consideration of the responsive records, I have determined that all responsive records are exempt from disclosure pursuant to 5 U.S.C. §552(b)(7)(A) since disclosure thereof could reasonably be expected to interfere with law enforcement proceedings regarding the review of this issue by the Civil Rights Division's Voting Section. The Department of Justice is currently in active litigation regarding the Census issues. *See New York v. DOC*, 1:18-cv-02921 (Filed April 4, 2018, S.D. NY); *California v. Ross*, 3:18-cv-01865, (Filed March 26, 2018, N.D. CA); and *Kravitz v. DOC*, 8:18-cv-01041 (Filed March 11, 2018, D.C. Md.). I have further determined that certain information within these records that is exempt from disclosure pursuant to 5 U.S.C. §552(b)(7)(A) should also be denied pursuant to 5 U.S.C. §552(b)(5), since records consist of attorney work product, and pre-decisional deliberative material and attorney client material.

You may resubmit your request once the Justice Department has closed this matter, and we will be happy to provide you with any documents that may be released which will not jeopardize the Department's currently active enforcement interest in this matter.

If you are not satisfied with my response to your request, you may administratively appeal by writing to the Director, Office of Information Policy, United States Department of Justice, Suite 11050, 1425 New York Avenue, NW, Washington, DC 20530-0001, or you may submit an appeal through OIP's eFOIA portal at <http://www.justice.gov/oip/efoia-portal.html>. Your appeal must be postmarked or transmitted electronically within sixty days from the date of

this letter. If you submit your appeal by mail, both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal."

I hope the Civil Rights Division has been of some assistance to you in this matter.

Sincerely,

Nelson D. Hermilla

Nelson D. Hermilla, Chief
Freedom of Information/Privacy Acts Branch
Civil Rights Division

EXHIBIT 4

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

STATES OF NEW YORK,
CONNECTICUT, DELAWARE,
ILLINOIS, IOWA, MARYLAND,
MINNESOTA, NEW JERSEY, NEW
MEXICO, NORTH CAROLINA,
OREGON, RHODE ISLAND,
VERMONT, and WASHINGTON;
COMMONWEALTHS OF
MASSACHUSETTS,
PENNSYLVANIA, and VIRGINIA;
DISTRICT OF COLUMBIA; CITIES
OF CHICAGO, NEW YORK,
PHILADELPHIA, PROVIDENCE,
and SEATTLE; CITY and COUNTY
of SAN FRANCISCO; and the
UNITED STATES CONFERENCE
OF MAYORS,

Plaintiffs,

v.

UNITED STATES DEPARTMENT
OF COMMERCE; and WILBUR L.
ROSS, JR., in his official capacity as
Secretary of Commerce,

and

BUREAU OF THE CENSUS, an
agency within the United States
Department of Commerce; and RON S.
JARMIN, in his capacity as performing
the non-exclusive functions and duties
of the Director of the U.S. Census
Bureau,

Defendants.

CIVIL ACTION NO.

COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF

INTRODUCTION

1. This case is brought to enforce the federal government’s constitutional obligation to conduct an “actual Enumeration” of the national population every ten years, by determining the “whole number of persons” in the United States. U.S. Const. art. I, § 2, cl. 3; *id.* amend. XIV, § 2. Plaintiffs challenge Defendants’ unconstitutional and arbitrary decision to add a citizenship demand to the 2020 Census questionnaire, which will fatally undermine the accuracy of the population count and cause tremendous harms to Plaintiffs and their residents.

2. The “decennial enumeration of the population is one of the most critical constitutional functions our federal government performs.”¹ The decennial census directly determines the apportionment of Representatives to Congress among the states, the allocation of electors to the Electoral College, and the distribution of hundreds of billions of dollars in federal funds to states, local governments, and other grantees.

3. On March 26, 2018, Defendants announced their decision to use the 2020 Census to demand information on the citizenship status of every resident in the country, despite acknowledging that “[t]he Department of Commerce is not able to determine definitively how inclusion of a citizenship question on the decennial census will impact responsiveness.”² As required by the Census Act, on March 29, 2018, Defendants transmitted the Secretary of Commerce’s final determination of the “questions that will be asked on the 2020 Census” to Congress.³

¹ Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act of 1998, Pub. L. No. 105-119, § 209(a)(5), 111 Stat. 2440, 2481 (1997).

² Memorandum from Sec’y of Commerce Wilbur Ross to Under Sec’y of Commerce for Econ. Affairs Karen Dunn Kelley, *Reinstatement of a Citizenship Question on the 2020 Decennial Census Questionnaire* 7 (Mar. 26, 2018), https://www.commerce.gov/sites/commerce.gov/files/2018-03-26_2.pdf (hereafter “Ross Memo”).

³ U.S. Census Bureau, *Questions Planned for the 2020 Census and American Community Survey* 1 (Mar. 2018); *see also* 13 U.S.C. § 141(f)(2) (hereafter “Final Questions Report”).

4. The U.S. Bureau of the Census (“Census Bureau”) has not sought citizenship information on the decennial census form that goes to every household in the country since 1950. In departing from nearly seven decades of settled practice, Defendants also departed from their long-standing and well-established processes for revising the decennial census questionnaire. Decisions to change questions on the decennial census typically take several years to test, evaluate, and implement; but Defendants’ decision here was compressed into a hasty and unprecedented period of less than four months.

5. As Defendants’ own research shows, this decision will “inevitably jeopardize the overall accuracy of the population count” by significantly deterring participation in immigrant communities, because of concerns about how the federal government will use citizenship information. *Fed’n for Am. Immigration Reform v. Klutznick*, 486 F. Supp. 564, 568 (D.D.C. 1980) (three-judge court). These concerns have been amplified by the anti-immigrant policies, actions, and rhetoric targeting immigrant communities from President Trump and this Administration.

6. The resulting undercount will not only fatally undermine the accuracy of the 2020 Census, but will jeopardize critical federal funding needed by states and localities to provide services and support for millions of residents. Further, it will deprive historically marginalized immigrant communities of critical public and private resources over the next ten years. Defendants’ decision is inconsistent with their constitutional and statutory obligations; is unsupported by the stated justification; departs from decades of settled practice without reasoned explanation; and fails to consider the availability of alternative data that effectively serve the federal government’s needs.

7. Plaintiffs the States of New York, Connecticut, Delaware, Illinois, Iowa, Maryland, Minnesota, New Jersey, New Mexico, North Carolina, Oregon, Rhode Island, Vermont, and Washington; the Commonwealths of Massachusetts, Pennsylvania, and Virginia; the District of Columbia; the Cities of Chicago, New York, Philadelphia, Providence, and Seattle; the City and County of San Francisco; and the United States Conference of Mayors (“USCM”), therefore bring this action to enjoin Defendants’ decision because it violates the constitutional mandate to conduct an “actual Enumeration,” U.S. Const. art. I, § 2, cl. 3; exceeds and is contrary to Defendants’ statutory jurisdiction, authority, and limitations in violation of the Administrative Procedure Act (“APA”), 5 U.S.C. § 706(2)(C); and is arbitrary, capricious, and an abuse of discretion under the APA, 5 U.S.C. § 706(2)(A).

JURISDICTION AND VENUE

8. The Court has subject-matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 2201(a). Jurisdiction is also proper under the judicial review provisions of the APA, 5 U.S.C. § 702.

9. Declaratory and injunctive relief is sought as authorized in 28 U.S.C. §§ 2201 and 2202.

10. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b)(2) and (e)(1). Defendants are United States agencies or officers sued in their official capacities. Plaintiffs State of New York and City of New York are residents of this judicial district, and the other Plaintiffs consent to adjudication of these issues in this district.

11. Plaintiffs bring this action to redress harms to their proprietary and sovereign interests and Plaintiff States and the District of Columbia as to their interests as *parens patriae*.

PARTIES

12. Plaintiff the State of New York, represented by and through its Attorney General, Eric T. Schneiderman, is a sovereign state in the United States of America. The Attorney General is New York State's chief law enforcement officer, and is authorized to pursue this action pursuant to N.Y. Executive Law § 63.

13. Plaintiff the State of Connecticut, represented by and through its Attorney General, is a sovereign state in the United States of America.

14. Plaintiff the State of Delaware, represented by and through its Attorney General, is a sovereign state in the United States of America.

15. Plaintiff the State of Illinois, represented by and through its Attorney General, is a sovereign state in the United States of America.

16. Plaintiff the State of Iowa, represented by and through its Attorney General, is a sovereign state in the United States of America.

17. Plaintiff the State of Maryland, represented by and through its Attorney General, is a sovereign state in the United States of America.

18. Plaintiff the State Minnesota, represented by and through its Attorney General, is a sovereign state in the United States of America.

19. Plaintiff the State New Jersey, represented by and through its Attorney General, is a sovereign state in the United States of America.

20. Plaintiff the State of New Mexico, represented by and through its Attorney General, is a sovereign state in the United States of America.

21. Plaintiff the State of North Carolina, represented by and through its Attorney General, is a sovereign state in the United States of America.

22. Plaintiff the State of Oregon, represented by and through its Attorney General, is a sovereign state in the United States of America.

23. Plaintiff the State of Rhode Island, represented by and through its Attorney General, is a sovereign state in the United States of America.

24. Plaintiff the State of Vermont, represented by and through its Attorney General, is a sovereign state in the United States of America.

25. Plaintiff the State of Washington, represented by and through its Attorney General, Robert W. Ferguson, is a sovereign state in the United States of America. The Washington State Attorney General is the chief legal advisor to the State. The Attorney General's powers and duties include acting in federal court on matters of public concern.

26. Plaintiff the Commonwealth of Massachusetts, represented by and through its Attorney General, is a sovereign state in the United States of America.

27. Plaintiff the Commonwealth of Pennsylvania, represented by and through its Attorney General, is a sovereign state in the United States of America.

28. Plaintiff the Commonwealth of Virginia, represented by and through its Attorney General, is a sovereign state in the United States of America.

29. Plaintiff the District of Columbia is a municipal corporation organized under the Constitution of the United States. It is empowered to sue and be sued, and is the local government for the territory constituting the permanent seat of the federal government. The District is represented by and through its chief legal officer, the Attorney General for the District of Columbia.

30. Plaintiff City of Chicago is a municipal corporation and home rule unit organized and existing under the constitution and laws of the State of Illinois. Chicago is the third largest city in the United States by population.

31. Plaintiff New York City is a municipal corporation organized pursuant to the laws of the State of New York. The City is a political subdivision of the State and derives its powers through the State Constitution, State laws, and the New York City Charter. New York City is the largest city in the United States by population.

32. Plaintiff City of Philadelphia is a municipal corporation organized pursuant to the laws of the Commonwealth of Pennsylvania. The City is a political subdivision of the Commonwealth with powers derived from the Pennsylvania Constitution, Commonwealth law, and the City's Home Rule Charter. Philadelphia is the fifth largest city in the United States by population.

33. Plaintiff City of Providence is a municipal corporation organized pursuant to the laws of the State of Rhode Island.

34. Plaintiff the City and County of San Francisco, represented by and through its City Attorney, is a municipal corporation organized and existing under and by virtue of the laws of the State of California, and is a charter city and county.

35. Plaintiff the City of Seattle is a first-class charter city, incorporated under the laws of the State of Washington, empowered to sue and be sued, and represented by and through its elected City Attorney, Peter S. Holmes. Seattle is the largest city in the State of Washington by population.

36. Plaintiff United States Conference of Mayors is the official nonpartisan organization of cities with populations of 30,000 or more. There are nearly 1,400 such cities in

the country today, and each member city is represented in the Conference by its chief elected official, the mayor.

37. Plaintiffs are aggrieved by Defendants' actions and have standing to bring this action because the decision to add a person-by-person demand for citizenship information to the 2020 Census has already damaged Plaintiffs' sovereign, quasi-sovereign, and proprietary interests and will continue to cause injury unless and until the decision is enjoined.

38. Defendant United States Department of Commerce is a cabinet agency within the executive branch of the United States Government, and is an agency within the meaning of 5 U.S.C. § 552(f). The Commerce Department is responsible for planning, designing, and implementing the 2020 Census. 13 U.S.C. § 4.

39. Defendant Wilbur L. Ross, Jr. is the Secretary of Commerce. He is responsible for conducting decennial censuses of the population, and oversees the Bureau of the Census ("Census Bureau"). He is sued in his official capacity.

40. Defendant Census Bureau is an agency within, and under the jurisdiction of, the Department of Commerce. 13 U.S.C. § 2. The Census Bureau is the agency responsible for planning and administering the decennial census.

41. Defendant Ron S. Jarmin is currently performing the non-exclusive functions and duties of the Director of the Census Bureau. He is sued in his official capacity.

ALLEGATIONS

I. Defendants have a constitutional obligation to conduct an accurate enumeration of the population.

42. The Constitution provides that Representatives "shall be apportioned among the several States . . . according to their respective Numbers," U.S. Const. art. I, cl. 2, § 3; which requires "counting the whole number of persons in each State," *id.* amend. XIV, § 2. To ensure

fair representation among the states, the Constitution requires that this count be an “actual Enumeration” conducted every ten years.

43. Congress has assigned the responsibility of making this enumeration to the Secretary of Commerce, and the Secretary may delegate authority for establishing procedures to conduct the census to the Census Bureau. 13 U.S.C. §§ 2, 4, 141. The central constitutional purpose of the Census Bureau in taking the decennial census is to conduct an accurate enumeration of the population.

44. In addition, the population data tabulated as a result of the census are used for other governmental purposes, including to permit compliance with the Fourteenth Amendment’s one-person one-vote requirement when drawing district lines for state and local government elected bodies; and to allocate federal funds authorized by hundreds of critical Congressional programs.

45. To enable a person-by-person count, the Census Bureau sends a questionnaire to every household in the United States. The questionnaires are directed to every resident in the United States and, under 13 U.S.C. § 221, residents are legally required to respond. The Census Bureau then counts responses from every household to determine the population count in the various states.

46. Some demographic groups have proven more difficult to count than others. Minority and immigrant populations have historically been some of the hardest groups to count accurately in the decennial census, due to issues such as language barriers and distrust of government. For example, the 2010 Census failed to count more than 1.5 million minorities.

Indeed, Census Bureau analyses show the fast-growing Hispanic population was undercounted by 1.54% in 2010, by 0.71% in 2000, and by 4.99% in 1990.⁴

47. Recognizing that these barriers undermine its constitutional mandate to pursue an accurate enumeration of the population, the Census Bureau has previously taken affirmative steps to reach these hard-to-count populations. One such measure includes hiring census workers to serve as “enumerators,” to conduct in-person follow-up with any person who fails to respond.⁵ In addition, during the 2000 and 2010 censuses, the Census Bureau designed and implemented a public advertising campaign to reach hard-to-count immigrant communities. The Census Bureau used paid media in over a dozen different languages to improve responsiveness in immigrant communities. For the 2010 Census, the Census Bureau adopted a plan to partner with local businesses, faith-based groups, community organizations, elected officials, and ethnic organizations to reach these communities and improve the accuracy of the count.

48. The Census Bureau’s constitutional obligation to pursue an accurate enumeration requires that the Census Bureau avoid unnecessarily deterring participation in the decennial census. U.S. Const. art. 1, § 2, cl. 3. To that end, the Census Bureau must minimize the burden questions may place on respondents. According to the Census Bureau’s own standards, it must also test its survey questions to ensure that they do not increase non-responsiveness by touching on sensitivities or anxieties respondents have about privacy and governmental overreach.

⁴ See Memorandum from Patrick J. Cantwell to David C. Whitford, *2010 Census Coverage Measurement Estimation Report: Summary of Estimates of Coverage for Persons in the United States 2* (May 22, 2012), https://www.census.gov/coverage_measurement/pdfs/g01.pdf.

⁵ U.S. Census Bureau, *2010 Census Non-Response Followup Enumerator Manual 1–6* (2009), <https://www.census.gov/history/pdf/2010nrfu.pdf>; U.S. Census Bureau, *Non-Response Followup Enumerator Manual 1–2* (1999), <https://www.census.gov/history/pdf/2000nrfu.pdf>; U.S. Census Bureau, *Census Instructions-History*, https://www.census.gov/history/www/through_the_decades/census_instructions/.

II. Defendants' decision to include a citizenship demand on the 2020 Census will deter participation.

49. Federal law requires the Secretary of Commerce to advise Congress by no later than March 31, 2018, of the Secretary's determination of the questions to be included on the 2020 Census. 13 U.S.C. § 141(f)(2). Consistent with this obligation, the Defendants transmitted a report to Congress on March 29, 2018, advising Congress of the questions to be included on the 2020 Census. This report included the Secretary's determination that the decennial census will include, for the first time since 1950, a demand for information regarding the citizenship status of every person in the country.

50. In the March 26, 2018, memo announcing the Defendants' decision to demand citizenship status for every resident in the country, Secretary Ross stated that "the Department [of Commerce]'s review found that limited empirical evidence exists about whether adding a citizenship question would decrease response rates materially."⁶ However, almost forty years of Census Bureau statements and data reflect the opposite to be true.

A. Defendants have acknowledged for decades that a citizenship demand would deter census participation and undermine the decennial population count.

51. Since at least 1980, the Census Bureau has expressed the public position that inquiries regarding citizenship are particularly sensitive in immigrant communities, and that demanding citizenship or immigration status on the decennial census would drive down response rates and seriously impair the accuracy of the decennial population count.

52. In 1980, in response to a lawsuit seeking to compel the Census Bureau to demand all Americans disclose their immigration status, the Bureau argued in litigation that "any effort to ascertain citizenship will inevitably jeopardize the overall accuracy of the population count."

⁶ Ross Memo at 5.

Fed'n for Am. Immigration Reform, 486 F. Supp. at 568. The Bureau explained that “[o]btaining the cooperation of a suspicious and fearful population would be impossible if the group being counted perceived any possibility of the information being used against them. Questions as to citizenship are particularly sensitive in minority communities and would inevitably trigger hostility, resentment and refusal to cooperate.” *Id.*

53. The Census Bureau repeated these concerns in 1988 and 1989, in congressional testimony opposing proposed legislation that would have directed the Census Bureau to exclude from its count any immigrant who was not a lawful permanent resident.

54. The Bureau testified that inquiring into immigration status “could seriously jeopardize the accuracy of the census,” because “[p]eople who are undocumented immigrants may either avoid the census altogether or deliberately misreport themselves as legal residents,” and legal residents “may misunderstand or mistrust the census and fail or refuse to respond.”⁷ The Bureau concluded that a citizenship demand would suffer from “the same problems.”⁸

55. The Census Bureau also declined to include a person-by-person demand regarding citizenship status on the 2000 Census. The former Director of the Census Bureau who oversaw the 2000 Census later testified that a citizenship demand “will lead to a less complete and less accurate census,” explaining that the “question will be treated with suspicion” and “[a] significant number of noncitizens will not respond,” because “it is foolish to expect that census-

⁷ See *Census Equity Act: Hearings Before the Subcomm. on Census & Population of the H. Comm. on Post Office & Civ. Serv.*, 101st Cong. 43–45 (1989) (statement of C. Louis Kincannon, Deputy Director, Census Bureau); *Exclude Undocumented Residents from Census Counts Used for Apportionment: Hearing Before the Subcomm. on Census & Population of the H. Comm. on Post Office & Civil Serv.*, 100th Cong. 50–51 (1988) (testimony of John Keane, Director, Census Bureau).

⁸ *Id.*

taking is immune from anxieties that surround such issues as undocumented aliens, immigration enforcement, and so forth.”⁹

56. In 2009, all eight former Census Bureau directors dating back to 1979, and appointed by presidents of both political parties, objected to an ultimately failed congressional proposal to add demands for information regarding citizenship and immigration status to the 2010 Census. They argued that the Census Bureau would not have enough time to determine “[t]he effect on data quality” and “the consequences for participation among all immigrants, regardless of their legal status,” including the concern that enumerators might encounter “problems during door-to-door visits to unresponsive households, when a legalized ‘head of household’ would avoid enumerators because one or more other household members are present unlawfully.”¹⁰

57. In 2010, the Census Bureau again declined to include a person-by-person citizenship demand on the census questionnaire. Then-Director of the Census Bureau, Robert Groves, explained that “we don’t ask citizenship or documentation status, all of the things that may make people uncomfortable are gone from [the census] form.”¹¹

58. Subsequently, in 2016, four former Directors of the Census Bureau, also appointed by presidents of both political parties, argued in a brief filed with the U.S. Supreme Court that “a [person-by-person] citizenship inquiry would invariably lead to a lower response

⁹ *Counting the Vote: Should Only U.S. Citizens Be Included in Apportioning Our Elected Representatives?: Hearing Before the Subcomm. on Federalism & the Census of the H. Comm. on Gov’t Reform*, 109th Cong. 73 (2005) (statement of Kenneth Prewitt).

¹⁰ *Statement of Former Census Directors on Adding a New Question to the 2010 Census* (Oct. 16, 2009), http://reformimmigrationforamerica.org/wp-content/uploads/2009/10/thecensusproject.org_letters_cp-formerdirs-16oct2009.pdf.

