

Exhibit G

Office of Legal Counsel

Department of Justice

WILMERHALE

July 1, 2020

By Electronic Mail

United States Department of Justice
Office of Legal Counsel

Melissa Golden
Lead Paralegal and FOIA Specialist
Office of Legal Counsel
Room 5511, 950 Pennsylvania Avenue, N.W.
Department of Justice
Washington, DC 20530-0001

Re: Freedom of Information Act Request

Dear Madam:

On behalf of our client, the Brennan Center for Justice at NYU School of Law (the “Brennan Center” or “Center” or “Requests”), we respectfully request all records in the possession of the Department of Justice, Office of Legal Counsel, including any officers, employees, or divisions thereof, on the topics listed below concerning the 2020 Census, pursuant to the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”). By this letter we also request expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E).

Background

On June 27, 2019, the U.S. Supreme Court struck down the Trump administration’s attempt to add an unprecedented citizenship question to the 2020 decennial census.¹ Soon after, on July 11, 2019, President Donald J. Trump renewed the administration’s attempt to collect citizenship data via the Census Bureau by issuing Executive Order 13880, which ordered the Bureau to collect pre-existing administrative records on citizenship from other federal agencies.² During the same press conference where President Trump announced Executive Order 13880, United States Attorney General William Barr stated that the Administration “will be studying” whether the data collected via Executive Order 13880 is “relevant to” whether “illegal aliens can

¹ *Dep’t of Commerce v. New York*, 139 S. Ct. 2551, 2576 (2019).

² 84 Fed. Reg. 33821 (July 11, 2019).

WILMERHALE

July 1, 2020

Page 2

be included for apportionment purposes.”³ Several agencies have already complied with that Executive Order.⁴

Apportionment—the determination of how many seats each state receives in the U.S. House of Representatives—is a constitutionally required, once-a-decade calculation made using the results of the decennial census. Under the U.S. Code, the Secretary of Commerce provides the state-population totals required for congressional apportionment to the President.⁵ The President then must use those state totals to calculate the congressional apportionment using a mathematical formula specified by statute and report the results to Congress.⁶ Because the administration has indicated that it may attempt to use citizenship data in some way during the process for calculating the congressional apportionment but has not revealed any details of its plans to the public, this request seeks all records related to the administration’s plans for how it might use citizenship data collected by the Census Bureau for apportionment purposes.

Apportionment affects the representational rights of every person living in the United States. Accordingly, the public has a right to know how the administration intends to calculate the apportionment and whether and how citizenship data might be used in the calculation.

Records Requested

We request the following:

- 1) All records⁷ created on or after June 27, 2019, pertaining to how any of the citizenship-status data collected pursuant to Executive Order 13880 can, could, should, or may be used, incorporated, referenced, or considered in any of the following activities:

³ *Remarks by President Trump on Citizenship and the Census*, The White House (July 11, 2019, 5:37 p.m.), <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-citizenship-census>.

⁴ See Hansi Lo Wang, *To Produce Citizenship Data, Homeland Security to Share Records With Census*, NPR (Jan. 4, 2020), <https://www.npr.org/2020/01/04/793325772/to-produce-citizenship-data-homeland-security-to-share-records-with-census.be>.

⁵ 13 U.S.C. § 141(b).

⁶ 2 U.S.C. § 2a(a).

⁷ The term “records” includes any and all codes, correspondence (including electronic mail and instant messages), digital recordings, documents, directives, examinations, guidelines, handbooks, instructions, manuals, maps, microfilms, computer tapes or disks, memoranda, notes, photographs, regulations, reports, rules, or standards, including any drafts thereof.