¹¹ *Video of Robert Groves*, C-SPAN (Mar. 26, 2010), <https://www.c-span.org/video/?292743-6/2010-us-census&start=1902>.

rate to the Census in general,” and would “seriously frustrate the Census Bureau’s ability to conduct the only count the Constitution expressly requires: determining the whole number of persons in each state in order to apportion House seats among the states.” Brief of Former Directors of the U.S. Census Bureau as Amici Curiae Supporting Appellees at 25, *Evenwel v. Abbott*, 136 S. Ct. 1120 (2016) (No. 14-940).

59. The former Directors also noted that “[r]ecent experience demonstrates lowered participation in the Census and increased suspicion of government collection of information in general,” and that “[p]articular anxiety exists among non-citizens.” *Id.* at 5. In this context, the former Directors concluded, “[t]here would be little incentive for non-citizens to offer to the government their actual status,” and the “result would be a reduced rate of response overall and an increase in inaccurate responses.” *Id.*

B. The Trump Administration’s anti-immigrant policies, actions, and rhetoric will amplify the negative impacts on census participation rates of Defendants’ demand for citizenship status.

60. These well-documented risks of adding a person-by-person citizenship demand to the decennial census are heightened in the current political climate because of President Trump’s anti-immigrant rhetoric and this Administration’s pattern of policies and actions that target immigrant communities. These actions and policies include the rescission of the Deferred Action for Childhood Arrivals program; the ban on travel from several majority-Muslim countries; the suspension on refugee admissions to the United States; the termination of special protections from removal for migrants from nations experiencing war and natural disasters; increased roundups of undocumented migrants; efforts to suspend or terminate federal funding to localities that elect to limit their participation in federal immigration enforcement efforts; and efforts to build a physical wall along the Mexico-U.S. border, among other actions.

61. The Trump Administration has also made a number of threatening statements about deporting undocumented immigrants. On June 13, 2017, the Acting Director of U.S. Immigration and Customs Enforcement, Thomas Homan, testified before Congress that “every immigrant in the country without papers . . . should be uncomfortable. You should look over your shoulder. And you need to be worried.”¹²

62. This anti-immigrant climate has led to significant public distrust and fear of providing information to the federal government. During recent pretests in preparation for the 2020 Census, Census Bureau researchers found that immigrant respondents are already increasingly concerned about confidentiality and data sharing in light of the current anti-immigrant rhetoric.

63. Census Bureau officials have noted that in routine pretests conducted from February 2017 to September 2017, “fears, particularly among immigrant respondents, have increased markedly this year.”¹³ The Census Bureau’s researchers recounted repeated instances of respondents spontaneously raising concerns about data confidentiality and the government’s negative attitudes toward immigrants. The researchers also noted that some respondents, acting on these same concerns, intentionally provided incomplete or inaccurate information, or sought to break off interviews.

64. The Census Bureau has recognized that these anxieties are already likely to present a barrier to participation in the 2020 Census, and that “[t]hese findings are particularly

¹² *Immigration and Customs Enforcement and Customs and Border Patrol Fiscal Year 2018 Budget Request: Hearing Before the Subcomm. on Homeland Sec. of the H. Comm. on Appropriations*, 115th Cong. (2017) (statement of Thomas D. Homan, Acting Director, Immigration and Customs Enforcement).

¹³ Memorandum from the U.S. Census Bureau, Ctr. for Survey Measurement to Assoc. Directorate for Research and Methodology, *Respondent Confidentiality Concerns 1* (Sept. 20, 2017), <https://www2.census.gov/cac/nac/meetings/2017-11/Memo-Regarding-Respondent-Confidentiality-Concerns.pdf>.

troubling given that they impact hard-to-count populations disproportionately, and have implications for data quality and nonresponse.”¹⁴

65. The Defendants’ decision to add a citizenship demand to the 2020 Census questionnaire will add to this unprecedented level of anxiety in immigrant communities. It will lead to nonresponse and lower participation by many immigrants who are citizens and legal residents and live in mixed immigration status households, as well as by undocumented immigrants, all of whom may seek to protect their own privacy or the privacy of their household. This exacerbated deterrent effect began on March 26, 2018, when immigrant communities learned that Secretary Ross directed the Census Bureau to add a citizenship demand to the 2020 Census.

66. Further, the Census Bureau will have to expend significant additional resources due to the lowered participation of immigrant communities, including hiring more census enumerators for in-person follow-up. However, enumerators are unlikely to succeed in meaningfully addressing nonresponses to the census where individuals decline to participate due to fear or mistrust of the federal government.

67. While Defendants recognize the detrimental impact that the addition of a citizenship demand will cause to the accuracy of the 2020 Census, they nevertheless decided to demand citizenship status from every individual resident in the country through the 2020 Census questionnaire.

¹⁴ *Id.* at 7.

C. Defendants ignored their own standards for ensuring the accuracy of the decennial census.

68. In adding a citizenship demand to the 2020 Census, Defendants departed from statistical standards that promote the accuracy of information collected and disseminated by the Defendants.

69. For each decennial census, the Census Bureau meticulously develops and tests the content, specific language, order, and layout of the questionnaire to improve the accuracy of the enumeration. In addition to fulfilling the Census Bureau's constitutional duty, this development process involves multiple steps that ensure the accuracy, reliability, and objectivity of the final data, as consistent with prior Census Bureau practice and as required by the Information Quality Act ("IQA"). Consolidated Appropriations Act, 2001, Pub. L. No. 106-554, § 515, 114 Stat. 2763 (Dec. 21, 2000).

70. Government-wide statistical standards adopted under the IQA require the Commerce Department and the Census Bureau to carefully design the census questionnaire to "minimize respondent burden while maximizing data quality" and to "achieve the highest rates of response."¹⁵ The standards also require testing each component of the questionnaire to ensure that it operates as intended.

71. The questionnaire development process and the evaluation of changes to individual inquiries take several years to complete.

72. Indeed, the Census Bureau has spent almost ten years developing and testing the content, specific language, and layout of just one proposed change to the question regarding race and ethnicity on the 2020 questionnaire. From 2008 through 2012, the Census Bureau conducted

¹⁵ Office of Mgmt. & Budget, *Statistical Policy Directive No. 2: Standards and Guidelines for Statistical Surveys* Sections 1.3, 1.4, 2.3.1 (2006).

comprehensive research into the possibility of combining race and ethnicity into one question on the 2020 Census. The research focused on whether this proposed change would improve respondent understanding of the question, and improve the accuracy of race and ethnicity data collected.

73. The Census Bureau then spent several years designing and conducting tests on the proposed change to explore different alternatives for the language, layout, and instructions regarding a revised question. The testing was designed to assess the accuracy and reliability of alternative forms of asking the proposed question. In 2016, the Census Bureau conducted outreach to federal agencies and to the public to obtain feedback on the proposed change.

74. The Bureau concluded its process at the end of 2017, after nine years of evaluation and testing, because it “needed to make a decision on the design of the race and ethnicity questions by December 31, 2017 in order to prepare for the 2020 Census systems, and deliver the final 2020 Census question wording to Congress by March 31, 2018.”¹⁶

75. In contrast, Defendants added a demand for citizenship information to the 2020 questionnaire after less than four months of consideration, conducted almost entirely after the Bureau’s internal deadline of December 31, 2017, for adding questions to the 2020 Census. Defendants did not conduct any research into the potential performance of the citizenship demand, and did not test the impact of adding a citizenship demand on data accuracy. Nevertheless, Secretary Ross directed the Census Bureau to add a citizenship demand to the 2020 Census questionnaire, overruling Census Bureau officials and the Bureau’s own expert advisory committee.

¹⁶ Memorandum, U.S. Census Bureau, *2020 Census Program Memorandum Series: 2018.02, Using Two Separate Questions for Race and Ethnicity in 2018 End-to-End Census Test and 2020 Census* (Jan. 26, 2018), https://www2.census.gov/programs-surveys/decennial/2020/program-management/memo-series/2020-memo-2018_02.pdf.

(1) The Defendants failed to adequately test the inclusion of a citizenship demand on the 2020 Census.

76. The Defendants added a citizenship demand to the 2020 Census without following required standards for testing the content, specific language, and layout of new inquiries. Specifically, Defendants ignored IQA standards that require testing of each inquiry to “ensure that all components of a survey function as intended,” and require incorporation of testing results into the final design of the questionnaire.¹⁷ These testing standards promote the accuracy of the decennial census, which is the Defendants’ primary constitutional obligation.

77. Major testing of proposed changes to the 2020 Census questionnaire began with the 2014 Census Test. At that time, the Census Bureau assessed wording changes to the race and Hispanic origin question, as well as new potential response categories for married and unmarried relationships. The 2014 test did not assess the content, wording, or layout of a demand for citizenship information.

78. For the 2020 Census, the 2015 National Content Test was the opportunity for the U.S. Census Bureau to “compare different versions of questions prior to making final decisions.”¹⁸

79. The Census Bureau designed and conducted the National Content Test in 2015. While the Census Bureau tested the changes to questions related to race and ethnicity, the Bureau did not design tests of language, layout, or instructions for a potential citizenship demand. The Census Bureau announced the results of this test in early March 2017, none of which related to citizenship.

¹⁷ Office of Mgmt. & Budget, *Statistical Policy Directive No. 2: Standards and Guidelines for Statistical Surveys* Section 1.4 (2006).

¹⁸ U.S. Census Bureau, *Information Collection Request: 2015 National Content Test*, 80 Fed. Reg. 29,609, 29,610 (May 22, 2015).

80. The Census Bureau had other opportunities during the major tests in 2016 and April 2017 to test its questionnaire for the 2020 Census. However, the questionnaires assessed in these tests did not include a question regarding citizenship. In fact, the Census Bureau did not begin considering whether to add a demand for citizenship information to the 2020 Census until approximately eight months after it began conducting major testing in 2017.

81. The last major test before the 2020 Census, the 2018 end-to-end test, began on April 1, 2018. The end-to-end test is a dress rehearsal for the upcoming census, in which the Bureau tests and validates all major components, including operations, procedures, systems, and infrastructure. The 2018 end-to-end test does not include any request for citizenship information on the questionnaire sent to households. As a result, none of the major tests for the 2020 Census will have assessed the content, language, layout, or order of the citizenship demand on the questionnaire, or the impact that the demand for person-by-person citizenship status would have on response rates and accuracy.

82. Defendants acknowledge that they are unable “to determine definitively how inclusion of a citizenship question on the decennial census will impact responsiveness,”¹⁹ but they added a citizenship question without conducting the necessary testing to determine the impact of this decision on the 2020 Census.

83. To date, the Census Bureau has not tested the language or layout of the newly added demand for person-by-person citizenship information. Indeed, the purpose of testing is to promote accuracy by ensuring that the components of the census function as intended. Yet, the Bureau has failed to conduct any testing to assess the accuracy and reliability of “different ways

¹⁹ Ross Memo at 7.

to ask the question” before adding it to the questionnaire.²⁰ The Census Bureau also failed to test the content and order of the citizenship demand on the proposed census questionnaire with actual respondents as required by its own standards. Such testing could have allowed the Bureau to identify potential problems, including adverse impact of the citizenship demand on response rates and accuracy.

84. The Census Bureau’s failure to test its demand for citizenship information before deciding to include it on the 2020 Census questionnaire is unprecedented in the modern administration of the decennial census. For each decennial census since 1970, “the Census Bureau has conducted content tests to research and improve the design and function of different questions.”²¹ The Census Bureau spent three to four years thoroughly testing proposed changes to topics and question wording “to ensure census questionnaires are easily understood and reflect the population accurately.”²² This thorough vetting process included testing of the language of specific questions in decennial National Content Tests in 1976, 1986, 1996, 2005, and 2015, as well as testing the performance of proposed topics and specific questions in the field with actual respondents.

85. In sharp contrast to these extensive testing practices, the Bureau failed to conduct any tests to determine the performance of its new demand for citizenship status on the 2020 questionnaire. Instead the Census Bureau simply transferred the citizenship demand from the existing American Community Survey (“ACS”) to the 2020 Census questionnaire.

²⁰ U.S. Census Bureau, *How a Question Becomes a Part of the American Communities Survey* (2017) <https://www.census.gov/content/dam/Census/library/visualizations/2017/comm/acs-questions.pdf>.

²¹ U.S. Census Bureau, *Content Research* (Jan. 11, 2017), <https://www.census.gov/programs-surveys/decennial-census/2020-census/research-testing/content-research.html>.

²² *Id.*

86. While the Census Bureau currently inquires into citizenship status on the annual ACS, it cannot simply transfer the demand from the ACS to the decennial census without testing. The ACS is a sample survey sent to 3.5 million households annually, rather than a complete enumeration of every household in the United States.

87. Moreover, the testing the Census Bureau has conducted on the citizenship demand occurred to refine the question in the context of the ACS questionnaire. The citizenship demand's specific language, layout, order, and instructions remain untested in the context of the decennial census questionnaire.

88. For instance, the Census Bureau developed the language of the citizenship demand on the ACS to fulfill various purposes, including the "evaluation of immigration policies."²³ As a result, the citizenship demand on the ACS requires citizens to disclose whether they were born in "United States territories," whether they were born "abroad" to U.S. parents, or if and when they were "naturalized."²⁴ This information is entirely irrelevant to the sole stated purpose for adding the citizenship demand to the 2020 Census questionnaire: to provide the Department of Justice with data it claims to need to enforce Section 2 of the Voting Rights Act.²⁵ The Census Bureau has not tested how these components of the citizenship demand will perform on a person-by-person questionnaire, and whether the language can be refined to minimize respondent burden.

89. Finally, the demand for information regarding the citizenship status of every individual in the United States has not been tested in the contemporary environment of high immigrant anxiety and concerns over privacy. Secretary Ross ignored these requirements when

²³ Final Questions Report at 59.

²⁴ *Id.* at 7.

²⁵ Ross Memo at 1, 8.

he asserted that the demand for citizenship status had been adequately tested by virtue of its inclusion on the so-called “long-form census” that was sent to a random sample of households from 1960 to 2000, and on the ACS since 2005. As the Census Bureau’s Scientific Advisory Committee publicly asserted on March 30, 2018, Secretary Ross’s reliance on these prior surveys is based on “data collected in a different data collection context, in a different political climate, before anti-immigrant attitudes were as salient and consequential” as they are at present.²⁶

90. Indeed, during general testing from February through September 2017, the Census Bureau found that unprecedented anxiety in immigrant communities – even without the inclusion of a demand for citizenship status – could increase non-response rates and adversely affect data quality for the 2020 Census. Defendants did not incorporate these findings into the final design of the 2020 Census questionnaire. Instead, Defendants incorporated a demand for citizenship status that will exacerbate anxiety in immigrant communities and further diminish the accuracy of the 2020 Census.

(2) The Defendants have not considered respondent burden or potential response rates.

91. The IQA standards require Defendants to design questionnaires “in a manner that achieves the best balance between maximizing data quality . . . while minimizing respondent burden and cost,” and “achieves the highest practical rates of response.”²⁷ Further, under agency-specific IQA standards adopted by the Census Bureau, the Bureau committed to verify that questions are not “unduly sensitive” and “do not cause undue burden.”²⁸

²⁶ Michael Wines, *Census Bureau’s Own Expert Panel Rebukes Decision to Add Citizenship Question* (Mar. 30, 2018).

²⁷ Office of Mgmt. & Budget, *Statistical Policy Directive No. 2*, § 2.3 at 11.

²⁸ U.S. Census Bureau, *Statistical Quality Standards* ii, 7–8 reqs. A2-3 & A2-3.3 (Jul. 2013).

92. The Defendants failed to follow these directives. To the contrary, despite accumulating significant evidence showing that inquiries into citizenship are especially burdensome for immigrant populations, and that a demand for citizenship status would lead to higher rates of non-response, Defendants nonetheless decided to include such a demand on the 2020 Census questionnaire that will be sent to every household.

(3) The Defendants failed to respond to stakeholder concerns.

93. A number of affected stakeholders have expressed concern to the Defendants regarding the inclusion of a demand for citizenship status on the 2020 Census.

94. On January 8, 2018, the American Statistical Association (“ASA”) urged the Census Bureau not to collect citizenship information because of the “very strong potential the quality of the census will be undermined.”²⁹ In addition, the ASA raised concerns that the addition of a citizenship demand this late in the preparation process “would likely increase distrust or suspicion of the government among immigrants, many of whom are already anxious about government inquiries and activities.”³⁰ Moreover, the timing of the Census Bureau’s consideration “[did] not allow time for adequate testing to incorporate new questions, particularly if the testing reveals substantial problems.”³¹

95. The National League of Cities also flagged concerns that the addition of a citizenship demand at such a late stage in the census planning process was “reckless and disruptive,” and would “spike fears about data confidentiality.”³²

²⁹ Letter from Lisa LaVange to Sec’y of Commerce Wilbur Ross (Jan. 8, 2018), <http://www.amstat.org/asa/files/pdfs/POL-CitizenshipQuestion.pdf>.

³⁰ *Id.*

³¹ *Id.*

³² Letter from Clarence Anthony to Sec’y of Commerce Wilbur Ross (Feb. 8, 2018), <http://www.nlc.org/sites/default/files/users/user125/Ross%20Letter%20on%20Citizenship%20Question.pdf>.

96. Plaintiff USCM also sent Secretary Ross a letter signed by 161 Republican and Democratic mayors, expressing concerns about the addition of a citizenship demand to the 2020 Census questionnaire. The USCM noted that adding a demand for citizenship status late in the 2020 Census development process would nullify years of careful planning by the Census Bureau, and would require staffing beyond currently planned levels to address higher rates of non-response in light of the anticipated chilling effect.

97. On February 12, 2018, nineteen state Attorneys General and the Governor of Colorado urged Secretary Ross not to collect citizenship information on the 2020 Census. In addition to the issues highlighted above, the states explained in detail that the collection of citizenship data is “unnecessary to enforce the vote-dilution prohibition in Section 2 of the Voting Rights Act,” and that “[c]ollecting citizenship data would undermine the goal of fair and effective representation for all communities, which the Voting Rights Act was enacted to protect.”³³

98. Several former directors of the Census Bureau voiced similar concerns after Defendants began considering this change. The Census Bureau Director from 2013 to 2017 explained, “[t]here are great risks that including that question, particularly in the atmosphere that we’re in today, will result in an undercount, not just of non-citizen populations but other populations that are concerned with what could happen to them.”³⁴ While Secretary Ross acknowledged receipt of some of these letters in his March 26, 2018, memorandum, he

³³ Letter from Eric Schneiderman *et al.* to Sec’y of Commerce Wilbur Ross (Feb. 12, 2018), https://ag.ny.gov/sites/default/files/multi-state_letter_2020_census.pdf.

³⁴ Kriston Capps, *Ex-Census Director: Citizenship Question is ‘a Tremendous Risk’*, CityLab (Feb. 27, 2018), <https://www.citylab.com/equity/2018/02/former-census-director-citizenship-question-is-a-tremendous-risk/554372/>.

disregarded the serious concerns raised in these letters and directed the Census Bureau to demand the citizenship status of all respondents to the 2020 Census.

(4) The Defendants failed to justify their changes to the subjects to be included on the 2020 Census.

99. Finally, the Defendants failed to comply with their statutory obligations to advise Congress of the subjects to be included on the decennial census, and of any changes to those subjects. The Census Act required the Commerce Secretary, not later than three years before the decennial census date (that is, before April 1, 2017), to transmit to Congress “a report containing the Secretary’s determination of the subjects proposed to be included” in the census. 13 U.S.C. § 141(f)(1). The report of subjects that Defendants submitted in March 2017 included the same subjects as the 2010 Census, and did not indicate any change to include citizenship information.

100. In reversing course just a year later, Defendants failed to identify and explain any “new circumstances” that “necessitated” this modification to the subjects it submitted in 2017, as required by statute. 13 U.S.C. § 141(f)(3).

III. Defendants’ decision to include a citizenship demand on the 2020 Census is not supported by the stated justification.

101. Defendants assert that they included a citizenship demand on the 2020 Census in response to a request from the United States Department of Justice (“DOJ”) dated December 12, 2017 (the “DOJ Letter”).

102. The DOJ Letter asserted that person-by-person information on the citizenship status of every individual in the country was necessary to enforce Section 2 of the Voting Rights Act. Specifically, DOJ claimed that it needs a “reliable calculation of citizen voting-age

population” in order to determine whether a minority group can constitute a majority in a single-member district, the first element in a vote dilution case.³⁵

103. Collecting citizenship information from every person in the United States is not necessary to achieve the goal of effective Section 2 enforcement. The Supreme Court has never held that citizen voting-age population (“CVAP”) is the proper measure for examining whether a minority group can constitute a majority in a single-member district.

104. Congress could not have intended for effective Section 2 enforcement to depend on the availability of person-by-person citizenship data, because such data has never been available at any point since Section 2 was enacted in 1965. Data collected through the decennial census would not provide a “reliable calculation” of CVAP in any event, because citizenship information collected decennially will quickly become outdated and less reliable over the course of the subsequent decade.

105. Further, the American Community Survey already provides a reliable calculation of annually updated citizenship information that is collected through less invasive methods. In fact, DOJ and voting rights advocates have long used data from the ACS or a functionally equivalent survey to effectively enforce the law, and have never relied on the decennial census for this purpose.³⁶

106. Even if demanding citizenship status from every person residing in the United States were necessary to enforce Section 2 of the Voting Rights Act – which it is not –

³⁵ Letter from Arthur E. Gary, General Counsel, Justice Management Division, U.S. Dep’t of Justice, to Ron Jarmin, Performing the Non-Exclusive Functions and Duties of the Director, U.S. Bureau of the Census, U.S. Dep’t of Commerce (Dec. 12, 2017).

³⁶ Section 2 of the VRA was enacted in 1965, and no citizenship question has been included on the decennial census since 1950. From 1970 to 2000, a citizenship question was included only on the “long form” questionnaire, which was distributed to a sample of about one in six households in lieu of the decennial census questionnaire. Following the 2000 Census, the Census Bureau discontinued the “long form” questionnaire and replaced it with the American Community Survey, which is now sent to about one in every 38 households each year.

Defendants' decision would impermissibly sacrifice the accuracy of the constitutionally-mandated census for non-constitutional purposes.

107. Demanding citizenship status on the 2020 Census will undermine, not advance, the goals of the Voting Right Act. A person-by-person citizenship demand that leads to a systematic undercount of minority populations across the United States will impair fair representation of those groups and the states in which they live.

108. It is clear that DOJ's stated rationale for demanding information on the citizenship status of every resident in the country is contrary to the evidence, and was not, in fact, the true reason DOJ sought this change in practice from the Census Bureau. A March 29, 2018, fundraising email from President Trump's reelection campaign indicates that the President "officially mandated" that a citizenship demand be included on the 2020 Census,³⁷ with no assertion that the President sought this information to strengthen enforcement of the Voting Rights Act.³⁸ Further, the assertion that President Trump compelled the addition of a demand for citizenship information undermines Secretary Ross's claims that Defendants made an informed decision to add this question based on a comprehensive review process. Therefore, Defendants' unfounded and conflicting rationales indicate that the stated reason for demanding citizenship information is pretext.

IV. Plaintiffs are harmed by Defendants' actions.

109. Defendants' decision to add a demand for person-by-person citizenship information to the 2020 Census will lead to significant undercount of Plaintiffs' citizen and

³⁷ Tal Kopan, *Trump Campaign Rallies Supporters on Census Citizenship Question*, CNN (Mar. 28, 2018), <https://www.cnn.com/2018/03/28/politics/trump-census-citizenship/index.html>.

³⁸ Ross Memo at 1, 8.

noncitizen residents. Indeed, Plaintiffs are home to some of the hardest-to-count communities in the nation, including significant authorized and undocumented immigrants.

110. For instance, in New York State, 24.2% of households did not mail back their 2010 Census questionnaire, which required the Census Bureau to conduct in-person follow-up. Approximately 36% of New York State's population lives in hard-to-count neighborhoods. Among those hard-to-count communities is New York State's large population of immigrants. One in five residents of New York State is foreign-born, the second highest proportion of foreign-born residents in the United States. In addition, in 2014, New York State had the fourth largest population of undocumented residents in the nation.

111. In Massachusetts, 21.1% of households did not mail back their 2010 Census questionnaire, which required the Census Bureau to conduct in-person follow-up. Approximately 23% of the population currently lives in hard-to-count neighborhoods. Immigrants account for 16.5% of Massachusetts's total population, and, in 2014, nearly one in five immigrants in Massachusetts was undocumented.

112. In Connecticut, 20.9% of households did not mail back their 2010 Census questionnaire, and therefore required the Census Bureau to conduct in-person follow-up. Approximately 22% of the population currently lives in hard-to-count neighborhoods. Immigrants account for 14.4% of Connecticut's population, and in 2014, nearly one in every four immigrants in Connecticut was undocumented.

113. In Delaware, 20% of households did not mail back their 2010 census questionnaire, and therefore required the Census Bureau to conduct in-person follow-up. Immigrants account for 9.4% of Delaware's population, and in 2014, approximately 31% of Delaware's immigrant population was undocumented.

114. In the District of Columbia, 21.7% of households did not mail back their 2010 Census questionnaire, and therefore required the Census Bureau to conduct in-person follow-up. Immigrants account for 13.3% of D.C.'s population, and in 2014, over one in four immigrants in D.C. was undocumented.

115. In Illinois, 19.3% of households did not mail back their 2010 Census questionnaire, and therefore required the Census Bureau to conduct in-person follow-up. Immigrants account for 13.9% of Illinois's population, and in 2014, nearly one in four immigrants in Illinois was undocumented.

116. In Iowa, 16.7% of households did not mail back their 2010 Census questionnaire, and therefore required the Census Bureau to conduct in-person follow-up. Immigrants account for 5.1% of Iowa's population, and in 2014, over one in four immigrants in Iowa was undocumented.

117. In Maryland, 19.7% of households did not mail back their 2010 Census questionnaire, and therefore required the Census Bureau to conduct in-person follow-up. Immigrants account for 15.3% of Maryland's population, and in 2014, over one in four immigrants in Maryland was undocumented.

118. In Minnesota, 14.4% of households did not mail back their 2010 Census questionnaire, and therefore required the Census Bureau to conduct in-person follow-up. Immigrants account for 8.2% of Minnesota's population, and in 2014, nearly one in four immigrants in Minnesota was undocumented.

119. In New Jersey, 21.9% of households did not mail back their 2010 Census questionnaire, and therefore required the Census Bureau to conduct in-person follow-up. Approximately 22% of the population currently lives in hard-to-count neighborhoods.

Immigrants account for 22.5% of New Jersey's population, and in 2014, nearly one in four immigrants in New Jersey was undocumented.

120. In New Mexico, 26.2% of households did not mail back their 2010 Census questionnaire, and therefore required the Census Bureau to conduct in-person follow-up. Approximately 43% of the population currently lives in hard-to-count neighborhoods. During the 2000 Census, New Mexico had the fourth highest undercount of any state. Immigrants account for 9.5% of New Mexico's population, and in 2014, approximately 37% of immigrants in New Mexico were undocumented.

121. In North Carolina, 19.3% of households did not mail back their 2010 Census questionnaire, and therefore required the Census Bureau to conduct in-person follow-up. North Carolina is home to one of the fastest growing immigrant communities in the nation, increasing by over 83% between 2000 and 2016. Immigrants account for 7.8% of North Carolina's population, and in 2014, approximately 43% of immigrants in North Carolina were undocumented.

122. In Oregon, 20.2% of households did not mail back their 2010 Census questionnaire, and therefore required the Census Bureau to conduct in-person follow-up. Immigrants account for 9.6% of Oregon's population, and in 2014, approximately 32% of immigrants in Oregon were undocumented.

123. In Pennsylvania, 17.7% of households did not mail back their 2010 Census questionnaire, and therefore required the Census Bureau to conduct in-person follow-up. Immigrants account for 6.8% of Pennsylvania's population, and in 2014, over one in five immigrants in Pennsylvania was undocumented.

124. In Rhode Island, 22.3% of households did not mail back their 2010 Census questionnaire, and therefore required the Census Bureau to conduct in-person follow-up. Immigrants account for 13.5% of Rhode Island's population, and in 2014, nearly one in five immigrants in Rhode Island was undocumented.

125. In Vermont, 20.3% of households did not mail back their 2010 Census questionnaire, and therefore required the Census Bureau to conduct in-person follow-up. Immigrants account for 4.5% of Vermont's population, and in 2014, approximately 8% of Vermont's immigrant population was undocumented.

126. In Virginia, 19.2% of households did not mail back their 2010 Census questionnaire, and therefore required the Census Bureau to conduct in-person follow-up. Immigrants account for 12.3% of Virginia's population, and in 2014, approximately 28% of Virginia's immigrant population was undocumented.

127. In Washington, more than 20% of households did not mail back their 2010 Census questionnaire, and therefore required the Census Bureau to conduct in-person follow-up. Roughly one in seven Washington residents is an immigrant, and one in eight native-born U.S. citizens lives with at least one immigrant parent. In 2014, over one in four immigrants in Washington was undocumented, and over 170,000 U.S. citizens lived with an undocumented family member.

128. In Chicago, 34% of households did not mail back their 2010 Census questionnaire, and therefore required the Census Bureau to conduct in-person follow-up. Approximately 48% of Chicago's population lives in hard-to-count neighborhoods. Immigrants account for 20.8% of Chicago's population, and in 2014, an estimated 425,000 undocumented immigrants lived in the Chicago metro area.

129. In New York City, 29% of households did not mail back the 2010 Census questionnaire, and therefore required the Census Bureau to conduct in-person follow-up. New York City is home to 3.4 million foreign-born residents, and approximately 46% of foreign-born residents are non-citizens. Immigrants and the children of immigrants account for 60% of New York City's population. The New York metropolitan area is also home to an estimated 1.15 million undocumented immigrants.

130. In Philadelphia, 26.9% of households did not mail back the 2010 Census questionnaire, and therefore required the Census Bureau to conduct in-person follow-up. Immigrants account for 13.1% of Philadelphia's population, and in 2014, an estimated 50,000 undocumented immigrants lived in the City of Philadelphia.

131. In Providence County, Rhode Island, where Providence is located, 24.8% of households did not mail back the 2010 Census questionnaire, and therefore required the Census Bureau to conduct in-person follow-up. Immigrants account for nearly 30% of Providence's population.

132. In the City and County of San Francisco, 22.3% of households did not mail back the 2010 Census questionnaire, and therefore required the Census Bureau to conduct in-person follow-up. Immigrants account for 35% of San Francisco's population, and the San Francisco metro area is home to an estimated 240,000 undocumented immigrants.

133. In King County, Washington, where Seattle is located, 20.7% of households did not mail back the 2010 Census questionnaire, and therefore required the Census Bureau to conduct in-person follow-up. Immigrants account for 18% of Seattle's population, and the immigrant population in Seattle grew by 20% from 2000 through 2014. Over one in five

residents in Seattle speak a language other than English at home. In 2014, approximately 150,000 undocumented immigrants lived in the Seattle metro area.

134. The members of the USCM are home to the majority of immigrants in the United States. In 2014, 104 metro areas, including many USCM members, accounted for over 86% of the immigrant population of the United States. Moreover, 61% of the nation's undocumented population live in the 20 largest metro areas in the United States, all of which contain cities that are USCM members.

135. Given the prevalence of Plaintiffs' hard-to-count populations, Plaintiffs are particularly susceptible to an undercount. The Defendants' decision to add a person-by-person citizenship demand to the 2020 Census questionnaire will disproportionately impact Plaintiffs' hard-to-count immigrant populations. The resulting undercounts in these communities will harm Plaintiffs' interests in full federal funding, accurate redistricting, and fair representation.

A. Defendants' conduct harms Plaintiffs' funding interests.

136. Many federal programs rely on the population figures collected in the decennial census to allocate federal funds among states and local governments. A total of approximately \$700 billion is distributed annually to nearly 300 different census-guided federal grant and funding programs. Inaccurate population counts as a result of Defendants' decision to add a citizenship demand to the 2020 Census will harm Plaintiffs by depriving them of their statutory fair share of federal funding.

137. For instance, the Highway Trust Fund provides grants to states and municipalities for road construction and other surface transportation programs, which are allocated on the basis of local population estimates collected through the decennial census. 23 U.S.C. § 104(d)(3). In fiscal year 2015:

- a. New York received \$1.66 billion in Highway Trust Fund grants.

- b. Massachusetts received nearly \$614 million in Highway Trust Fund grants.
- c. Connecticut received over \$470 million in Highway Trust Fund grants.
- d. Delaware received nearly \$182 million in Highway Trust Fund grants.
- e. The District of Columbia received over \$185 million in Highway Trust Fund grants.
- f. Illinois received over \$1.44 billion in Highway Trust Fund grants.
- g. Iowa received over \$506 million in Highway Trust Fund grants.
- h. Maryland received about \$597 million in Highway Trust Fund grants.
- i. Minnesota received over \$673 million in Highway Trust Fund grants.
- j. New Jersey received over \$839 million in Highway Trust Fund grants.
- k. New Mexico received nearly \$361 million in Highway Trust Fund grants.
- l. North Carolina received over \$237 million in Highway Trust Fund grants.
- m. Oregon received nearly \$431 million in Highway Trust Fund grants.
- n. Pennsylvania received over \$1.67 billion in Highway Trust Fund grants.
- o. Rhode Island received nearly \$217 million in Highway Trust Fund grants.
- p. Vermont received over \$206 million in Highway Trust Fund grants.
- q. Virginia received over \$953 million in Highway Trust Fund grants.
- r. Washington received over \$663 million in Highway Trust Fund grants.

138. Under the Urbanized Area Formula Funding program, the Department of Transportation utilizes population figures from the most recent decennial census to calculate the federal resources allocated to cities and states for planning, operating, and improving transportation. 49 U.S.C. §§ 5307, 5340. In fiscal year 2017:

- a. New York received nearly \$657 million in Urbanized Area Formula grants.

- b. Massachusetts received over \$205 million in Urbanized Area Formula grants.
 - c. Connecticut received nearly \$98 million in Urbanized Area Formula grants.
 - d. Delaware received over \$20 million in Urbanized Area Formula grants.
 - e. The District of Columbia received over \$22 million in Urbanized Area Formula grants.
 - f. Illinois received over \$273 million in Urbanized Area Formula grants.
 - g. Iowa received over \$21 million in Urbanized Area Formula grants.
 - h. Maryland received over \$165 million in Urbanized Area Formula grants.
 - i. Minnesota received over \$63 million in Urbanized Area Formula grants.
 - j. New Jersey received over \$401 million in Urbanized Area Formula grants.
 - k. New Mexico received over \$24 million in Urbanized Area Formula grants.
 - l. North Carolina received nearly \$71 million in Urbanized Area Formula grants.
 - m. Oregon received nearly \$57 million in Urbanized Area Formula grants.
 - n. Pennsylvania received nearly \$183 million in Urbanized Area Formula grants.
 - o. Rhode Island received over \$28 million in Urbanized Area Formula grants.
 - p. Vermont received nearly 2.5 million in Urbanized Area Formula grants.
 - q. Virginia received over 131 million in Urbanized Area Formula grants.
 - r. Washington received over \$145 million in Urbanized Area Formula grants.
139. The Child Care and Development Fund allocates funding based on census information of the number of children below the age of thirteen. 45 C.F.R. § 98.63. In Fiscal Year 2015:
- a. New York received over \$198 million in Child Care Development grants.
 - b. Massachusetts received over \$76 million in Child Care Development grants.

- c. Connecticut received over \$36 million in Child Care Development grants.
- d. Delaware received nearly \$9.9 million in Child Care Development grants.
- e. The District of Columbia received over \$7.2 million in Child Care Development grants.
- f. Illinois received over \$126 million in Child Care Development grants.
- g. Iowa received over \$25 million in Child Care Development grants.
- h. Maryland received nearly \$54 million in Child Care Development grants.
- i. Minnesota received over \$52 million in Child Care Development grants.
- j. New Jersey received nearly \$72 million in Child Care Development grants.
- k. New Mexico received over \$20 million in Child Care Development grants.
- l. North Carolina received over \$122 million in Child Care Development grants.
- m. Oregon received nearly \$39 million in Child Care Development grants.
- n. Pennsylvania received over \$116 million in Child Care Development grants.
- o. Rhode Island received over \$11 million in Child Care Development grants.
- p. Vermont received nearly \$6.7 million in Child Care Development grants.
- q. Virginia received nearly \$64 million in Child Care Development grants.
- r. Washington received nearly \$78 million in Child Care Development grants.

140. The Medicaid Program relies on “per-capita income” information calculated with decennial census data to determine the amount to reimburse each state for medical assistance payments on behalf of low-income individuals. 42 U.S.C. §§ 1301, 1396d. Several Plaintiff States will lose millions of dollars in reimbursement as a result of even a 1% undercount. In fiscal year 2015:

- a. Delaware received \$771 million under the Medicaid program, and an additional 1% undercount on the 2010 Census would have resulted in losses of over \$14 million in federal funding.
- b. Illinois received \$7.19 billion in reimbursement under the Medicaid program, and an additional 1% undercount on the 2010 Census would have resulted in losses of over \$122 million in federal funding.
- c. Iowa received \$2.14 billion in reimbursement under the Medicaid program, and an additional 1% undercount on the 2010 Census would have resulted in losses of over \$38 million in federal funding.
- d. New Mexico received \$2.49 billion in reimbursement under the Medicaid program, and an additional 1% undercount on the 2010 Census would have resulted in losses of over \$23 million in federal funding.
- e. North Carolina received \$8.43 billion in reimbursement under the Medicaid program, and an additional 1% undercount on the 2010 Census would have resulted in losses of over \$94 million in federal funding.
- f. Oregon received \$3.64 billion in reimbursement under the Medicaid program, and an additional 1% undercount on the 2010 Census would have resulted in losses of over \$44 million in federal funding.
- g. Pennsylvania received \$11.2 billion in reimbursement under the Medicaid program, and an additional 1% undercount on the 2010 Census would have resulted in losses of nearly \$222 million in federal funding.

- h. Vermont received \$774 million under the Medicaid program, and an additional 1% undercount on the 2010 Census would have resulted in losses of over \$14 million in federal funding.
- i. Washington received 3.92 billion under the Medicaid program, and an additional 1% undercount on the 2010 Census would have resulted in losses of over \$2 million in federal funding.

141. In addition, Plaintiff Cities of Chicago, New York, Philadelphia, Providence, and Seattle, the City and County of San Francisco, and the members of the USCM also receive funding through these and other programs that determine allocations on the basis of population data collected during the decennial census.

142. An undercount of Plaintiffs' populations as a result of the demand for person-by-person citizenship status of every resident in the country will lead to losses of funding for Plaintiffs in each of these programs, as well as losses in other federally-funded programs that tie allocations to data collected during the decennial census. Losses of funding for these programs will significantly harm Plaintiffs, who will either need to procure additional resources to meet these shortfalls in funding, or their resource needs will be unmet.

B. Defendants' conduct harms Plaintiffs' interests in accurate redistricting and compliance with the Constitution's one-person, one-vote mandate.

143. Defendants' decision to demand person-by-person citizenship information on the 2020 Census questionnaire also harms Plaintiffs' interests in obtaining accurate population figures for redistricting purposes.

144. Each Plaintiff State relies on tabulations of the population produced by the Census Bureau from the decennial census to draw statewide redistricting plans for their Congressional and state legislative districts. When drawing these districts, Plaintiff States must adhere to the

U.S. Constitution's one-person, one-vote requirement, which requires that legislative districts must be "as nearly of equal population as is practicable." *Reynolds v. Sims*, 377 U.S. 533, 559, 577 (1964); see *Brown v. Thomson*, 462 U.S. 835, 842-43 (1983). Moreover, at least for congressional districts, the Constitution requires apportionment "based on total population," not citizen voting age population. *Evenwel v. Abbott*, 136 S. Ct. 1120, 1128-29 (2015).

145. Plaintiff the District of Columbia relies on tabulations of the population produced by the Census Bureau to redistrict for local elections within the District, setting boundaries for wards that elect members to the local legislative body, the Council of the District of Columbia, as well as boundaries for Advisory Neighborhood Commissions, Single Member Districts, and voting precincts. Similarly, Plaintiff Cities, including the Cities of Chicago, New York, and San Francisco, also rely on population tabulations produced by the Census Bureau in order to reapportion their legislative districts. 65 ILCS 20/21-36; N.Y.C. Charter § 51; S.F. Charter art. XIII, § 13.110(d). Like all U.S. States, the District of Columbia, and the Cities of Chicago, New York, Philadelphia, Providence, and Seattle, the City and County of San Francisco, and the members of the USCM are also bound by the U.S. Constitution's one-person, one-vote requirement.

146. By causing disproportionate undercounts of citizens and noncitizens in communities with immigrant populations, the addition of a citizenship demand to the 2020 Census will jeopardize the ability of Plaintiffs to comply with the one-person, one-vote requirement. Undercounts of citizens and noncitizens in these communities will create distributional inaccuracies in the data Plaintiffs rely on to draw district lines. Districts drawn on the basis of inaccurate data may systemically dilute the voting power of persons living in communities with immigrant populations.

147. As a result, Defendants' decision will harm Plaintiffs' interest in complying with the constitutional equal population principle in redistricting.

C. Defendants' conduct harms Plaintiffs' representational interests.

148. Defendants' decision to demand person-by-person citizenship information on the 2020 Census questionnaire will harm Plaintiffs' interest in fair representation in Congress by depressing participation in the decennial census within Plaintiffs' diverse immigrant and undocumented populations, leading to inaccurate responses and a significant undercount of Plaintiffs' residents.

149. For instance, an undercount resulting from Defendants' decision to add a citizenship demand will lead to loss of representation in Rhode Island. As a result of the 2010 Census, Rhode Island was allocated two seats to the United States House of Representatives in accordance with U.S. Const. art. I, § 2. Rhode Island has maintained two seats to the United States House of Representatives for over 200 years. According to the Census Bureau estimates for 2017, the population of Rhode Island is 1,059,639. Based on these 2017 estimates of its population, if 157 persons that reside in Rhode Island are not counted in the 2020 Census, Rhode Island will lose one of its two seats in the United States House of Representatives.