WILMERHALE

July 1, 2020

Page 3

- calculating or otherwise formulating the 2020 total national population;
 - calculating or otherwise formulating the 2020 state-population totals to be used to apportion the United States House of Representatives as contemplated by 13 U.S.C. § 141(b) (hereinafter, the “2020 state-population totals”);
 - reporting the 2020 state-population totals to President Trump by the Secretary of Commerce as required under 13 U.S.C. § 141(b);
 - reporting by President Trump to Congress the 2020 state-population totals and number of congressional representatives to which each state is entitled, as required under 2 U.S.C. § 2a(a);
 - changing the Census Bureau’s policy for calculating the 2020 state-population totals, which currently states the 2020 state-population totals will be calculated using the Census Unedited File⁸;
 - changing the Census Bureau’s policy for creating the Census Unedited File, which currently states the Census Unedited File will not contain any citizenship status data.⁹
- 2) All records created on or after June 27, 2019, pertaining to the process by which the Secretary of Commerce will report the 2020 state-population totals to President Trump, as required under 13 U.S.C. § 141(b).
 - 3) All records created on or after June 27, 2019 pertaining to the process by which President Trump will report to Congress the 2020 state-population totals and number of congressional representatives to which each state is entitled thereunder, as required under 2 U.S.C. § 2a(a).
 - 4) All records created on or after June 27, 2019 and relating to the 2020 Census in which there is any mention of, involvement in, or communication with any of the following persons or entities:

Persons

- Adam Korzeniewski, Senior Advisor to the Deputy Director for Policy at the U.S. Census Bureau
- Christopher C. Demuth, Sr., Hudson Institute
- Christopher J. Hajec, Immigration Reform Law Institute

⁸ See John M. Abowd & Victoria Velkoff, *Update on Disclosure Avoidance and Administrative Data*, U.S. Census Bureau, at 12 (Sept. 13, 2019), <https://www2.census.gov/cac/sac/meetings/2019-09/update-disclosure-avoidance-administrative-data.pdf>.

⁹ *Id.*

WILMERHALE

July 1, 2020

Page 4

- David Dewhirst, Formerly of Department of Commerce
- Eric Ueland, White House Office of Legislative Affairs
- Eric W. Lee, Judicial Watch
- Gail Gitcho, National Republican Redistricting Trust
- Guy Harrison, National Republic Redistricting Trust
- Hans von Spakovsky, Heritage Foundation
- J. Christian Adams, Public Interest Legal Foundation and Presidential Advisory Commission on Election Integrity
- J. Justin Reimer, Republican National Committee
- Jeff Timmer, Michigan GOP
- John Fleming, White House Chief of Staff Office
- Joseph W. Miller, Restoring Liberty
- Karen Dunn Kelley, Deputy Secretary of Commerce
- Kaylan Phillips, Public Interest Legal Foundation
- Lauren Bryan, National Republican Senatorial Committee
- Mark S. Venezia, Immigration Reform Law Institute
- Michael M. Hethmon, Immigration Reform Law Institute
- Mike Walsh, Chief of Staff to the Secretary of Commerce
- Nathaniel Cogley, Deputy Director for Policy at the U.S. Census Bureau
- Peter B. Davidson, Department of Commerce
- Robert D. Popper, Judicial Watch
- Russ Vought, Deputy Director of Office of Management and Budget

Entities

- Allied Educational Foundation
- American Civil Rights Union
- American Legislative Exchange Council
- Citizens United
- Citizens United Foundation
- Conservative Legal Defense and Education Fund
- Eagle Forum Education & Legal Defense Fund
- English First Foundation
- Fair Lines America
- Family-PAC Federal
- Gun Owners Foundation
- Gun Owners of America, Inc.
- Heritage Foundation

WILMERHALE

July 1, 2020

Page 5

- Immigration Reform Law Institute
- Judicial Watch
- National Republican Congressional Committee
- Policy Analysis Center
- Polidata
- Public Advocate of the United States
- Public Interest Legal Foundation
- Project on Fair Representation
- Republican National Committee
- Republican State Leadership Committee
- Restoring Liberty Action Committee
- The Senior Citizens League

Request for Expedited Processing

Requestors seek expedited processing of the above requests pursuant to 5 U.S.C. § 552(a)(6)(E) and 28 C.F.R. § 16.5(e) and rely on two justifications for the request.