150. In addition, the undercount resulting from Defendants' decision will threaten additional Plaintiffs with losses in representation.

151. For example, New York is projected to lose one representative as a result of the 2020 Census, and is on the cusp of losing a second. Illinois also risks losing additional representation in Congress. An undercount of immigrant communities in these states will result in losses of these seats, and harm these states' interest in fair representation in Congress, and in the Electoral College.

152. Moreover, Defendants' decision will also harm the interest of Plaintiff Cities and the members of Plaintiff USCM in fair electoral representation within their states. Plaintiff Cities and the members of Plaintiff USCM are home to larger immigrant populations than other jurisdictions within their states. For instance, the foreign-born population of Chicago is approximately 20.8% of the total population, compared to 13.9% for the State of Illinois. Similarly, approximately 34.9% of San Francisco's population is foreign-born, while only 27% of the State of California's population is foreign-born, and approximately 13.1% of Philadelphia's population is foreign-born, while 6.5% of Pennsylvania's population is foreign-born.

153. Defendants' decision to include a citizenship demand on the 2020 Census questionnaire will lead to undercounts in immigrant communities, and, as a result, will disproportionately affect jurisdictions within states with larger immigrant communities. Redistricting on the basis of these inaccurate numbers will harm Plaintiff Cities and the members of Plaintiff USCM, including Chicago and San Francisco, vis-a-vis other jurisdictions within their states with smaller immigrant communities.

D. Plaintiffs will expend significant resources to mitigate the harm from Defendants' decision.

154. Plaintiffs already devote considerable resources every ten years to ensuring that they receive an accurate count of their populations on the census. Plaintiffs will have to expend additional funding to combat the undercount that the addition of a citizenship demand will cause, such as expending resources on greater public outreach to encourage residents, particularly in immigrant communities, to respond to the 2020 Census. For example, New York City implemented an early outreach initiative, which consists of deploying employees to canvass in

hard-to-count neighborhoods and identifying potentially problematic blocks, among other measures, to ensure these residents are counted.

E. Defendants' conduct harms the health of Plaintiffs' residents.

155. Many federal health agencies and public health organizations rely on the decennial census for accurate demographic statistics of the population of the United States.

156. These statistics help healthcare providers and policymakers contain and prevent the spread of disease by efficiently allocating funding and limited resources for targeted interventions. For example, census statistics help reduce the incidence of asthma and other preventative diseases by using demographic data to model neighborhoods before initiating preventative programs.

157. An inaccurate census would not just result in worse health outcomes for undercounted communities, but for the nation as a whole. An undercount in the 2020 Census would undermine efforts to prevent disease and cost millions of dollars in long-term treatment.

F. Defendants' conduct harms Plaintiffs' economies and residents who are beneficiaries of private funding.

158. An accurate census is essential for both public and private actors to identify and help meet community and business needs.

159. The Department of Commerce estimates that census data guide trillions of dollars in private sector investment and create \$221 billion in private sector revenue.

160. Non-profit organizations use census data to decide where to provide critical aid such as health care and natural disaster relief and where to conduct fundraising and advocacy drives.

161. Academics and researchers from Plaintiffs' universities rely on census data to conduct research on a wide variety of issues relating to race and ethnicity, population mobility, and other areas.

162. An undercount on the 2020 Census, caused by Defendants' demand for citizenship information from every respondent, will ultimately deprive historically marginalized communities of vital private resources over the next decade.

163. Plaintiffs will need to expend additional funds to compensate for the loss of vital aid from private actors to their residents.

FIRST CLAIM FOR RELIEF
(U.S. Constitution article I, section 2, clause 3;
U.S. Constitution amend. XIV, sec. 2)

164. Plaintiffs reallege and incorporate by reference the allegations set forth in each of the preceding paragraphs of this Complaint.

165. The Constitution requires that Defendants conduct an "actual Enumeration" of the "whole number of persons" in the United States, so that Members of the U.S. House of Representatives may be "apportioned among the several States . . . according to their respective Numbers." U.S. Const. art. I, § 2, cl. 3; *id.* amend. XIV, § 2; *see* 13 U.S.C. §§ 4, 141.

166. Defendants' decision to add a citizenship demand to the 2020 Census questionnaire will deter participation in the decennial census and cause an undercount that impedes the "actual Enumeration" required by the Constitution.

167. Defendants' conduct poses a significant risk that Plaintiffs' number of U.S. Representatives and representation in the Electoral College will not reflect their actual population.

168. Defendants' violation causes ongoing harm to Plaintiffs and their residents.

SECOND CLAIM FOR RELIEF
**(Administrative Procedure Act – not in accordance with law,
contrary to constitutional right, and beyond statutory authority)**

169. Plaintiffs reallege and incorporate by reference the allegations set forth in each of the preceding paragraphs of this Complaint.

170. Under the Administrative Procedure Act, courts must “hold unlawful and set aside” agency action that is “not in accordance with law,” “contrary to constitutional right,” or that is “in excess of statutory jurisdiction, authority, or limitations, or short of statutory right.” 5 U.S.C. § 706(2).

171. Defendants’ decision to add a citizenship demand to the 2020 Census questionnaire is inconsistent with and contrary to the constitutional mandate to conduct an “actual Enumeration” of “the whole number of persons” in the United States. U.S. Const. art. I, § 2, cl. 3; *id.* amend. XIV, § 2.

172. Defendants’ decision is also inconsistent with the data quality requirements of the Information Quality Act and the guidelines implementing the IQA adopted by the Census Bureau. Pub. L. No. 106-554, § 515. The data quality requirements and testing standards developed pursuant to law and practice are designed to ensure accuracy, reliability, and objectivity in the final data, to minimize respondent burden and maximize data quality, and to achieve the highest rates of response. Defendants have failed to act in a manner consistent with these requirements and standards by failing to adequately test the citizenship demand, minimize the burden that that demand imposes on respondents, maximize data quality, or ensure the highest rates of response.

173. Defendants’ decision to add a citizenship demand to the 2020 Census is therefore not in accordance with law and beyond statutory authority, in violation of the APA. 5 U.S.C. § 706(2).

174. Defendants' violation causes ongoing harm to Plaintiffs and their residents.

THIRD CLAIM FOR RELIEF
(Administrative Procedure Act – arbitrary and capricious)

175. Plaintiffs reallege and incorporate by reference the allegations set forth in each of the preceding paragraphs of this Complaint.

176. The Administrative Procedure Act provides that courts must “hold unlawful and set aside” agency action that is “arbitrary, capricious, [or] an abuse of discretion.” 5 U.S.C. § 706(2)(A).

177. Defendants' decision to add a citizenship demand to the 2020 Census is arbitrary and capricious and an abuse of discretion for multiple reasons. First, there is no support for the Department of Justice's claim that effective enforcement of Section 2 of the Voting Rights Act requires person-by-person citizenship data; to the contrary, requesting citizenship data would undermine the purposes of the Voting Rights Act and weaken voting rights enforcement; and sufficient data for Voting Rights Act purposes is already available to the Department of Justice.

178. Second, Defendants' decision to add a citizenship demand is arbitrary and capricious because it reverses nearly seven decades of settled and well-considered practice without reasoned explanation, in contradiction to factual findings that underlay the Census Bureau's previous practice.

179. Third, Defendants' decision is arbitrary and capricious because Defendants entirely failed to consider important aspects of the problem, including the risk of inaccurate results and the availability of alternative data that serves the federal government's needs no less well.

180. Fourth, Defendants' decision is arbitrary and capricious because it was reached without complying with Defendants' own data quality requirements and testing standards.

181. Fifth, Defendants' unfounded and conflicting rationales indicate that the stated reason for adding the question is pretext. Defendants' decision to add a citizenship demand to the 2020 Census is therefore "arbitrary, capricious, [or] an abuse of discretion" in violation of the APA. 5 U.S.C. § 706(2)(A).

182. Defendants' violation causes ongoing harm to Plaintiffs and their residents.

PRAYER FOR RELIEF

Wherefore, Plaintiffs respectfully request that this Court:

1. Declare that the Defendants' decision to add a citizenship demand to the questionnaire for the 2020 Census is unauthorized by and contrary to the Constitution and laws of the United States;

2. Declare that the Defendants' decision to add a citizenship demand to the 2020 Census is not in accordance with law, is beyond statutory authority, and is arbitrary and capricious, in violation of the Administrative Procedure Act, 5 U.S.C. § 706;

3. Enjoin Defendants and all those acting on their behalf from adding a citizenship demand to the 2020 Census;

4. Award Plaintiffs their reasonable fees, costs, and expenses, including attorneys' fees, pursuant to 28 U.S.C. § 2412; and

5. Award such additional relief as the interests of justice may require.

DATED: April 3, 2018

ERIC T. SCHNEIDERMAN
Attorney General of the State of New York

By: /s Lourdes M. Rosado
Lourdes M. Rosado,[†] Bureau Chief
Matthew Colangelo,[†] Executive Deputy
Attorney General
Laura Wood,[†] Special Counsel
Ajay Saini,** Assistant Attorney General
Diane Lucas,[†] Assistant Attorney General
Alex Finkelstein,*** Volunteer Assistant
Attorney General
Civil Rights Bureau
Office of the New York State Attorney
General
28 Liberty, 20th Floor
New York, NY 10005
Lourdes.Rosado@ag.ny.gov
Diane.Lucas@ag.ny.gov
Ajay.Saini@ag.ny.gov
Tel. (212) 416-6348
Fax (212) 416-8074

[†] Admitted in the S.D.N.Y.
**Admission pending
***NYS bar admission application pending

GEORGE JEPSEN
Attorney General of the State of Connecticut

By: /s Mark F. Kohler
Mark F. Kohler,*
Assistant Attorney General
Connecticut Office of the Attorney
General
55 Elm Street, P.O. Box 120
Hartford, CT 06106
Mark.Kohler@ct.gov
Tel. (860) 808-5020

MATTHEW DENN
Attorney General of the State of Delaware

By: /s Ilona Kirshon
Ilona Kirshon,[†] Deputy State Solicitor
David Lyons, Deputy Attorney General
Department of Justice
Carvel State Building, 6th Floor
820 North French Street
Wilmington, Delaware 19801
Ilona.Kirshon@state.de.us
Tel. (302) 577-8372
Fax (302) 577-6630

KARL A. RACINE

Attorney General for the District of Columbia

By: /s/ Robyn R. Bender

Robyn R. Bender,* Deputy Attorney
General

Valerie M. Nannery,* Assistant
Attorney General

Public Advocacy Division

441 4th Street, NW

Suite 650 North

Washington, DC 20001

Robyn.Bender@dc.gov

Tel. (202) 724-6610

Fax (202) 730-0650

LISA MADIGAN

Attorney General of the State of Illinois

By: /s/ Cara A. Hendrickson

Cara A. Hendrickson,* Chief, Public
Interest Division

Karyn L. Bass Ehler,* Chief, Civil Rights
Bureau

Jeffrey VanDam,* Assistant Attorney
General

Matthew J. Martin,* Assistant Attorney
General

Civil Rights Bureau

Office of the Illinois Attorney General

100 W. Randolph Street

Chicago, IL 60601

JVanDam@atg.state.il.us

Tel. (312) 814-3400

Fax (312) 814-3212

THOMAS J. MILLER

Attorney General of the State of Iowa

By: /s/ Nathan Blake

Nathan Blake,* Deputy Attorney
General

Office of the Iowa Attorney General

1305 E. Walnut St.

Des Moines, IA 50319

nathan.blake@ag.iowa.gov

Tel. (515) 281-4325

BRIAN E. FROSH

Attorney General of the State of Maryland

By: /s/ John R. Grimm

John R. Grimm,* Assistant Attorney
General

Civil Litigation Division

Maryland Office of the Attorney General

200 St. Paul Place, 20th Floor

Baltimore, Maryland 21202

jgrimm@oag.state.md.us

Tel. (410) 576-76339

Fax (410) 576-6955

MAURA HEALEY

Attorney General for the Commonwealth of
Massachusetts

By: /s/ Jonathan Miller

Jonathan Miller,[†] Assistant Attorney
General
Miranda Cover,* Assistant Attorney
General
Ann E. Lynch,* Assistant Attorney
General
Public Protection & Advocacy Bureau
Massachusetts Attorney General's Office
One Ashburton Place
Boston, MA 02108
Jonathan.Miller@state.ma.us
Mercy.Cover@state.ma.us
Ann.Lynch@state.ma.us
Tel. (617) 727-2200
Fax (617) 727-5762

LORI SWANSON

Attorney General of the State of Minnesota

By: s/ Jacob Campion

Jacob Campion,* Assistant Attorney
General
Office of the Minnesota Attorney General
445 Minnesota Street, Suite 1100
St. Paul, Minnesota 55101-2128
jacob.campion@ag.state.mn.us
(651) 757-1459 (Voice)
(651) 282-5832 (Fax)

GURBIR S. GREWAL

Attorney General of the State of New Jersey

By: /s Rachel Wainer Apter

Rachel Wainer Apter*
Assistant Attorney General
Office of the Attorney General
Richard J. Hughes Justice Complex
25 Market Street, 8th Floor, West Wing
Trenton, New Jersey 08625-0080
Rachel.Apter@njoag.gov
Tel: (609) 376-2702

HECTOR H. BALDERAS

Attorney General of the State of New Mexico

By: /s Tania Maestas

Tania Maestas,* Deputy Attorney General
New Mexico Office of the Attorney
General
408 Galisteo St.
Santa Fe, NM 87501
tmaestas@nmag.gov
Tel. (505) 490-4060
Fax (505) 490-4883

JOSHUA H. STEIN

Attorney General of the State of North Carolina

By: /s Ryan Y. Park
Ryan Y. Park,*
Deputy Solicitor General
North Carolina Department of Justice
114 W. Edenton Street
Raleigh, NC 27603
RPark@ncdoj.gov
Tel. (919) 716-6400

ELLEN F. ROSENBLUM

Attorney General of the State of Oregon

By: /s Brian De Haan
Brian De Haan,†
Assistant Attorney General
Trial Attorney
Brian.A.DeHaan@doj.state.or.us
Tel. (971) 673-1880
Fax (971) 673-5000

JOSH SHAPIRO

Attorney General of the Commonwealth of Pennsylvania

By: /s Jonathan Scott Goldman
Jonathan Scott Goldman,*
Executive Deputy Attorney General,
Civil Law Division
Michael J. Fischer,*
Chief Deputy Attorney General,
Impact Litigation Section
Office of Attorney General
16th Floor, Strawberry Square
Harrisburg, PA 17120
MFischer@attorneygeneral.gov
Tel. (215) 560-2171

PETER KILMARTIN

Attorney General of the State of Rhode Island

By: /s Adam D. Roach
Adam D. Roach,* Special Assistant
Attorney General
RI Office of the Attorney General
150 South Main Street
Providence, RI 02903
aroach@riag.ri.gov
Tel: (401) 274-4400 ext. 2490
Fax: (401) 222-2995

MARK R. HERRING

Attorney General of the Commonwealth of Virginia

By: /s Matthew R. McGuire
Matthew R. McGuire,*
Deputy Solicitor General
202 North Ninth Street
Richmond, VA 23219
MMcguire@oag.state.va.us
Tel. (804) 786-7240
Fax (804) 371-0200

THOMAS J. DONOVAN, JR.

Attorney General of the State of Vermont

By: /s Benjamin D. Battles
Benjamin D. Battles,* Solicitor General
Julio A. Thompson,* Assistant Attorney
General, Civil Rights Unit
Office of the Vermont Attorney General
109 State Street
Montpelier, VT 05609
Benjamin.Battles@vermont.gov
Tel. (802) 828-5500
Fax (802) 828-3187

ROBERT W. FERGUSON

Attorney General of the State of Washington

By: /s/ Laura K. Clinton

Laura K. Clinton,*
Assistant Attorney General
Complex Litigation Division
800 Fifth Avenue, Suite 2000
Seattle, WA 98104
LauraC5@atg.wa.gov
(206) 233-3383
Peter Gonick,
Deputy Solicitor General
Office of the Attorney General
PO Box 40100
Olympia, WA 98504-0100
peterg@atg.wa.gov
Tel. (360) 753-6245

EDWARD N. SISSEL

Corporation Counsel of the City of Chicago

By: /s John Hendricks

John Hendricks,* Deputy Corporation
Counsel
Andrew W. Worseck,* Chief Assistant
Corporation Counsel
Andrew S. Mine, Senior Counsel
Maggie Sobota,* Assistant Corporation
Counsel
Christie Starzec, Assistant Corporation
Counsel
City of Chicago Law Department
30 N. LaSalle Street, Suite 1230
Chicago, IL 60602
John.Hendricks@cityofchicago.org
Andrew.Worseck@cityofchicago.org
Andrew.Mine@cityofchicago.org
Maggie.Sobota@cityofchicago.org
Christie.Starzec@cityofchicago.org
Tel. (312) 744-6975
Fax (312) 742-3925

ZACHARY W. CARTER

Corporation Counsel of the City of New York

By: /s Sabita Krishnan

Gail Rubin[†]
Sabita Krishnan[†]
100 Church Street
New York, NY 10007
grubin@law.nyc.gov
skrishna@law.nyc.gov
Tel. (212) 356-2030
Fax (212) 356-2038

MARCEL S. PRATT

Acting Solicitor of the City Of Philadelphia

By: /s Marcel S. Pratt

Marcel S. Pratt,* Acting City Solicitor
Eleanor N. Ewing,* Chief Deputy
Solicitor
Benjamin H. Field,* Deputy City
Solicitor
Michael W. Pfautz, Assistant City
Solicitor
City of Philadelphia Law Department
1515 Arch Street, 17th Floor
Philadelphia, PA 19102
marcel.pratt@phila.gov
eleanor.ewing@phila.gov
benjamin.field@phila.gov
Tel. (215)683-5000
Fax (215)683-5299

JEFFREY DANA

City Solicitor for the City of Providence

By: /s Jeffrey Dana

Jeffrey Dana,*
City Solicitor
City of Providence
444 Westminister Street
Providence, RI 02903
JDana@providenceri.gov
401-680-5333

DENNIS J. HERRERA

City Attorney for the City and County of San Francisco

By: /s Dennis J. Herrera

Dennis J. Herrera,* City Attorney
Jesse C. Smith, Chief Assistant City
Attorney
Ronald P. Flynn, Chief Deputy City
Attorney
Yvonne R. Meré, Chief of Complex and
Affirmative Litigation
Mollie Lee,* Deputy City Attorney
Erin Kuka, Deputy City Attorney
Neha Gupta, Deputy City Attorney
San Francisco City Attorney's Office
City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102
Mollie.Lee@sfcityatty.org
Tel. (415) 554-4748
Fax (415) 554-4715

**UNITED STATES CONFERENCE OF
MAYORS**

By: /s John Daniel Reaves
John Daniel Reaves*
General Counsel
United Conference of Mayor
1200 New Hampshire Avenue, NW
Third Floor
Washington, D.C. 20036
jdreavesoffice@gmail.com
Tel. (202) 974-5931

CITY OF SEATTLE
City of Seattle City Attorney

By: /s Peter S. Holmes
Peter S. Holmes,*
City Attorney
701 Fifth Avenue, Suite 2050
Seattle, WA 98104-7097

† Admitted in the S.D.N.Y.

**Pro hac vice* motions will be forthcoming.

EXHIBIT 5

1 XAVIER BECERRA
 Attorney General of California
 2 THOMAS S. PATTERSON
 Senior Assistant Attorney General
 3 MARK R. BECKINGTON
 Supervising Deputy Attorney General
 4 GABRIELLE D. BOUTIN, SBN 267308
 R. MATTHEW WISE, SBN 238485
 5 Deputy Attorneys General
 1300 I Street, Suite 125
 6 P.O. Box 944255
 Sacramento, CA 94244-2550
 7 Telephone: (916) 210-6046
 Fax: (916) 324-8835
 8 E-mail: Matthew.Wise@doj.ca.gov
*Attorneys for Plaintiff State of California, by and
 9 through Attorney General Xavier Becerra*

10 IN THE UNITED STATES DISTRICT COURT
 11 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 12

13
 14
 15 **STATE OF CALIFORNIA, BY AND
 THROUGH ATTORNEY GENERAL XAVIER
 16 BECERRA,**

17 Plaintiff,

18 v.

19 **WILBUR L. ROSS, JR., IN HIS OFFICIAL
 20 CAPACITY AS SECRETARY OF THE U.S.
 DEPARTMENT OF COMMERCE; U.S.
 21 DEPARTMENT OF COMMERCE; RON
 JARMIN, IN HIS OFFICIAL CAPACITY AS
 22 ACTING DIRECTOR OF THE U.S. CENSUS
 BUREAU; U.S. CENSUS BUREAU; DOES 1-
 23 100,**

24 Defendants.
 25

**COMPLAINT FOR DECLARATORY AND
 INJUNCTIVE RELIEF**

(Second Cause of Action – Administrative
 Procedure Act Case)

26 **INTRODUCTION**

27 1. The United States Constitution requires that all persons in each state be counted every
 28 ten years. U.S. Const. art. I, § 2, cl. 3, and amend. XIV, § 2. The Constitution mandates the

1 “actual Enumeration” of the population for the purpose of apportioning congressional
2 representatives among the states. U.S. Const. art. I, § 2, cl. 3. For this foundational step in our
3 country’s democratic process, the Constitution recognizes no exception based on citizenship
4 status. It is long settled that *all* persons residing in the United States—citizens and non-citizens
5 alike—must be counted to fulfill the Constitution’s “actual Enumeration” mandate. *Id.*; *Fed’n for*
6 *Am. Immigration Reform v. Klutznick*, 486 F. Supp. 564, 576 (D.D.C. 1980).

7 2. The U.S. Census Bureau (Bureau), a division of the U.S. Department of Commerce,
8 will conduct the next census, also known as the “decennial census,” in 2020. The census surveys
9 the number of persons in each household and, in the process, gathers certain demographic
10 information about those persons. But not since 1950 has the decennial census asked whether each
11 respondent is a citizen of the United States. Consistent with the modern practice, when in March
12 2017, as required by statute, the Bureau submitted to Congress a report of the proposed subjects
13 planned for the 2020 Census, none related to citizenship or immigration status.

14 3. In a December 12, 2017 letter, late in the census planning process and months after
15 the statutory deadline for reporting proposed subjects, the U.S. Department of Justice requested
16 that the Bureau include a citizenship question on the 2020 Census. While the letter suggested that
17 adding a citizenship question would assist the Department of Justice in enforcing Section 2 of the
18 Voting Rights Act, it did not address whether or how a citizenship question would facilitate the
19 Bureau’s constitutional duty to capture the “actual Enumeration” of the U.S. population. Nor did
20 the letter consider whether adding a citizenship question would serve the Voting Rights Act’s
21 purpose of ensuring fair representation for all communities, ignoring substantial evidence—and
22 the Bureau’s own past admissions—that fewer people would respond to the 2020 Census if it
23 included a citizenship question.

24 4. On March 26, 2018, the Department of Commerce, setting aside decades of practice,
25 announced that the final list of census questions that it will submit to Congress will include a
26 question asking the citizenship status of every person in every household in the United States.
27 The Department of Commerce concedes that it “is not able to determine definitively how
28

1 inclusion of a citizenship question on the decennial census will impact responsiveness” to the
2 2020 Census. *See* Ex. 1, p. 7 [Letter of Wilbur Ross to Karen Dunn Kelley, dated Mar. 26, 2018].

3 5. Including the citizenship question on the 2020 Census will directly impede the
4 Bureau from procuring the “actual Enumeration” of the U.S. population. Numerous studies—
5 including those conducted by the Bureau—point to the same conclusion: asking about citizenship
6 will repress responses from non-citizens and their citizen relatives. At least four former Bureau
7 directors share the view that inquiring about citizenship status on the census “would likely
8 exacerbate privacy concerns and lead to inaccurate responses from non-citizens worried about a
9 government record of their immigration status.” Brief of Former Directors of the U.S. Census
10 Bureau as Amici Curiae in Support of Appellees at 23-26, *Evenwel v. Abbott*, 136 S.Ct. 1120
11 (2016) (No. 14-940), 2015 WL 5675832.

12 6. The State of California, in particular, stands to lose if the citizenship question is
13 included on the 2020 Census. According to 2016 figures from the Bureau’s American
14 Community Survey (ACS), California has more foreign-born residents (over 10 million) and non-
15 citizens (over 5 million) than any other state.¹ And a recent study from the University of
16 Southern California’s Center for the Study of Immigrant Integration found that California has the
17 highest number of U.S.-born citizens who live with at least one undocumented family member.²
18 Undercounting the sizeable number of Californian non-citizens and their citizen relatives will
19 imperil the State’s fair share of congressional seats and Electoral College electors and will cost
20 the State billions of dollars in federal funding over the next decade.

21
22
23 ¹ *Selected Characteristics of the Native and Foreign-Born Population – 2012-2016*
24 *American Community Survey 5-Year Estimates*, U.S. Census Bureau,
25 <https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=bkml> (last
26 visited Mar. 26, 2018); *Nativity and Citizenship Status in the United States—Universe: Total*
27 *Population in the United States – 2012-2016 American Community Survey 5-Year Estimates*, U.S.
28 Census Bureau,
[https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_16_5YR_](https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_16_5YR_B05001&prodType=table)
[_B05001&prodType=table](https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_16_5YR_B05001&prodType=table) (last visited Mar. 26, 2018).

² *Keeping Families Together*, Silva Mathema, University of Southern California’s Center
for the Study of Immigrant Integration and Center for American Progress (Mar. 16, 2017),
[https://cdn.americanprogress.org/content/uploads/2017/03/15112450/KeepFamiliesTogether-](https://cdn.americanprogress.org/content/uploads/2017/03/15112450/KeepFamiliesTogether-brief.pdf)
brief.pdf (last visited Mar. 26, 2018).

1 Likewise, the Bureau Director “is necessarily invested with discretion in matters of form and
2 procedure when these are not specifically provided for by law” *U.S. ex rel. City of Atlanta,*
3 *Ga. v. Stuart*, 47 F.2d 979, 982 (D.C. Cir. 1931).

4 19. Defendants’ discretion in taking the census is not unfettered, and in particular, is
5 subject to congressional oversight. Three years before the census, the Secretary must submit to
6 Congress a report proposing the subjects to be included in the census. 13 U.S.C. § 141(f)(1).
7 Two years before the census, the Secretary must submit to Congress the specific questions to be
8 included in the census. 13 U.S.C. § 141(f)(2). The Secretary may only later modify the subjects
9 or questions if he submits a report to Congress finding that “new circumstances exist which
10 necessitate” the modification. 13 U.S.C. § 141(f)(3).

11 20. Defendants’ discretion in taking the census is also subject to the APA. Under the
12 APA, Defendants must ensure that any agency action is not “arbitrary, capricious, an abuse of
13 discretion, or otherwise not in accordance with law,” “contrary to constitutional right, power,
14 privilege or immunity,” or “in excess of statutory jurisdiction, authority, or limitations, or short of
15 statutory right.” 5 U.S.C. § 706.

16 21. Congress and the states use census data for many purposes, including for allocating
17 federal funding and for state legislative districting. *City of Los Angeles v. U.S. Dept. of*
18 *Commerce*, 307 F.3d 859, 864 (9th Cir. 2002); *Wisconsin v. City of New York*, 517 U.S. 1, 5-6
19 (1996). But the only constitutional purpose of the census is to apportion congressional
20 representatives based on the “actual Enumeration” of the population of each state.

21 22. To fulfill this constitutional purpose, as the Bureau itself has recognized, the 2020
22 Census will succeed only if it achieves its aim “to count everyone once, only once, and in the
23 right place.”³

24 **FACTUAL AND PROCEDURAL BACKGROUND**

25 23. Under the direction of the Secretary of Commerce and the Bureau Director, the
26 Bureau conducts the constitutionally required census every ten years by counting all U.S.

27 ³ *Why We Conduct the Decennial Census*, United States Census Bureau,
28 <https://www.census.gov/programs-surveys/decennial-census/about/why.html> (last visited March 26, 2018).

1 residents in the place where they live. Besides using the results of the decennial census for the
2 constitutional purpose of determining the number of seats for each state in the House of
3 Representatives, the federal government relies on census data to determine how to distribute
4 billions of dollars of funding each year, including funding for Medicaid, Medicare Part B, the
5 Supplemental Nutrition Assistance Program (SNAP), the State Children's Health Insurance
6 Program (S-CHIP), and the Highway Planning and Construction Program.

7 24. In addition to the decennial census, every year the Bureau conducts the ACS. The
8 ACS contains a more expansive set of questions than the decennial census. Unlike the decennial
9 census, the ACS is not required by the Constitution. And while the decennial Census requires an
10 actual enumeration of all U.S. residents, the ACS surveys only a sample of the population.
11 Compared to the decennial census, the ACS gathers more detailed information about U.S.
12 residents.

13 25. The decennial census has not included a question on citizenship since the 1950
14 Census. Since that time, the question has appeared only on the ACS.

15 26. On March 28, 2017, Secretary Ross timely submitted a report containing the subjects
16 proposed to be included in the 2020 Census. The subjects, which were unchanged from the 2010
17 Census, did not include citizenship or immigration status.

18 27. Nearly nine months after the subjects for the 2020 Census had been identified, on
19 December 12, 2017, the U.S. Department of Justice sent a letter to the Bureau requesting the
20 inclusion of a citizenship question on the 2020 Census. The Department of Justice's stated
21 rationale for adding a citizenship question was to assist the Department of Justice in enforcing
22 Section 2 of the Voting Rights Act. The letter failed to address the likelihood that a citizenship
23 question would decrease the accuracy of the Census by deterring responses from non-citizens and
24 their relatives and that this consequence would undermine the Voting Rights Act's purpose of
25 ensuring fair representation for all communities.

26 28. On March 26, 2018, setting aside decades of practice, Secretary Ross and the
27 Department of Commerce announced that the final list of census questions that it will submit to
28

1 Congress will include a question on citizenship status. Specifically, the question will ask, for
2 every member of every household, whether that person is a citizen of the United States.

3 29. Secretary Ross explained that, to address the Department of Justice's request, he had
4 determined that the best option was to add the ACS citizenship question to the decennial census.
5 Secretary Ross speculated that the citizenship question may not cause an undercount because
6 "there is no information available to determine the number of people who would in fact not
7 respond due to a citizenship question being added, and no one has identified any mechanism for
8 making such a determination." Ex. 1, p. 5. Secretary Ross concluded that "the need for accurate
9 citizenship data" was worth the risk of an undercount. *Id.*

10 30. Notwithstanding the rationale stated in this letter, the Bureau is well aware that
11 adding the citizenship question will directly cause an undercount in the 2020 Census. Its own
12 2017 study revealed "an unprecedented ground swell in confidentiality and data sharing concerns,
13 particularly among immigrants or those who live with immigrants" and that these concerns "may
14 present a barrier to participation in the 2020 Census."⁴ This apprehension about participating in
15 the census is unsurprising in the current political climate. The studies' respondents "express[ed]
16 new concerns about topics like the 'Muslim ban,' discomfort 'registering' other household
17 members by reporting their demographic characteristics, the dissolution of the 'DACA' (Deferred
18 Action for Childhood Arrival) program, repeated references to Immigration and Customs
19 Enforcement (ICE), etc."⁵ These types of concerns are not new to the Bureau. Since at least
20 1980, the Bureau has recognized that, because of immigrants' fear of how information disclosed
21 on the Census may be used against them, "any effort to ascertain citizenship will inevitably
22

23
24 ⁴ See Mikelyn Meyers, Center for Survey Management, U.S. Census Bureau, Presentation
25 on Respondent Confidentiality Concerns and Possible Effects on Response Rates and Data
26 Quality for the 2020 Census, presented at National Advisory Committee on Racial, Ethnic, and
27 Other Populations Fall Meeting (Nov. 2, 2017),
28 [https://www2.census.gov/cac/nac/meetings/2017-11/Meyers-NAC-Confidentiality-
Presentation.pdf](https://www2.census.gov/cac/nac/meetings/2017-11/Meyers-NAC-Confidentiality-Presentation.pdf) (last visited Mar. 26, 2018).

⁵ See Ex. 2, Memorandum from Center for Survey Measurement on Respondent
Confidentiality Concerns to Associate Directorate for Research and Methodology, U.S. Census
Bureau (Sept. 20, 2017), [https://www2.census.gov/cac/nac/meetings/2017-11/Memo-Regarding-
Respondent-Confidentiality-Concerns.pdf](https://www2.census.gov/cac/nac/meetings/2017-11/Memo-Regarding-Respondent-Confidentiality-Concerns.pdf) (last visited Mar. 26, 2018).

1 jeopardize the overall accuracy of the population count.” *Fed’n for Am. Immigration Reform*, 486
2 F. Supp. at 568.

3 31. The undercount of Californians in the 2020 decennial census resulting from the
4 citizenship question will cause significant harm to the State of California, its counties, cities, and
5 residents. Before the citizenship question was added, California was predicted to retain its
6 current number of seats in the House of Representatives and, consequently, the Electoral College,
7 but only by a very slim margin. Because California has a proportionately large population of
8 non-citizens and relatives of non-citizens compared to other states, the citizenship question will
9 now likely cause California to lose seats for the first time in its history.⁶

10 30. The undercount that will result from the citizenship question will also cause
11 California to lose federal funding. The State receives over \$76 billion in funding from the sixteen
12 large federal assistance programs that distribute funds on the basis of decennial census-derived
13 statistics.⁷

14 31. The Bureau is currently conducting its “2018 Census Test” in Providence County,
15 Rhode Island. The 2018 Census Test is a dress rehearsal for the 2020 Census. As the Bureau’s
16 website states, “Throughout the decade, the Census Bureau has conducted extensive research and
17 testing to inform census design. The 2018 Census Test is the culmination of that research,
18 providing a rich environment to test all major components of the 2020 Census. The primary
19 objective of the test is to confirm key technologies, data collection methods, outreach and
20 promotional strategies, and management and response processes that will be deployed in support
21 of the 2020 Census.”⁸ No citizenship question or similar question was included in the 2018
22 Census Test. Having failed to adequately test the question before including it in the 2020 Census,

23 ⁶ Election Data Services, *Some Change in Apportionment Allocations with New 2017*
24 *Census Estimates; But Greater Change Likely by 2020*, Dec. 26, 2017,
[https://www.electiondataservices.com/wp-](https://www.electiondataservices.com/wp-content/uploads/2017/12/NR_Appor17c2wTablesMapsC1.pdf)
25 [content/uploads/2017/12/NR_Appor17c2wTablesMapsC1.pdf](https://www.electiondataservices.com/wp-content/uploads/2017/12/NR_Appor17c2wTablesMapsC1.pdf) (last visited Mar. 26, 2018).

26 ⁷ Reamer, The George Washington Institute of Public Policy, *Counting for Dollars 2020 –*
California, Aug. 18, 2017,
27 <https://gwipp.gwu.edu/sites/gwipp.gwu.edu/files/downloads/California%2008-18-17.pdf> (last
28 visited Mar. 26, 2018).

⁸ 2018 Census Test—About this Test, U.S. Census Bureau,
<https://www.census.gov/programs-surveys/decennial-census/2018-census-test/about.html> (last
visited Mar. 26, 2018).

1 the Bureau will be unable to take sufficient measures to avoid or mitigate the resulting undercount
2 of non-citizens and their citizen relatives.

3 32. The Bureau plans to finalize the 2020 Census paper questionnaires for print in May
4 2019. Ensuring that the 2020 Census is not compromised by the inclusion of the citizenship
5 question will become more difficult with each passing day, as more of the Bureau's resources are
6 dedicated to including the question on the census.

7 **FIRST CAUSE OF ACTION**

8 **(Violation of Constitution's "Actual Enumeration" Mandate; U.S. Const. art. I, § 2, cl. 3)**

9 33. Plaintiffs reallege and incorporate herein by reference each and every allegation and
10 paragraph set forth previously.

11 34. The Constitution requires the "actual Enumeration" of all people in each state every
12 ten years for the sole purpose of apportioning representatives among the states. U.S. Const. art. I,
13 § 2, cl. 3, and amend. XIV, § 2.

14 35. By including the citizenship question on the 2020 Census, Defendants are in violation
15 of the "actual Enumeration" clause of the Constitution. Because the question will diminish the
16 response rates of non-citizens and their citizen relatives, California, which has the largest
17 immigrant population in the country, will be disproportionately affected by the census
18 undercount. Inclusion of the question thus directly interferes with Defendants' fulfillment of their
19 constitutional responsibility, as delegated by Congress, to conduct an "actual Enumeration" of the
20 U.S. population.

21 36. This violation harms the State of California and its residents, given that the State is
22 entitled under the Constitution to a proportionate share of congressional representatives based on
23 its total population.

24 37. Defendants' violation has caused and will continue to cause ongoing, irreparable
25 harm to California and its residents.

26 38. An actual controversy exists between Plaintiff and Defendants regarding whether
27 Defendants' inclusion of a citizenship question on the 2020 Census violates the "actual
28 Enumeration" clause of the U.S. Constitution.

1 **SECOND CAUSE OF ACTION**

2 **(Violation of APA; 5 U.S.C. § 706)**

3 39. Plaintiffs reallege and incorporate herein by reference each and every allegation and
4 paragraph set forth previously.

5 40. The APA requires courts to “hold unlawful and set aside” agency action that is,
6 among other things, “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance
7 with law,” “contrary to constitutional right, power, privilege or immunity,” or “in excess of
8 statutory jurisdiction, authority, or limitations, or short of statutory right.” 5 U.S.C. § 706.

9 41. Defendants’ inclusion of the citizenship question on the 2020 Census is all of the
10 above. Because the question will diminish the response rates of non-citizens and their citizen
11 relatives, California, which has the largest immigrant population in the country, will be
12 disproportionately affected by the census undercount. Inclusion of the question thus directly
13 interferes with Defendants’ fulfillment of their constitutional responsibility, as delegated by
14 Congress, to conduct an “actual Enumeration” of the U.S. population, as well as Secretary Ross’
15 statutory duty to “take a decennial census of population” under 13 U.S.C. § 141(a). A citizenship
16 question, moreover, would not serve the purpose articulated by the U.S. Department of
17 Commerce, because an undercount of non-citizens and their citizen relatives will decrease the
18 accuracy of census data available to prove voter dilution under Section 2 of the Voting Rights
19 Act. Finally, Defendants failed to follow their own internal agency policies and guidelines,
20 including under the Information Quality Act, in reaching their decision to add the citizenship
21 question.

22 42. Defendants’ decision to add a citizenship question to the 2020 Census thus violates
23 the APA’s prohibition against “arbitrary and capricious” agency action.

24 43. Defendants’ violation has caused and will continue to cause ongoing, irreparable
25 harm to California and its residents.

26 44. An actual controversy exists between Plaintiff and Defendants regarding whether
27 Defendants’ inclusion of a citizenship question on the 2020 Census violates the APA.
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PRAYER FOR RELIEF

WHEREFORE, the State of California, by and through Attorney General Xavier Becerra, respectfully requests that this Court:

1. Issue a declaratory judgment, under 28 U.S.C. §§ 2201 and 2202, that including the citizenship question on the 2020 Census violates Article I, Section 2, Clause 3 of the United States Constitution and the APA.

4. Issue a preliminary injunction prohibiting all Defendants and all those acting in concert with them from including a citizenship question on the 2020 Census and from taking any irreversible steps to include a citizenship question on the 2020 Census;

5. Issue a permanent injunction prohibiting all Defendants and all those acting in concert with them from including the citizenship question on the 2020 Census;

6. Award Plaintiff costs, expenses, and reasonable attorney fees; and

7. Award such other relief as the Court deems just and proper.

Dated: March 26, 2018

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
THOMAS S. PATTERSON
Senior Assistant Attorney General
MARK R. BECKINGTON
Supervising Deputy Attorney General

/s/ Gabrielle D. Boutin

GABRIELLE D. BOUTIN
R. MATTHEW WISE
Deputy Attorneys General
*Attorneys for Plaintiff State of California, by
and through Attorney General Xavier
Becerra*

SA2018100200
13015330.docx

EXHIBIT 6

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

ROBYN KRAVITZ,
3606 Stewart Road
District Heights
Prince George's County, MD 20747;

MICHAEL KRAVITZ,
3606 Stewart Road
District Heights
Prince George's County, MD 20747;

CATHERINE NWOSU,
8004 18th Avenue
Hyattsville
Prince George's County, MD 20783;

NNABUGWU NWOSU,
8004 18th Avenue
Hyattsville
Prince George's County, MD 20783;

JOANNE WILSON,
3806 Viser Court
Bowie
Prince George's County, MD 20715;

RICHARD McCUNE,
455 West Crawford Street
Nogales, AZ 85621;

JOSE MORENO,
443 East Ramona Street
Box 3293
Somerton, AZ 85350;

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF
COMMERCE,

Case No. _____

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

1401 Constitution Avenue NW
Washington, DC 20230;

UNITED STATES CENSUS BUREAU,
4600 Silver Hill Road
Suitland
Prince George's County, MD 20746;

WILBUR L. ROSS, JR., in his official capacity
as Secretary of Commerce
1401 Constitution Avenue NW
Washington, DC 20230;

KAREN DUNN KELLEY in her official
capacity as the Under Secretary for Economic
Affairs, performing the nonexclusive duties of
the Deputy Secretary of Commerce,
1401 Constitution Avenue NW
Washington, DC 20230;

RON JARMIN in his official capacity as an
employee of the U.S. Census Bureau performing
the non-exclusive functions and duties of the
Director of the U.S. Census Bureau,
4600 Silver Hill Road
Suitland
Prince George's County, MD 20746;

ENRIQUE LAMAS in his official capacity as an
employee of the U.S. Census Bureau performing
the non-exclusive duties and functions of the
Deputy Director and Chief Operating Officer of
the U.S. Census Bureau,
4600 Silver Hill Road
Suitland
Prince George's County, MD 20746;

Defendants.