The Department of Justice must process requests on an expedited basis when either (1) “[a] matter of widespread and exceptional media interest involving questions about the Government’s integrity which affect public confidence”¹⁰ exists; or (2) “[a]n urgency to inform the public about an actual or alleged Federal Government activity” is made by an organization “primarily engaged in disseminating information.”¹¹ Both bases are satisfied by this request.

First, the records requested concern a matter of widespread and exceptional media interest. There has been a plethora of reporting about how the Trump Administration plans to collect citizenship data¹² in conjunction with the 2020 Census reporting.¹³ Such news reporting discusses the nexus between Executive Order 13880 and the census generally, as well as focuses on how the Bureau is preparing citizenship data and how states might use that data for

¹⁰ 5 U.S.C. § 552(a)(6)(E) and 28 C.F.R. § 16.5(e)(iv).

¹¹ 5 U.S.C. § 552(a)(6)(E)(II) and 28 C.F.R. § 16.5(e)(ii).

¹² See Abowd & Velkoff, *supra* note 8, at 12 (“[T]he President’s Executive Order 13880 commit[s] the Census Bureau to releasing Citizen Voting-Age Population (CVAP) data . . . by combining administrative data from a number of federal, and possibly state, agencies into a separate micro-data file that will contain a ‘best citizenship’ variable for every person in the 2020 census.”).

¹³ See, e.g., Katie Rogers et al., *Trump Says He Will Seek Citizenship Information From Existing Federal Records, Not the Census*, N.Y. Times (July 11, 2019), <https://www.nytimes.com/2019/07/11/us/politics/census-executive-action.html>; Wang, *supra* note 4.

WILMERHALE

July 1, 2020

Page 6

apportioning their legislatures and/or redrawing their electoral districts.¹⁴ Census Bureau policy instructs that the file used to calculate apportionment counts “does not contain any citizenship data.”¹⁵ Nevertheless, Attorney General Barr stated that the Administration “will be studying” whether the data collected via Executive Order 13880 is “relevant to” whether “illegal aliens can be included for apportionment purposes.”¹⁶ A challenge by the Trump Administration to the Census Bureau’s well-settled policy raises “questions about the Government’s integrity which affect public confidence.”¹⁷

Second, there is an “urgency to inform the public” about any past, present, or future actions taken by the federal government with regard to using citizenship data to calculate the apportionment.¹⁸ Such urgency exists because any action taken by the government to incorporate citizenship status into the calculations for apportioning congressional seats would violate the clear command of the U.S. Constitution, mark a monumental shift in methodology for apportioning Congress, and contravene the Census Bureau’s current policy.¹⁹ Modeling shows how significantly the use of citizenship data would affect apportionment.²⁰

¹⁴ See, e.g., Brendan A. Shanahan, *Counting Everyone—Citizens and Non-Citizens—in the 2020 Census is Crucial*, Wash. Post (Mar. 12, 2020), <https://www.washingtonpost.com/outlook/2020/03/12/counting-everyone-citizens-non-citizens-2020-census-is-crucial/>; Adam Boyd, *How Census Is Building a Citizenship Database Covering Everyone Living in the U.S.*, Nextgov (Apr. 1, 2020), <https://www.nextgov.com/analytics-data/2020/04/how-census-building-citizenship-database-covering-everyone-living-us/164275>. A dispute is also currently ongoing involving whether non-citizens can be excluded from the population totals used for congressional apportionment. See *Alabama v. Dep’t of Commerce*, No. 18-CV-00772 (N.D. Ala. May 21, 2018) (Complaint).

¹⁵ See Abowd & Velkoff, *supra* note 8, at 9.

¹⁶ *Remarks by President Trump on Citizenship and the Census*, The White House (July 11, 2019, 5:37 p.m.), available at <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-citizenship-census>.

¹⁷ 5 U.S.C. § 552(a)(6)(E) and 28 C.F.R. § 16.5(e)(iv). Further, the Department of Justice’s standard of interpretation is satisfied here as the citations above show that the “matter that draws widespread and exceptional media interest” is the same “matter in which there exists possible questions about the Government’s integrity that affect public confidence.” See *Am. Oversight v. Dep’t of Justice*, 292 F. Supp. 3d 501, 506 (D.D.C. 2018).

¹⁸ 5 U.S.C. § 552(a)(6)(E)(II) and 28 C.F.R. § 16.5(e)(ii).

¹⁹ See U.S. Const. amend. XIV, § 2 (mandating that “[r]epresentatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state”); Abowd & Velkoff, *supra* note 8, at 9; cf. *Wisconsin v. City of New York*, 517 U.S. 1, 11–12 (1996) (approving of the Secretary’s findings that “small changes in adjustment methodology would have a large impact upon apportionment” and that any adjustment “might open the door to political tampering in the future.”). Efforts to use citizenship data in light of the Census Bureau’s policy raises the specter of political tampering.

²⁰ See *States Gaining/Losing Seats Based Upon Citizen VAP Projected to 2020*, Polidata.org, <https://www.polidata.org/census/ST017KCA.pdf> (last accessed May 17, 2020).

WILMERHALE

July 1, 2020

Page 7

The federal government's actual or alleged activity includes at least the following:²¹ First, the government is collecting citizenship data in conjunction with the 2020 Census. President Trump signed Executive Order 13880, requesting that citizenship data be sent to the Census Bureau. Several agencies have already complied with that Order.²² Second, Attorney General Barr has stated that the Justice Department would study how that data could be used in calculating apportionment. And yet, little else is known of the government's plans and whether other non-government entities may be influencing those plans. As the census is currently ongoing and the statutory deadline for calculating the apportionment is rapidly approaching, processing this request is urgent to inform the public about how the federal government is affecting their representational rights.

The Brennan Center is an organization "primarily engaged in the dissemination of information."²³ The Brennan Center is a think tank and public interest law center that regularly writes and publishes reports and articles and makes appearances in various media outlets regarding census-related subjects, including efforts to ensure that all people participate in the census. The opportunity to explain to the public how citizenship data may be used to calculate the apportionment is the best tool to mitigate any public fears of government abuses and thereby increase census participation. The records and communications requested are essential to that goal.

The Brennan Center certifies that the above explanation is true and correct to the best of its knowledge and belief.²⁴

Pursuant to the applicable statute and regulations, Requestors expect the determination regarding expedited processing to be made within 10 days.²⁵

Request for Fee Waiver or Limitation on Fees

Requestors seek a waiver of all document search, review, and duplication fees because disclosure "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 Brennan

²¹ 5 U.S.C. § 552(a)(6)(E)(v)(II) and 28 C.F.R. § 16.5(e)(ii).

²² See Wang, *supra* note 4.

²³ 5 U.S.C. § 552(a)(6)(E)(v)(II) and 28 C.F.R. § 16.5(e)(ii). Requestors are "a cutting-edge communications hub, shaping opinion by taking our message directly to the press and public." *Mission & Impact*, Brennan Ctr., <https://www.brennancenter.org/about/mission-impact> (last accessed May 17, 2020).

²⁴ 5 U.S.C. § 552(a)(6)(E)(vi) and 28 C.F.R. § 16.5(e)(3).

²⁵ See 5 U.S.C. § 552(a)(6)(E)(ii)(I) and 28 C.F.R. § 16.5(e)(4).

WILMERHALE

July 1, 2020

Page 8

Center.²⁶ If the fee waiver request is not granted, the Brennan Center asks that fees be limited to reasonable standard charges for document duplication because the Center qualifies as a noncommercial scientific institution, an educational institution, and a representative of the news media.²⁷

A. *Disclosure Is in the Public Interest*

The records requested satisfy the three factors used by the Department of Justice when determining whether to waive fees: (i) “[d]isclosure of the requested information would shed light on the operations or activities of the government”; (ii) “[d]isclosure of the requested information would be likely to contribute significantly to public understanding of those operations or activities”; and (iii) disclosure is not “primarily in the commercial interest of” the Brennan Center.²⁸

First, the records requested have a “direct and clear” connection with “identifiable operations or activities of the Federal Government,” namely: (1) compilation of citizenship data by the Department of Commerce pursuant to Executive Order 13880; (2) reporting of the 2020 Census results by the Secretary of Commerce and the President; and (3) communications involving employees of the Department of Commerce, Department of Justice, or outside organizations concerning details about the 2020 Census.