INTRODUCTION

1. On March 26, 2018, in an abrupt reversal of 60 years of policy and practice, U.S. Secretary of Commerce Wilbur L. Ross, Jr., ordered the U.S. Census Bureau (the “Bureau” or “Census Bureau”) to add a question to the 2020 decennial census (“2020 Census”) questionnaire that requires respondents to report to the government whether they and their household members are United States citizens. Coming amidst what the Bureau itself has identified as a widespread climate of fear among citizen and noncitizen immigrants, the belated addition of a citizenship question will significantly depress response rates in certain communities, thereby undermining the completeness and accuracy of the 2020 Census. The Secretary insisted on the addition of a citizenship question despite expressly conceding that it could lead to a disproportionate undercount and without having conducted a single test, in almost seven years of pre-Census preparation, to assess the impact that a citizenship question would have on the accuracy of the census count.

2. The Secretary’s action violates the paramount constitutional objective of the decennial census—to count every person residing in the United States, citizen and noncitizen alike. It also contravenes binding legal requirements and the Bureau’s own policies and procedures for ensuring an accurate and complete census count. Defendants’ action not only violates the Census Clause of the U.S. Constitution, as amended by the Fourteenth Amendment, but also must be set aside under the Administrative Procedure Act (“APA”) as arbitrary, capricious, an abuse of discretion, and otherwise in contravention of applicable law.

3. Plaintiffs—individual citizens residing in Prince George’s County, Maryland and the State of Arizona—bring this action under the Constitution and the APA to block this unlawful assault on the integrity of the decennial census and to prevent the harm that

each of the Plaintiffs will suffer if this final agency action taken by the U.S. Department of Commerce (the “Commerce Department” or “Department”) is permitted to stand.

4. The U.S. Constitution requires the federal government to conduct a decennial census counting the total number of “persons”—regardless of citizenship status—residing in each state. The population data collected through this decennial census determines the apportionment of seats in the U.S. House of Representatives among the states. States also use these data to draw congressional and state legislative districts. And over \$675 billion in federal funding for a wide array of programs is allocated to individual states and localities every year based upon decennial census data.

5. From 1960 until March 26, 2018, the Bureau had steadfastly determined, in census after census, *not* to ask about citizenship status on the standard census questionnaire used to count all persons in the United States. Bureau personnel have repeatedly found that such a question was unnecessary to count total population and would undermine the accuracy and completeness of the census by causing disproportionate levels of non-participation among certain demographic groups.

6. As a federal statistical agency within the Commerce Department, the Census Bureau is held to stringent regulations on impartiality, objectivity, and statistical reliability, requiring decisions about census content and collection methodologies to be insulated from political considerations and based on rigorous pre-testing. The Census Bureau is nearly seven years into the preparation process for the 2020 Census and has already completed numerous tests to inform the final content, design, and operation of the 2020 Census.

7. None of the testing for the 2020 Census to date has evaluated the impact of a citizenship question on response rates to the 2020 Census questionnaire, or on the accuracy

and completeness of 2020 Census data. The final pre-census test, a “dress rehearsal” that is the culmination of the Bureau’s research and testing efforts, is now underway and will not assess the impact of a citizenship question.

8. The Secretary’s last-minute decision to add a citizenship question—which reportedly overruled both top Bureau officials and the Bureau’s own scientific advisory committee—was purportedly made to satisfy a belated December 2017 request from the Department of Justice (“DOJ”), which claimed that it needed “census block”-level citizenship data to enforce Section 2 of the Voting Rights Act (“VRA”). The DOJ’s claim, however, had no valid foundation. In over half a century of the VRA’s existence, census block-level citizenship data have never been available to or used by the government to enforce Section 2, nor have Congress or the courts required such data.

9. In reality, the VRA rationale is a mere pretext. The circumstances of the Secretary’s decision show that the addition of an untested citizenship question is a partisan act aimed at advancing the Trump Administration’s anti-immigration political agenda, heedless of legal requirements. Even before the Secretary announced his decision, President Trump’s reelection campaign sent a mass email declaring that the President “wants the 2020 United States Census to ask people whether or not they are citizens” and asking “if you’re on his side.” Within two days of the Secretary’s decision, the Trump campaign sent out another mass e-mail asserting that President Trump had personally “mandated” the decision and soliciting political support on that basis.

10. As the Bureau’s own prior research and investigation demonstrate, Defendants’ reckless addition of a citizenship question to the 2020 Census questionnaire will increase fear and distrust, depress response rates, and produce a disproportionate undercount of

residents in states and localities with high numbers of certain demographic groups, including noncitizens, immigrants, non-English speakers, and individuals of Hispanic or Latino origin. This undercount will have harmful, decade-long effects for *everyone* who lives in these communities—citizens and noncitizens, native and foreign-born. Voters will be denied their constitutionally guaranteed rights to equitable political representation based on actual population, and billions of dollars in federal funding—for education, infrastructure, health care, and countless other pressing needs—will be unlawfully misallocated.

11. The 2020 Census must be carried out in accordance with the highest standards of statistical reliability, accuracy, and completeness, to ensure that the Constitution’s mandate to conduct an “actual Enumeration” of all “persons” is fulfilled. Plaintiffs bring this action to enjoin Defendants’ unlawful action and prevent severe injuries to themselves and to innumerable other citizens and noncitizens in states and localities across the country.

JURISDICTION AND VENUE

12. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1343 over Plaintiffs’ claims arising under the U.S. Constitution and federal statutes. An actual controversy exists between the parties within the meaning of 28 U.S.C. § 2201(a), and this Court may grant declaratory relief, injunctive relief, and other relief against the Defendants pursuant to 28 U.S.C. §§ 2201-2202 and 5 U.S.C. §§ 705-706.

13. Defendants’ decision to add a citizenship question to the 2020 Census, *see* Ex. 1, and its submission of the final census questions to Congress on March 29, 2018, *see* Ex. 2, constitute final agency action that is judicially reviewable under the Administrative Procedure Act (“APA”). 5 U.S.C. §§ 704, 706.

14. Venue is proper under 28 U.S.C. §1391(e)(1). First, Defendants United States Census Bureau, Ron Jarmin (in his official capacity), and Enrique Lamas (in his official

capacity) reside in Prince George's County within this District. Second, a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred in this District. Third, Plaintiffs Robyn Kravitz, Michael Kravitz, Catherine Nwosu, Nnabugwu Nwosu, and Joanne Wilson reside in Prince George's County within this District, and no real property is involved in this action.

PARTIES

15. Plaintiff Robyn Kravitz resides in District Heights, Maryland, a city located in Prince George's County. Ms. Kravitz's daughter currently attends a public school in Prince George's County. Her son recently attended, and is expected to re-enroll soon, in a public school in Prince George's County that receives funding under Title I of the Elementary and Secondary Education Act ("Title I"). District Heights falls within an "urbanized area" for purposes of federal transportation funding. Ms. Kravitz regularly drives on highways and roads, and uses other modes of transportation, in Prince George's County, including for her daily commute to work.

16. Plaintiff Michael Kravitz resides in District Heights, Maryland, a city located in Prince George's County. Mr. Kravitz's daughter currently attends a public school in Prince George's County. His son recently attended, and is expected to re-enroll soon, in a public school in Prince George's County that receives Title I funding. District Heights falls within an "urbanized area" for purposes of federal transportation funding. Mr. Kravitz regularly drives on highways and roads, and uses other modes of transportation, in Prince George's County, including for his daily commute to work.

17. Plaintiff Richard McCune resides in Nogales, Arizona, a city located in Santa Cruz County. Mr. McCune regularly drives on highways and roads in Santa Cruz County and other parts of Arizona.

18. Plaintiff Jose Moreno resides in Somerton, Arizona, a city located in Yuma County. Mr. Moreno is the Vice Principal at Somerton Middle School, a public school that receives Title I funding. He has three children who attend public schools that receive Title I funding. Mr. Moreno regularly drives on highways and roads in Yuma County.

19. Plaintiff Catherine Nwosu resides in Langley Park, Maryland, an unincorporated area in Prince George's County. Ms. Nwosu's son attends a public school in Prince George's County that receives Title I funding. Langley Park falls within an "urbanized area" for purposes of federal transportation funding. Ms. Nwosu regularly drives on highways and roads, and uses other modes of transportation, in Prince George's County, including for her daily commute to work.

20. Plaintiff Nnabugwu Nwosu resides in Langley Park, Maryland, an unincorporated area in Prince George's County, Maryland. Mr. Nwosu's son attends a public school in Prince George's County that receives Title I funding. Langley Park falls within an "urbanized area" for purposes of federal transportation funding. Mr. Nwosu regularly drives on highways and roads, and uses other modes of transportation, in Prince George's County, including for his daily commute to work.

21. Plaintiff Joanne Wilson resides in Bowie, Maryland, a city located in Prince George's County. Two of Ms. Wilson's children attend public school in Prince George's County. Bowie falls within an "urbanized area" for purposes of federal transportation funding. Ms. Wilson regularly drives on highways and roads, and uses other modes of transportation, in Prince George's County, including for her daily commute to work.

22. Defendant United States Department of Commerce is a cabinet-level department of the United States federal government. It oversees the development, content, and

implementation of the federal decennial census, including the 2020 Census, by the United States Census Bureau.

23. Defendant United States Census Bureau is an agency within the Commerce Department. It is responsible for developing and implementing the 2020 Census, subject to oversight by the Commerce Department.

24. Defendant Wilbur L. Ross, Jr., is the Secretary of Commerce. He has responsibility for overseeing the Bureau, including with respect to the Bureau's responsibility to develop and implement the 2020 Census. Secretary Ross is sued in his official capacity.

25. Defendant Karen Dunn Kelley is the Under Secretary for Economic Affairs, performing the nonexclusive duties of the Deputy Secretary of Commerce. She oversees the Department's statistical programs, including the United States Census Bureau. She is sued in her official capacity.

26. Defendant Ron Jarmin is performing the non-exclusive functions and duties of the Director of the United States Census Bureau. He has responsibility for the development and implementation of the 2020 Census. He is sued in his official capacity.

27. Defendant Enrique Lamas is performing the non-exclusive duties and functions of the Deputy Director and Chief Operating Officer of the United States Census Bureau. He has responsibility for the development and implementation of the 2020 Census. He is sued in his official capacity.

LEGAL BACKGROUND

A. The Constitutional Mandate to Count All "Persons"

28. Article I, Section 2, Clause 3 (the "Census Clause") of the United States Constitution mandates that the federal government shall conduct an "actual Enumeration" of the United States population every ten years. As amended by Section 2 of the Fourteenth

Amendment, this “Enumeration” must count “the whole number of persons in each state,” regardless of such persons’ status as citizens or noncitizens.

29. Pursuant to the Census Clause, representatives in the U.S. House of Representatives “shall be apportioned among the several States . . . according to their respective Numbers,” based upon the decennial census. U.S. Const. Art. I, § 2, cl. 3. Apportionment must be “based on total population,” regardless of citizenship. *Evenwel v. Abbott*, 136 S. Ct. 1120, 1127-29 (2015). An “actual Enumeration” for purposes of apportionment is the sole constitutional objective of the decennial census.

30. States also use population data from the decennial census to draw congressional and state legislative districts of equal population, as required by the U.S. Constitution.

31. In addition, federal government agencies utilize data from the decennial census, including population data, to allocate more than \$675 billion in federal funds involving over 130 different federal programs.¹ This includes funding for public schools under Title I of the Elementary and Secondary Education Act and for federal transportation planning programs, some of which is calculated based on the population of urbanized areas. Decennial census data also impacts funding for a wide range of other programs, including special education, Head Start, Medicaid, the Children’s Health Insurance Program, child care assistance, foster care, adoption assistance, home energy assistance, and the supplemental nutrition program for women, infants, and children.

¹ Marisa Hotchkiss and Jessica Phelan, *Uses of Census Bureau Data in Federal Funds Distribution* at 3 (Sept. 2017), <https://www2.census.gov/programs-surveys/decennial/2020/program-management/working-papers/Uses-of-Census-Bureau-Data-in-Federal-Funds-Distribution.pdf>.

B. The Statutory and Regulatory Framework

(1) Congress's Specification of the Bureau's Duties Under the Census Act

32. Pursuant to its constitutional authority to prescribe the “Manner” in which the decennial census is taken, Congress has delegated the duty of conducting the census to the Secretary of Commerce under the Census Act, 13 U.S.C. § 141. Although the Secretary has authority to determine the “form and content” of the census, *id.* § 141(a), this discretion is not unlimited.

33. In particular, the preparation for the decennial census is a decade-long undertaking subject to interim statutory deadlines and congressional oversight. The Census Act, 13 U.S.C. § 141(a), directs the Secretary to take a decennial census of “population as of the first day of April” in 1980 “and every ten years thereafter” (the “Census Date”). This “tabulation of total population by State” must be completed within nine months of the Census Date. *Id.* § 141(b).

34. Not later than three years before the Census Date, the Secretary must submit a report containing his “determination” as to the subjects to be included and the types of information to be compiled in the next decennial census. *Id.* § 141(f)(1). The deadline for submission of this report for the 2020 Census was March 31, 2017.

35. Not later than two years before the Census Date, the Secretary must submit another report to Congress setting forth his “determination” as to the questions to be asked in the next decennial census. *Id.* § 141(f)(2). The deadline for submission of this report for the 2020 Census was March 31, 2018.

36. The Secretary may not modify the subjects, types of information, or questions contained in a report under § 141(f)(1) or (f)(2) without finding that “new

circumstances exist which necessitate” such a modification and reporting that finding to Congress. *Id.* § 141(f)(3).

(2) The Requirements of Independence, Impartiality, and Statistical Rigor in Conducting the Decennial Census

37. The Secretary’s discretion is also limited by the statutory and regulatory framework that Congress has established to ensure that the Census Bureau provides impartial, unbiased, and objective data consistent with the highest standards of statistical accuracy and reliability.

38. The Census Bureau is a “statistical agency” within the “Federal statistical system” subject to the standards and directives of the Office of Management and Budget (“OMB”) under the Paperwork Reduction Act (“PRA”), 44 U.S.C. §§ 3501-21. The PRA directs OMB to ensure “the integrity, objectivity, impartiality, utility, and confidentiality of information collected for statistical purposes” by federal statistical agencies, *id.* § 3504(e)(1)(B), including by issuing “[g]overnment-wide policies, principles, standards, and guidelines” governing “statistical collection procedures and methods,” *id.* § 3504(e)(3)(A).

39. Under the PRA, the Census Bureau must adhere to OMB’s “statistical policy and coordination” standards, including with respect to data collection and analysis. *Id.* § 3506(e)(4); *see also* 5 C.F.R. § 1320.18(c) (OMB regulation requiring agency compliance with “the information policies, principles, standards, and guidelines prescribed by OMB” under the PRA).

40. Through the Information Quality Act (“IQA”), Congress further underscored the importance of the PRA’s requirement that agencies disseminate objective and

accurate information.² The IQA instructs OMB and federal agencies to issue guidance for “ensuring and maximizing the quality, objectivity, utility, and integrity of information they disseminate.”³

41. Pursuant to its authority over the Federal statistical system under 44 U.S.C. § 3504(e), OMB has issued directives defining the statistical standards that agencies, including the Census Bureau, must follow. In particular, OMB’s Statistical Policy Directive No. 1, entitled “Fundamental Responsibilities of Federal Statistical Agencies and Recognized Statistical Units,” requires the Census Bureau to “apply sound statistical methods to ensure statistical products are accurate,” and to “produce data that are impartial, clear, and complete and are readily perceived as such by the public.”⁴ To guarantee such impartiality, statistical agencies including the Census Bureau “must function in an environment that is clearly separate and autonomous from the other administrative, regulatory, law enforcement, or policy-making activities within their respective Departments” and “must be able to conduct statistical activities autonomously when determining what information to collect and process.”⁵

42. Further, OMB’s Statistical Policy Directive No. 2, entitled “Standards and Guidelines for Statistical Surveys,” requires the Census Bureau, *inter alia*, to (i) design its surveys “to achieve the highest practical rates of response, commensurate with the importance of survey uses”; (ii) pretest the survey components, if they have not been successfully used before,

² Consol. Appropriations Act of 2001, Pub. L. No. 106-554, § 515, 114 Stat. 2763 (2000) (amending PRA).

³ *Id.* § 515(a).

⁴ Office of Mgmt. and Budget, Statistical Policy Directive No. 1., *Fundamental Responsibilities of Fed. Statistical Agencies and Recognized Statistical Units*, 79 Fed. Reg. 71,610, 71,615 (Dec. 2, 2014).

⁵ *Id.*

to “ensure that all components of a survey function as intended when implemented *in the full-scale survey*” and that “measurement error is controlled”; and (iii) administer the survey in a way that “maximiz[es] data quality” while “minimizing respondent burden and cost.”⁶

43. Consistent with OMB directives, the Census Bureau has issued its own Statistical Quality Standards that “address[] the Census Bureau’s unique methodological and operational issues” and “apply to all information products released by the Census Bureau and the activities that generate those products.”⁷

44. Pursuant to its obligations under the IQA, the Census Bureau has also issued stringent Information Quality Guidelines that require the Bureau to “provide information that is accurate, reliable and unbiased.”⁸

45. As federal administrative agencies, the Commerce Department and the Census Bureau are also subject to the APA, 5 U.S.C. §§ 701-06. Under the APA, agency action is unlawful and courts must set such action aside if it is, *inter alia*, “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law,” *id.* § 706(2)(A); “contrary to constitutional right, power, privilege or immunity,” *id.* § 706(2)(B); “in excess of statutory jurisdiction, authority, or limitations, or short of statutory right,” *id.* § 706(2)(C); or “without observance of procedure required by law,” *id.* § 706(2)(D).

⁶ Office of Management and Budget, Statistical Policy Directive No. 2, *Standards and Guidelines for Statistical Surveys* at §§ 1.3, 1.4, 2.3 (2006), https://obamawhitehouse.archives.gov/sites/default/files/omb/inforeg/statpolicy/standards_stat_surveys.pdf (emphasis added); *see also* 71 Fed. Reg. 55,522 (Sept. 22, 2006).

⁷ U.S. Census Bureau, Statistical Quality Standards at ii (Reissued Jul. 2013), https://www.census.gov/content/dam/Census/about/about-the-bureau/policies_and_notices/quality/statistical-quality-standards/Quality_Standards.pdf.

⁸ U.S. Census Bureau, Information Quality: Objectivity, <https://www.census.gov/about/policies/quality/guidelines/objectivity.html> (last revised Apr. 17, 2015).

(3) The Necessity of Rigorous Pretesting of Census Questions and Other Content

46. Rigorous pretesting of all survey questions and questionnaires as a whole is an essential component of the Census Bureau's preparations for the decennial census, including the 2020 Census. Consistent with the pretesting requirement set forth in OMB's Statistical Policy Directive No. 2, the Bureau's own Statistical Quality Standards specify that "[d]ata collection instruments and supporting materials must be pretested with respondents to identify problems" and must then be "refined, prior to implementation, based on pretesting results."⁹ The Bureau's pretesting must consider problems related not only to the content of a question, but also to "order/context effects, skip instructions, formatting, [and] navigation"; pretesting must also verify that a question does not cause "undue burden" and is not "unduly sensitive."¹⁰

47. Furthermore, additions or changes to the questions contained in the decennial census questionnaire must be pretested to ensure that they are necessary and will not compromise the impartiality, accuracy, and reliability of census data. As stated by the Bureau at its January 2018 quarterly Program Management Review:

Adding a question or making a change to the Decennial Census . . . involves extensive testing, review, and evaluation. This process ensures the change is necessary and will produce quality useful information for the nation . . . Final proposed questions result from extensive cognitive and field testing to ensure they result in the proper data with an integrity that meets the Census Bureau's high standards.¹¹

⁹ U.S. Census Bureau, Statistical Quality Standards at 8.

¹⁰ *Id.*

¹¹ U.S. Census Bureau, Jan. 26, 2018 Program Mgmt. Review Tr. at 20, <https://www2.census.gov/programs-surveys/decennial/2020/program-management/pmr-materials/01-26-2018/transcript-2018-01-26-pmr.pdf>. See also *Review of 1990 Decennial Census Questionnaire*:

48. Because the Census Bureau will provide language support for the 2020 Census in multiple foreign languages, such pretesting must be conducted not only in English but also in multiple other languages. The Bureau's Statistical Quality Standards require that "[d]ata collection instruments in any languages other than English must be pretested in the languages that will be used to collect data during production."¹² Both questionnaires and non-questionnaire materials must be prepared in multiple languages.

FACTUAL ALLEGATIONS

A. The Census Bureau's Extensive Pretesting of the 2020 Census Questionnaire Without Any Question or Other Inquiry Regarding Citizenship

49. In light of the pretesting and other requirements imposed by the above legal framework, and the operational demands of preparing for a nationwide survey of every U.S. household, the Census Bureau began preparing for the 2020 Census in 2011. None of the Bureau's preparations over the last seven years contemplated the inclusion of a citizenship question on the 2020 Census questionnaire. Indeed, the Bureau has done nothing to test the use of a citizenship question in the context of the 2020 Census questionnaire, including the impact that such a question would have on response rates.

50. The 2020 Census will utilize a single questionnaire, which contains only a limited number of questions designed to collect basic demographic information from every resident and determine the total population of persons residing in each state within the United

Hr'g Before the Subcomm. on Census & Population of the Comm. on Post Office and Civil Serv., 100th Cong. 69 (April 1988) (Statement of John Keane, Dir. Bureau of the Census) (highlighting sensitivity of question wording and arrangement, and noting that without pretesting the Bureau "wouldn't know the technical problems and uncertainty worries us as much as a negative test result").

¹² U.S. Census Bureau, Statistical Quality Standards at 10.

States.¹³ Prior to 2010 and for much of the 20th century, the decennial census used both a “short-form” and a “long-form” questionnaire. The short-form questionnaire, sent to the vast majority of U.S. households, was similar to the single questionnaire that will be used in the 2020 Census. The long-form questionnaire was sent only to a limited random sample of U.S. households and was designed to collect more detailed social, housing, and economic information. Beginning with the 2010 decennial census, the long-form questionnaire was dropped and the decennial census was taken using a single short-form questionnaire sent to all U.S. households. In 2005, the Bureau began using the American Community Survey (“ACS”) to gather, on an ongoing, monthly basis, the more detailed population data from a sample of U.S. households that were previously collected on a decennial basis through the long-form questionnaire.

51. As part of its preparation for the 2020 Census, the Bureau and OMB conducted a “comprehensive review” of the content to be included in the 2020 Census questionnaire.¹⁴ In accordance with the Bureau’s rigorous testing protocols, this review included extensive testing of the wording, content, and layout of the 2020 Census questionnaire.

52. The Bureau has conducted an annual census test of various questions and technologies in every year since 2012. These tests are used to assess methods to improve the 2020 Census, including by identifying potential wording changes to questionnaire content, procedures to improve self-response rates, and follow-up procedures for residents who do not respond. For example, the 2012 National Census Test assessed self-response rates and evaluated the performance of a combined race and origin question. The 2013 Census Test considered methods to improve non-response follow-up procedures. The 2014 Census Test evaluated

¹³ Under 13 U.S.C § 221, United States residents are legally required to respond to the questionnaire.

¹⁴ U.S. Census Bureau, Jan. 26, 2018 Program Mgmt. Review Tr. at 21.

various technologies for enumeration and census responses, including the Internet and mobile devices. As part of the 2014 test, the Census Bureau examined respondents' reactions, including privacy and confidentiality concerns.

53. In 2015, the Bureau conducted the National Content Test, which represented "the only opportunity to test [decennial census] content with a nationally representative sample prior to the 2020 Census."¹⁵ The Bureau emphasized that, without the results of the 2015 National Content Test, it "would lack some of the key quantitative evidence needed to improve upon the current decennial census design."¹⁶ The Bureau announced the results of this test in March 2017.¹⁷

54. The Census Bureau also has conducted cognitive testing of potential questionnaire content for the 2020 Census since at least 2015. These tests are used to understand how respondents interpret census questions and instructions, in the context of the entire questionnaire, in order to determine whether the questionnaire as a whole is interpreted as intended and to evaluate question sensitivity, including the potential impact on the rates and accuracy of responses.

¹⁵ U.S. Census Bureau, Supporting Statement for 2015 National Content Test at 15, https://www.census.gov/content/dam/Census/programs-surveys/decennial/2020_census/2015_census_tests/nct/2015-nct-omb-package.pdf.

¹⁶ *Id.* at 17.

¹⁷ For each decennial census since 1970, "the Census Bureau has conducted content tests to research and improve the design and function of different questions." U.S. Census Bureau, *Content Research* (Jan. 11, 2017), <https://www.census.gov/programs-surveys/decennial-census/2020-census/research-testing/content-research.html>. This thorough vetting process included testing of the language of specific questions in decennial National Content Tests in 1976, 1986, 1996, 2005, and 2015, as well as testing the performance of proposed topics and specific questions in the field with actual respondents.

55. In addition, the Bureau has conducted extensive testing of non-English materials in order to “[o]ptimize the non-English content of questionnaires and associated non-questionnaire materials across data collection modes.”¹⁸

56. The Bureau is now conducting its 2018 End-to-End Census Test. In past censuses, the End-to-End Census Test was referred to as the “dress rehearsal”: it is “the final test to help prepare for the 2020 Census”¹⁹ and marks the “culmination” of the Bureau’s “extensive research and testing to inform census design.”²⁰ The primary objective of the test is to “confirm” key features that will be deployed in the 2020 Census.²¹

57. The Census Bureau conducts testing specific to the decennial census questionnaire throughout the decade and does not rely on data imported from testing on other surveys to support decennial census testing. In particular, the Bureau has specifically emphasized that testing data from other surveys cannot substitute for the 2018 End-to-End Test, which is the final dress rehearsal for the 2020 Census:

[M]ost survey results cannot be directly applied to a decennial census environment. The size, scope, mandatory nature, importance of results (for such things as congressional apportionment, state redistricting efforts, and the allocation of billions of dollars in federal funds each year), and timing constraints (legal deadlines for producing apportionment and redistricting data) of the decennial census are unique. Thus, thorough and separate research and integrated testing must be conducted to ensure that new methods and

¹⁸ U.S. Census Bureau, 2020 Census Operational Plan Version 3.0, at 72 (Sept. 2017), <https://www2.census.gov/programs-surveys/decennial/2020/program-management/planning-docs/2020-oper-plan3.pdf>.

¹⁹ U.S. Census Bureau, 2018 Census Test, Frequently Asked Questions for the 2018 Census Test, <https://www.census.gov/programs-surveys/decennial-census/2018-census-test/faqs.html> (last revised Mar. 16, 2018).

²⁰ U.S. Census Bureau, 2018 Census Test, About this Test, <https://www.census.gov/programs-surveys/decennial-census/2018-census-test/about.html> (last revised Mar. 16, 2018).

²¹ *Id.*

operations will work in a decennial census environment.²²

58. None of the above-mentioned pretesting for the 2020 Census—including but not limited to the 2012 National Census Test, the 2013 Census Test, the 2014 National Census Test, the 2015 National Content Test, and the ongoing 2018 End-to-End Test—has included a citizenship question or gathered statistical data on the impact of a citizenship question in the context of the 2020 Census questionnaire.

B. The Secretary’s 2017 Determination Not to Include Citizenship as a Subject of the 2020 Census

59. Under the Census Act, 13 U.S.C. § 141(f)(1), the Secretary was required to submit a report to Congress by March 31, 2017, containing his determination as to the subjects and types of information to be collected on the 2020 Census. Pursuant to this provision, the Census Bureau submitted its report of the Subjects Planned for the 2020 Census and American Community Survey (“March 2017 Report”) to Congress on March 28, 2017.

60. The March 2017 Report set forth the Secretary’s determination that the only subjects to be included on the 2020 Census questionnaire are age, gender, race/ethnicity, relationship to head of household, and tenure (*i.e.*, whether the respondent is an owner or renter).²³ The March 2017 Report made no reference to inclusion of citizenship as a subject for the 2020 Census.

61. The Secretary’s determination *not* to include citizenship as a subject of the 2020 Census was consistent with long-standing agency policy and practice going back nearly 60

²² U.S. Census Bureau, Supporting Statement for 2018 End-to-End Census Test—Peak Operations (Jan. 23, 2018), available at https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201801-0607-002.

²³ U.S. Census Bureau, Subjects Planned for 2020 Census at 5-15 (Mar. 2017), <https://www2.census.gov/library/publications/decennial/2020/operations/planned-subjects-2020-ac.pdf>.

years. The Census Bureau has consistently taken the position that asking all households and respondents to report their citizenship status as part of the decennial census would depress response rates, particularly among certain historically undercounted groups, and would compromise the accuracy and completeness of the census count.

62. In the 1950s, the Census Bureau determined that information on citizenship was not important enough to seek from every household and consequently removed the citizenship question from the short-form questionnaire for the 1960 decennial census. As noted above, since 1960, citizenship information has been collected only through the long-form questionnaire or the ACS, each administered only to a limited sample of the U.S. population. No question concerning citizenship appeared on the short-form questionnaire used to conduct the decennial census in 1960, 1970, 1980, 1990, 2000, and 2010.

63. Prior to the 1980 decennial census, an interagency council including Bureau officials was tasked with examining the content and coverage of the census questionnaire, and it expressly recommended that a citizenship question *not* be included on the short-form questionnaire.²⁴

64. Prior to the 1990 decennial census, the Bureau publicly opposed the inclusion of any question concerning citizenship on the 1990 short-form questionnaire. The Bureau's then-Director warned that a census question on citizenship and legal status could cause the Census Bureau to be adversely "perceived as an enforcement agency," with "a major effect

²⁴ Aff. of Daniel B. Levine, Deputy Dir. of the Census Bureau at ¶ 5, Ex. A to Defs.' Mot. to Dismiss the Action or, in the Alt., for Summ. J., Fed'n for Am. Immigr. Reform v. Klutznick, No. 79-3269 (D.D.C. filed Jan. 9, 1983); *see also* U.S. Census Bureau, 1980 Census of Population and Housing History at 1-23 (Aug. 1989) (statement to Congress that inquiries about respondents' legal status "would have seriously hampered its efforts to achieve a complete count").

on census coverage.”²⁵ The Director stated the Bureau’s conclusion that both undocumented immigrants and legal residents might “misunderstand or mistrust the census and fail or refuse to respond,” resulting in reduced census counts for some cities and states.²⁶

65. In 2010, the Director of the Census Bureau, Robert Groves, explained that “we don’t ask citizenship or documentation status, all of the things that may make people uncomfortable are gone from [the census] form.”²⁷

66. Echoing the Bureau’s long-standing policy, numerous former Census Bureau directors have emphasized the deleterious impact that a citizenship question would have in depressing response rates and diminishing the accuracy and completeness of the census. In 2005, Kenneth Prewitt, who served as Census Bureau Director for the 2000 decennial census, explained that any proposed question to distinguish noncitizens from citizens “will be treated with suspicion” and cause “many American citizens as well as noncitizens” to avoid the question.²⁸

67. In 2009, eight former Census Bureau Directors who served both Republican and Democratic administrations jointly declared that inclusion of a citizenship question would create “problems during door-to-door visits to unresponsive households, when a

²⁵ *Enumeration of Undocumented Aliens in the Decennial Census: Hr’g Before the Subcomm. on Energy, Nuclear Proliferation, and Gov’t Processes of the S. Comm. on Governmental Affairs*, 99th Cong. 32 (1985) (Statement of John Keane, Dir., Bureau of the Census).

²⁶ *Exclude Undocumented Residents from Census Counts Used for Apportionment: Hr’g Before the Subcomm. on Post Office & Civil Serv.*, 100th Cong. 50 (June 1988) (Statement of John Keane, Dir., Bureau of the Census).

²⁷ *Video of Robert Groves*, C-SPAN (Mar. 26, 2010), <https://www.c-span.org/video/?292743-6/2010-us-census&start=1902>.

²⁸ *Counting the Vote: Should Only U.S. Citizens Be Included in Apportioning Our Elected Rep.*, Hr’g Before the Subcomm. on Federalism and the Census of the Cmte on Gov’t Reform, 109th Cong. 72 (Dec. 6, 2005) (Statement of Kenneth Prewitt).

legalized ‘head of household’ would avoid enumerators because one or more other household members are present unlawfully.”²⁹

68. In 2016, four former Census Bureau Directors appointed by presidents of both parties stated in an amicus brief to the U.S. Supreme Court that “a one-by-one citizenship inquiry would invariably lead to a lower response rate to the Census in general,” and would “seriously frustrate the Census Bureau’s ability to conduct the only count the Constitution expressly requires: determining the whole number of persons in each state in order to apportion House seats among the states.”³⁰ Citing increased suspicion of government collection of information in general, and particular anxiety among noncitizens, they stated that the addition of a citizenship question would result in “a reduced rate of response overall and an increase in inaccurate responses.”³¹

C. The Trump Administration Plays Politics With the 2020 Census

69. Immediately upon taking office in January 2017, President Trump revealed his intention to press the 2020 Census into the service of his anti-immigration political agenda, by shoehorning a citizenship question into the 2020 Census questionnaire.

70. By January 31, 2017, less than two weeks after President Trump’s inauguration, the administration had prepared a draft Executive Order which, among other things, directed the Census Bureau to ask “questions to determine U.S. citizenship and

²⁹ Statement of Former Census Directors on Adding a New Question to the 2010 Census at 1-2 (Oct. 16, 2009), <https://web.archive.org/web/20100718133124/https://thecensusproject.org/letters/cp-formerdirs-16oct2009.pdf>.

³⁰ Amicus Br. of Former Directors of the U.S. Census Bureau at 25, *Evenwel v. Abbott*, 136 S. Ct. 1120 (2016) (No. 14-940).

³¹ *Id.* at 5.

immigration status” through the decennial census.³² A background memo accompanying the draft order stated that its purpose was to “fulfill several campaign promises by aligning immigration policies with the national interest.”³³ The memo further indicated that the provisions of the draft order were meant to address “the flow of illegal entries and visa overstays” and the “unlawful employment of aliens.”³⁴ Neither the draft order, which to date has not been issued, nor the background memo detailing its objectives made any mention of the VRA.

71. Kris Kobach, who advised President Trump on immigration issues during the 2016 Presidential campaign and served on the Trump transition team, has acknowledged that in the early days of the Trump presidency he urged the President to add a citizenship question to the 2020 Census questionnaire.

72. On December 12, 2017, Arthur Gary, general counsel for the DOJ’s Justice Management Division, sent a letter addressed to Defendant Jarmin (the “DOJ Letter”), requesting that the Census Bureau include a question about citizenship status on the 2020 Census questionnaire.³⁵ The DOJ Letter asserted that obtaining citizenship data from the decennial

³² Abigail Hauslohner and Janell Ross, *Trump administration circulates more draft immigration restrictions, focusing on protecting U.S. jobs*, Wash. Post (Jan. 31, 2017), https://www.washingtonpost.com/world/national-security/trump-administration-circulates-more-draft-immigration-restrictions-focusing-on-protecting-us-jobs/2017/01/31/38529236-e741-11e6-80c2-30e57e57e05d_story.html?utm_term=.4d2d4847755a; The White House, Memorandum from Andrew Bremberg to the President at 7 (Jan. 23, 2017), https://cdn0.vox-cdn.com/uploads/chorus_asset/file/7872567/Protecting_American_Jobs_and_Workers_by_Strengthening_the_Integrity_of_Foreign_Worker_Visa_Programs.0.pdf [hereinafter “January 2017 Memorandum”].

³³ January 2017 Memorandum at 1.

³⁴ *Id.*

³⁵ Letter from Arthur E. Gary, General Counsel, Justice Management Division to Dr. Ron Jarmin (Dec. 12, 2017), <https://www.documentcloud.org/documents/4340651-Text-of-Dec-2017-DOJ-letter-to-Census.html> [hereinafter “DOJ Letter”].

census was “critical to the [DOJ’s] enforcement of Section 2 of the Voting Rights Act” because the ACS allegedly does not yield “ideal” data on citizen voting age population (“CVAP”),³⁶ a relevant data point for certain Section 2 cases.

73. Emails released by the DOJ in response to a Freedom of Information Act request show that the DOJ Letter was sent at the request of DOJ leadership. The U.S. Attorney General, Jeff Sessions, has in the past expressed public support for including a citizenship question in the decennial census as a tool to assist law enforcement in locating undocumented immigrants.

74. While the DOJ Letter was still under review by the Secretary and the Census Bureau, and only days before the Secretary’s announcement of his decision, the President’s reelection campaign sent a mass fundraising email declaring: “The President wants the 2020 United States Census to ask people whether or not they are citizens. . . . The President wants to know if you’re on his side.”³⁷ The email then provided survey response buttons that linked to a page seeking campaign contributions.

75. On March 26, 2018, Defendant Ross issued a memorandum to Defendant Kelley (the “Ross Memorandum”) advising the Census Bureau of his determination to reverse nearly 60 years of Census Bureau policy and practice in 2020 by including a citizenship question on the census questionnaire to be sent to every U.S. household. *See* Ex. 1, attached, at 8.

³⁶ *Id.* at 1-2.

³⁷ Tierney Sneed, *Trump Fundraising Off Controversial Push To Include Citizenship Question In Census*, Talking Points Memo (Mar. 19, 2018), <https://talkingpointsmemo.com/muckraker/trump-fundraising-off-controversial-push-to-include-citizenship-question-in-census>.

Secretary Ross' decision was reportedly opposed by career officials at the Census Bureau and the Bureau's own scientific advisory committee.³⁸

76. Two days later, on March 28, 2018, the President's reelection campaign released yet another mass fundraising email, announcing that "President Trump has officially mandated that the 2020 United States Census ask people living in America whether or not they are citizens." The email asked respondents to sign a petition supporting "the President's decision" to "make citizenship a question on the 2020 United States Census."³⁹

D. The Secretary's Unlawful Failure to Identify Any Valid Basis for the Belated Insertion of a Citizenship Question Into the 2020 Census Questionnaire

77. The Ross Memorandum asserted that the Secretary had taken a "hard look" at the request in the DOJ Letter and considered "all facts and data relevant" to making an informed decision regarding the DOJ request. Ex. 1 at 1. However, the Memorandum contained no evaluation of the asserted legal or statistical foundation for the DOJ request and no independent assessment by the Commerce Department or Census Bureau of the asserted governmental benefit of adding a citizenship question to the 2020 Census questionnaire.

³⁸ Justin Elliott, *Wilbur Ross Overruled Career Officials at Census Bureau to Add Citizenship Question*, ProPublica (Mar. 27, 2018), <https://www.propublica.org/article/wilbur-ross-overruled-career-officials-at-census-bureau-to-add-citizenship-question>; Michael Wines, *Census Bureau's Own Expert Panel Rebukes Decision to Add Citizenship Question*, N.Y. Times (Mar. 30, 2018), <https://www.nytimes.com/2018/03/30/us/census-bureau-citizenship.html>; Census Scientific Advisory Committee Meeting, Day 1, video at 1:56:25-2:17:42 (Presentation of Dr. D. Sunshine Hillygus, Member of the Scientific Advisory Committee) (Mar. 29, 2018), <https://youtu.be/JlxZ16qRo9s>; *id.* at 2:28:15-2:28:22 (Statement of Dr. Barbara Anderson, Chair of the Scientific Advisory Committee).

³⁹ Ray Schultz, *Trump Campaign Exploits Citizenship Question In Email*, Elite Marketing Daily (Mar. 29, 2018), <https://www.mediapost.com/publications/article/316863/trump-campaign-exploits-citizenship-question-in-em.html>.

78. In particular, the Ross Memorandum accepted at face value the DOJ Letter’s assertion that “census block level” CVAP data are needed to enforce Section 2 of the VRA and determined, on that basis, that a citizenship question should be added to the 2020 Census questionnaire. In fact, enforcement of Section 2 of the VRA has *never* depended on block-level CVAP data. The sampling of citizenship information collected through the long-form questionnaire and the ACS never provided data at that level, yet courts have consistently recognized the reliability of citizenship data from the long-form questionnaire and ACS for purposes of Section 2 enforcement.⁴⁰

79. In 2000, the Census Bureau conducted its own analysis of the VRA’s implications for the decennial census and concluded that the VRA required data on the “number of persons by age, race, and Hispanic origin at the [census] block level,” but did *not* require block-level CVAP data.⁴¹ The Ross Memorandum failed to cite the Bureau’s prior conclusion that the VRA only required block-level data on age, race, and Hispanic origin. Nor did it identify any relevant recent change to the legal requirements for the enforcement of Section 2 of the VRA, or suggest that the Bureau had made any finding that its prior determination was flawed.

80. The Ross Memorandum also did not acknowledge that the addition of a citizenship *question* to the 2020 Census questionnaire would result in the addition of a new *subject* for the 2020 Census not reported to Congress in the Bureau’s March 2017 Report pursuant to 13 U.S.C. § 141(f)(1). The Memorandum failed to identify any “*new* circumstances” arising since March 2017 that necessitated this expansion of the 2020 Census subjects previously

⁴⁰ See, e.g., *Cisneros v. Pasadena Indep. School Dist.*, No. 4:12-CV-2579, 2014 WL 1668500, at *8 (S.D. Tex. Apr. 25, 2014) (“This Court, like others, finds the ACS’s estimates of CVAP sufficiently reliable for use in voting rights litigation.”); *Rodriguez v. Harris Cnty.*, 964 F. Supp. 2d 686, 727-28 (S.D. Tex. 2013); *Meza v. Galvin*, 322 F. Supp. 2d 52, 61-62 (D. Mass. 2004).

⁴¹ U.S. Census Bureau, 2000 Census of Population and Housing History at 39 (Dec. 2009).

reported to Congress in March 2017—as required under 13 U.S.C. § 141(f)(3) to justify such a modification.

81. Although none of the Bureau’s testing for the 2020 Census contemplated or evaluated the inclusion of a citizenship question on the census questionnaire, the Ross Memorandum claimed that “the citizenship question has been well tested” because it has been used in sample surveys, including the ACS. Ex. 1 at 2. However, this claim is contradicted by the Ross Memorandum itself, which dismissed evidence that noncitizens and Hispanics and Latinos had lower response rates to sample surveys asking about citizenship status on the ground that “the decennial census has differed significantly in nature from the sample surveys.” *Id.* at 3.

82. Furthermore, use and testing of the citizenship question in the context of the ACS or long-form sample surveys do not make the question “well tested” for purposes of the 2020 Census for several reasons. First, the Census Bureau’s Statistical Quality Standards require it to test not only the wording of questions in isolation, but also the order and context effects, the instructions, and the formatting of the entire questionnaire. Second, the experience with prior sample surveys will understate the extent of non-response because, as the Census Bureau’s own scientific advisory committee explained in a March 30, 2018 letter, the earlier sample surveys were conducted “in a different data collection context, in a different political climate, before anti-immigrant attitudes were as salient and consequential” as they are today.⁴² Third, the procedures for collecting data as part of the ACS survey differ from the decennial census procedures in ways that could impact how certain questions affect response rates and data quality. For example, the

⁴² Michael Wines, *Census Bureau’s Own Expert Panel Rebukes Decision to Add Citizenship Question*, N.Y. Times (Mar. 30, 2018).

ACS is conducted only by experienced Bureau personnel whereas the much larger decennial census relies upon a cohort of temporary survey workers to count the entire U.S. population.

83. Ultimately, the Secretary decided to add an untested citizenship question to the 2020 Census despite his explicit admission that the Department did not know, and was unable to determine, the impact such a question would have on nonresponse rates and the potential undercounting of immigrants and other hard-to-count populations. The Ross Memorandum asserted that “no empirical data existed on the impact of a citizenship question on responses,” and the Department “is not able to determine definitively how inclusion of a citizenship question on the decennial census will impact responsiveness.” *Id.* at 3, 7.

84. Having conducted no independent review of the value of CVAP data for VRA enforcement, and having made no findings concerning the impact on nonresponses, the Secretary lacked any valid basis to evaluate and compare the potential benefits and harms of adding a citizenship question to the 2020 Census at this late stage in the preparation process, after years of census pretesting had been completed and with the 2018 End-to-End Census Test already underway.

85. Nonetheless, the Secretary declared in the Ross Memorandum that the data would be “more complete and accurate,” and the “value” of a citizenship question “outweighs such concerns [about nonresponses]” and “is of greater importance than any adverse effect that may result,” regardless of its “impact on responses.” *Id.* at 7.

86. On March 29, 2018, the Census Bureau submitted its report (the “March 2018 Report”) to Congress pursuant to the Census Act, 13 U.S.C. § 141(f)(2), identifying the questions to be asked in the 2020 Census. *See* Ex. 2, attached. The March 2018 Report confirmed that the Census Bureau has made a final determination to include an additional question in the

2020 Census questionnaire asking respondents to provide U.S. citizenship information for each household member. *Id.* at 7. The March 2018 Report asserts, without explanation, that citizenship statistics “are essential for enforcing the Voting Rights Act and its protections against voting discrimination.” *Id.*

87. The Census Bureau’s determination to insert a citizenship question into the 2020 Census questionnaire contravenes the Bureau’s legal obligations as a federal statistical agency and violates the regulatory directives and standards that require the Bureau to design the decennial census to maximize response rates. Defendants failed to identify any valid basis for deviating from decades of consistent policy and practice. Without the mandatory pretesting of a citizenship question—which it is now too late to complete—the Bureau cannot correct those errors before the 2020 Census proceeds.

E. The Disproportionate Undercount That Will Result From Use of a Citizenship Question

88. The Ross Memorandum claimed to have found that “limited empirical evidence exists about whether adding a citizenship question would decrease response rates materially.” Ex. 1 at 5. In fact, the evidence is compelling that the inclusion of a citizenship question will result in a disproportionate undercount of persons belonging to or sharing a household with certain demographic groups, including immigrants, noncitizens, those with limited English proficiency (“LEPs”), and individuals of Hispanic or Latino origin (the “Undercount Groups”).

89. Research and testing on census participation, including work conducted by the Bureau, have shown that the Undercount Groups are traditionally “hard to count” for purposes of the decennial census. This is in part because they are more likely to be suspicious about the purpose of the decennial census and the government’s use of census data. The Bureau

itself has found that questions about citizenship in government surveys are especially “sensitive” and are likely to trigger and exacerbate these concerns about the confidentiality and use of respondent data.⁴³ The inclusion of a citizenship question in the 2020 Census is therefore expected to reduce participation and depress response rates among the Undercount Groups.

90. To the extent that the Bureau’s experience with the citizenship question in sample surveys is helpful in understanding its likely impact on the 2020 Census, the available data referred to in the Ross Memorandum actually substantiate concerns that a citizenship question will depress response rates among certain demographic groups. For example, the Bureau has measured the relative response rates for citizens and noncitizens to the 2000 short-form census questionnaire, which did not ask about citizenship status, and the 2000 long-form questionnaire, which did. For noncitizens, as the Ross Memorandum notes, the decline in the response rate to the long form relative to the short form was 3.3% greater than it was for citizens. In other words, noncitizens were disproportionately more non-responsive than citizens to a census survey that inquired about citizenship status. Similarly, in the ACS surveys conducted from 2013 through 2016, nonresponse rates for the specific question about citizenship were materially higher for Hispanics than for non-Hispanic whites, suggesting that Hispanics are less likely to respond to survey questions about citizenship.

91. Furthermore, the current political environment has substantially increased the risk of census nonresponse to a citizenship question among the Undercount Groups. Recent census field-testing has shown that these groups have become even more suspicious and

⁴³ U.S. Census Bureau, DS-16: Policy on Respondent Identification and Sensitive Topics in Dependent Interviewing (Dec. 9, 2014), https://www2.census.gov/foia/ds_policies/ds016.pdf.

distrustful of government efforts to collect personal data since President Trump took office in 2017.

92. In September 2017, the Bureau's own Center for Survey Measurement ("CSM") reported that survey-testing efforts undertaken by the Bureau in 2017 revealed an unprecedented climate of fear among certain hard-to-count populations, including noncitizens, immigrants, LEPs, and Latinos.⁴⁴ Survey respondents repeatedly expressed concerns about the confidentiality and use of survey response data and fears related to ongoing issues involving immigration enforcement policy. CSM found that these concerns were raised to a much greater degree than in previous years.

93. Furthermore, such fears led many respondents to deliberately falsify survey responses or refuse to respond at all. In one instance, a Bureau field representative reported on her experience conducting a health survey interview (unrelated to the decennial census) that included questions about citizenship status. A Spanish-speaking respondent initially acknowledged that he was not a citizen, but then appeared to lie about his country of origin. When the field representative started asking about his year of entry into the United States, he stopped responding to her questions and eventually walked out and left the field representative alone in his apartment, which the representative noted "had never happened to her during an interview before."⁴⁵

94. In another set of interviews testing an internet self-response instrument in English and Spanish, numerous respondents "intentionally provided incomplete or incorrect

⁴⁴ Memorandum from Ctr. for Survey Measurement (CSM) to Assoc. Dir. for Research and Methodology (Sept. 20, 2017), <https://www2.census.gov/cac/nac/meetings/2017-11/Memo-Regarding-Respondent-Confidentiality-Concerns.pdf>.

⁴⁵ *Id.* at 5.

information about household members due to concerns regarding confidentiality, particularly relating to perceived negative attitudes towards immigrants.”⁴⁶ On the basis of its extensive research, CSM found that the “level of deliberate falsification of the household roster, and spontaneous mention of concerns regarding negative attitudes toward immigrants” was “largely unprecedented.”⁴⁷

95. The Bureau itself concluded that the CSM findings demonstrated “an unprecedented groundswell in confidentiality and data-sharing concerns among immigrants or those who live with immigrants” that could “present a barrier to participation in the 2020 Census” and “impact data quality and coverage for the 2020 Census.”⁴⁸ According to the Bureau, this is “[p]articularly troubling due to the disproportionate impact on hard-to-count [immigrant] populations.”⁴⁹

96. In light of these findings, the Secretary’s determination to order the Bureau to include a citizenship question on the 2020 Census is particularly arbitrary, capricious, and in violation of the Bureau’s fundamental obligations as a statistical agency. While failing to acknowledge or consider the Bureau’s own findings above, the Ross Memorandum openly admits that the Department has no idea what impact adding a question about citizenship to the 2020 Census will have on response rates among the Undercount Groups.

⁴⁶ *Id.* at 2.

⁴⁷ *Id.* at 3.

⁴⁸ See U.S. Census Bureau, Nat’l Advisory Comm. on Racial, Ethnic, and Other Populations, Respondent Confidentiality Concerns and Possible Effects on Response Rates and Data Quality for 2020 Census, 15 (Nov. 2, 2017), <https://www2.census.gov/cac/nac/meetings/2017-11/Meyers-NAC-Confidentiality-Presentation.pdf>.

⁴⁹ *Id.*

F. Plaintiffs' Injury Resulting From Defendants' Unlawful Distortion of the 2020 Census

97. As explained above, the inclusion of a citizenship question is likely to result in a disproportionate undercount of individuals in the Undercount Groups.

98. According to recent ACS data, the population of Arizona has a higher percentage of individuals belonging to Undercount Groups than the United States as a whole. As a result, the inclusion of a citizenship question will result in a disproportionate undercount of Arizona residents relative to the rest of the country.

99. Plaintiffs Richard McCune and Jose Moreno reside in areas of Arizona in which, according to recent ACS data, the population has a higher percentage of individuals belonging to Undercount Groups than the population of Arizona as a whole. As a result, the inclusion of a citizenship question will result in a disproportionate undercount of residents of these areas of Arizona relative to the rest of the state.

100. According to recent ACS data, the population of Prince George's County, Maryland has a higher percentage of Undercount Groups than both the United States and Maryland as a whole. As a result, the inclusion of a citizenship question will result in a disproportionate undercount of Prince George's County residents relative to the rest of the country and the rest of the state.

101. Under Article I, Section 2, Clause 3 of the U.S. Constitution, as amended by the Fourteenth Amendment, the decennial census population counts are used to determine the number of congressional representatives apportioned to each state. Based on recent population growth trends, Arizona is likely to gain one congressional seat following the 2020 Census. The disproportionate undercount that will result from use of a citizenship question in the 2020 Census is expected to deprive Arizona of this additional congressional seat.

102. Arizona and Maryland use decennial census data to draw congressional and state legislative districts of equal population. Plaintiffs reside in areas of those states where the residents will be disproportionately undercounted relative to the rest of the state due to the inclusion of a citizenship question. Thus, if a citizenship question is used in the 2020 Census, the drawing of “equal population” districts based on 2020 Census data will result in the over-population of Plaintiffs’ congressional and state legislative districts, thereby diluting Plaintiffs’ votes.

103. As described above, *see supra* ¶ 30, U.S. census population data are essential in determining the federal government’s allocation of hundreds of billions of dollars in funding to states and localities under more than 130 federal programs.

104. The disproportionate undercount caused by the use of a citizenship question on the 2020 Census questionnaire will reduce the amount of these federal funds that are distributed to Arizona, to localities within Arizona in which Plaintiffs McCune and Moreno reside, and to Prince George’s County, including for programs and projects on which Plaintiffs directly rely.

105. For example, under Title I of the Elementary and Secondary Education Act, the federal government distributes funding to school districts to enhance teaching and learning outcomes in public schools. In fiscal year 2016, the program distributed more than \$15 billion, including \$333.8 million to schools in Arizona and \$38.6 million to schools in Prince George’s County. The amount of funding provided to a school district is determined, in part, by the number of individuals and school-age children counted in the decennial census.

106. Plaintiff Jose Moreno sends his children to public schools in Arizona school districts that receive Title I funding. The population in these school districts has a higher

percentage of Undercount Groups than the entire populations of the United States and Arizona, respectively. A disproportionate undercount in these school districts in the 2020 Census will therefore result in reduced Title I funding for schools in those districts.

107. Plaintiffs Catherine and Nnabugwu Nwosu send their son to a public school in Prince George's County that receives Title I funding. A disproportionate undercount in Prince George's County in the 2020 Census will result in reduced Title I funding for schools in the county.

108. The allocation of federal transportation funding, including funds available under the Surface Transportation Block Grant Program and the Metropolitan and Statewide and Nonmetropolitan Transportation Planning Programs, depends on the decennial census population count. The amount of funding provided to a state under the Metropolitan and Statewide and Nonmetropolitan Transportation Planning Programs is based on the population of urbanized areas in that state compared to those of other states, as determined by the decennial census. The amount of funding provided to an area within a state under the Surface Transportation Block Grant Program is based, in part, on the relative share of the population in that area, as determined by the decennial census.

109. Plaintiffs Richard McCune and Jose Moreno regularly drive on highways and roads in Arizona, including the areas of the state in which they reside. A disproportionate undercount in urbanized areas in Arizona in the 2020 Census will result in reduced transportation funding in Arizona under the Metropolitan and Statewide and Nonmetropolitan Transportation Planning Programs. A disproportionate undercount in the areas of the state in which Plaintiffs McCune and Moreno reside will result in reduced transportation funding in those areas under the Surface Transportation Block Grant Program.

110. Plaintiffs Robyn Kravitz, Michael Kravitz, Catherine Nwosu, Nnabugwu Nwosu, and Joanne Wilson regularly drive on highways and roads, and use other modes of transportation, in Prince George's County, Maryland. A disproportionate undercount in Prince George's County in the 2020 Census will result in reduced transportation funding in Prince George's County under the Metropolitan and Statewide and Nonmetropolitan Transportation Planning Programs and the Surface Transportation Block Grant Program.

CLAIMS FOR RELIEF

COUNT I

(Violation of Census Clause)

111. Plaintiffs incorporate the allegations above as if fully made herein.

112. Article I, Section 2, Clause 3 of the Constitution and Section 2 of the Fourteenth Amendment to the Constitution, require that the Census Bureau conduct an "actual Enumeration" of "the whole number of persons in each State."

113. The federal government must conduct the decennial census in a manner "consistent with the constitutional language and the constitutional goal of equal representation." *Franklin v. Massachusetts*, 505 U.S. 788, 804 (1992). The paramount objective of the Census Clause, as amended, is to ensure that all "persons" residing in each state are counted in the decennial census, regardless of their citizenship status. Decisions regarding the conduct of the census must therefore bear "a reasonable relationship to the accomplishment of an actual enumeration of the population." *Wisconsin v. City of New York*, 517 U.S. 1, 20 (1996).

114. Defendants' decision to add a citizenship question on the 2020 Census questionnaire without regard to its potential to cause a disproportionate undercount of certain

demographic groups is inconsistent with the constitutional purposes of the census and does not bear a reasonable relationship to the accomplishment of an actual enumeration of the population.

115. The inclusion of a citizenship question as part of the 2020 Census will result in a disproportionate undercount of certain population groups, including immigrants, noncitizens, those with limited English proficiency, and individuals of Hispanic or Latino origin.

116. This undercount will disproportionately affect the states and/or localities in which Plaintiffs reside by, *inter alia*, depriving those states of representation in the U.S. House of Representatives to which they are entitled and causing under-allocations of federal funding to those states and/or localities.

117. Plaintiffs Richard McCune and Jose Moreno will be harmed by the disproportionate undercount because it will, *inter alia*, (i) dilute their vote by depriving Arizona of an additional congressional representative, (ii) dilute their vote by overpopulating their congressional and legislative districts, and (iii) reduce federal funding to their state and localities, including for programs on which they directly rely.

118. Plaintiffs Robyn Kravitz, Michael Kravitz, Catherine Nwosu, Nnabugwu Nwosu, and Joanne Wilson will be harmed, *inter alia*, because the disproportionate undercount will (i) dilute their vote by overpopulating their congressional and legislative districts, and (ii) reduce federal funding to their localities, including for programs on which they directly rely.

COUNT II

(Violation of Administrative Procedure Act)

119. Plaintiffs incorporate the allegations above as if fully made herein.

120. The Administrative Procedure Act (“APA”) requires courts to hold unlawful and set aside any final agency action that is, *inter alia*, “arbitrary, capricious, an abuse

of discretion, or otherwise not in accordance with law,” *id.* § 706(2)(A); “contrary to constitutional right, power, privilege or immunity,” *id.* § 706(2)(B); “in excess of statutory jurisdiction, authority, or limitations, or short of statutory right,” *id.* § 706(2)(C); or “without observance of procedure required by law,” *id.* § 706(2)(D).

121. Defendants’ decision to add a citizenship question to the 2020 Census questionnaire, as set forth in the March 26, 2018 Ross Memorandum and confirmed by the Census Bureau in its March 29, 2018 Report to Congress, constitutes final agency action.

122. Defendants’ decision to add a question on citizenship to the 2020 Census questionnaire is arbitrary and capricious, an abuse of discretion, and otherwise not in accordance with law; contrary to constitutional right, power, privilege or immunity; in excess of statutory jurisdiction and authority; and without observance of procedure required by law.

123. Defendants, *inter alia*, failed to conduct an adequate independent review of the need to collect citizenship data through the decennial census alleged in the DOJ Letter; failed to provide a reasoned explanation for why such data are necessary to enforce Section 2 of the Voting Rights Act; failed to reasonably assess the impact of including a citizenship question on the 2020 Census questionnaire on the response rates of various population groups; departed, without any reasoned basis, from the Bureau’s own policy and practice of not asking about the citizenship status of every individual; departed, without any reasoned basis, from the Bureau’s own statistical quality standards; made its decision regarding the inclusion of a citizenship question based on improper political considerations; violated binding law and regulations regarding statistical collection procedures and methods; breached the Constitutional duty to conduct an “actual Enumeration” of the population; and failed to identify or report to Congress any new circumstances that could justify modification of Defendants’ prior decision not to

include citizenship as a subject matter for the 2020 Census, as required under 13 U.S.C. § 141(f)(3). Defendants' action is therefore unlawful and must be set aside pursuant to APA § 706(2)(A)-(D).

124. Defendants' determination to add a citizenship question to the 2020 Census questionnaire will result in a disproportionate undercount of certain population groups, including immigrants, noncitizens, those with limited English proficiency, and individuals of Hispanic or Latino origin, in the 2020 Census.

125. Plaintiffs Richard McCune and Jose Moreno will suffer a legal wrong and be adversely affected by the Defendants' decision to add a citizenship question to the 2020 Census because, *inter alia*, the resulting disproportionate undercount will (i) dilute their vote by depriving Arizona of an additional congressional representative, (ii) dilute their vote by overpopulating their congressional and legislative districts, and (iii) reduce federal funding to their state and localities, including for programs on which they directly rely.

126. Plaintiffs Robyn Kravitz, Michael Kravitz, Catherine Nwosu, Nnabugwu Nwosu, and Joanne Wilson will suffer a legal wrong and be adversely affected by the Defendants' decision to add a citizenship question to the 2020 Census because, *inter alia*, the resulting disproportionate undercount will (i) dilute their vote by overpopulating their congressional and legislative districts, and (ii) reduce federal funding to their localities, including for programs on which they directly rely.

127. Plaintiffs will therefore be harmed by Defendants' unlawful action unless such action is set aside pursuant to § 706 of the APA.

PRAYER FOR RELIEF

128. WHEREFORE, Plaintiffs pray that the Court:

- a) Declare that Defendants' decision to add a citizenship question to the questionnaire used for all households and individuals in the 2020 Census is unauthorized by, and contrary to, Article I, Section 2, Clause 3 of the United States Constitution;
- b) Declare that Defendants' decision to add a citizenship question to the questionnaire used for all households and individuals in the 2020 Census is arbitrary and capricious, an abuse of discretion, and not in accordance with law; contrary to constitutional right, power, privilege or immunity; in excess of statutory jurisdiction and authority; and without observance of procedure required by law, in violation of § 706(2)(A)-(D) of the APA;
- c) Enjoin Defendants and all those acting in concert with them from including a citizenship question on the 2020 Census questionnaire, and from taking any irreversible steps to include a citizenship question on the 2020 Census questionnaire;
- d) Award Plaintiffs reasonable costs, expenses, and attorney's fees, pursuant to 28 U.S.C. § 2412; and
- e) Award such additional relief as the interests of justice may require.

Date: April 11, 2018

Respectfully submitted,

_____/s/_____

Daniel Grant (Bar Number: 19659)
Shankar Duraiswamy*
Bianca Nunes*

Tina M. Thomas*
Karun Tilak*
COVINGTON & BURLING LLP
One CityCenter
850 Tenth Street, NW
Washington, D.C. 20001-4956
Tel: (202) 662-6000
Fax: (202) 662-6302
dgrant@cov.com
sduraiswamy@cov.com
bnunes@cov.com
tthomas@cov.com
ktilak@cov.com

P. Benjamin Duke*
COVINGTON & BURLING LLP
The New York Times Building
620 Eighth Avenue
New York, NY 10018-1405
Tel: (212) 841-1000
Fax: (212) 841-1010
pbduke@cov.com

Attorneys for Plaintiffs

* *pro hac vice* application forthcoming