Second, disclosure of the records requested would “contribute significantly to public understanding of those operations or activities” because detailed information about how the federal government plans to use citizenship data in apportionment is not “in the public domain,” and because disclosure will “contribute to the understanding of a reasonably broad audience of persons interested in the subject.”²⁹ Aside from Attorney General Barr’s brief remarks about using citizenship data for apportionment purposes, little is known about how the federal government plans to use data gathered under Executive Order 13880 for apportionment purposes or whether groups outside the government have been involved in discussions about how to use that data. The records requested will reveal those discussions. Moreover, the Brennan Center has both “expertise in the subject area” of the decennial census and apportionment, and the “ability and intention to effectively convey information to the public”³⁰ about the 2020 Census

²⁶ 5 U.S.C. § 552(a)(4)(A)(iii) and 28 C.F.R. § 16.10(k).

²⁷ See 5 U.S.C. § 552(a)(4)(A)(ii)(II) and 28 C.F.R. 16.10(c)(1)(i), (c)(3), (d)(1).

²⁸ 28 C.F.R. § 16.10(k)(2)(i)–(iii).

²⁹ *Id.* § 16.10(k)(2)(ii), (ii)(A)–(B).

³⁰ *Id.* § 16.10(k)(2)(ii)(B).

WILMERHALE

July 1, 2020

Page 9

through its reports and frequently visited website.³¹ All of these factors will ensure that the information requested will contribute significantly to public understanding of the operations and activities of the federal government.

Third, the records requested are “not primarily in the commercial interest of” the Brennan Center.³² The Brennan Center is a 501(c)(3) non-profit organization and does not seek the records requested for commercial use.³³ Instead, the Center plans to analyze, publish, and publicly disseminate the records requested at no cost. Moreover, the Department of Justice “ordinarily will presume that when a news media requester has satisfied the requirements of paragraphs (k)(2)(i) and (ii) of [the fee waiver] section, the request is not primarily in the commercial interest of the requester.”³⁴ As explained in further detail below, the Brennan Center qualifies as a representative of the news media because it is an “entity that [] gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.”³⁵ And as explained above, the Center has met the first two fee-waiver requirements. It has therefore presumptively satisfied the third requirement.

For these reasons, the Brennan Center’s request for a fee waiver should be granted.

B. *The Brennan Center is a Noncommercial Scientific Institution*

Even if the Brennan Center’s request for a fee waiver is not granted, fees should be limited to standard charges for document duplication because the Center qualifies as a noncommercial scientific institution.³⁶ The Brennan Center is a noncommercial scientific institution because it conducts social scientific research into the American justice system and American democracy, the results of which are intended to inform the American public, not “promote any particular product or industry.”³⁷ As stated on its website, the Center is “an independent, nonpartisan law and policy organization” that conducts “rigorous research to

³¹ See, e.g., Kelly Percival, *Federal Laws that Protect Census Confidentiality*, Brennan Ctr. (Feb. 20, 2019), <https://www.brennancenter.org/our-work/research-reports/federal-laws-protect-census-confidentiality>.

³² 28 C.F.R. § 16.10(k)(2)(iii).

³³ See, *Financial & Legal Information*, Brennan Ctr., <https://www.brennancenter.org/about/financial-legal-information> (last accessed May 18, 2020).

³⁴ 28 C.F.R. § 16.10(k)(2)(iii)(B).

³⁵ *Id.* § 16.10(b)(6).

³⁶ See 5 U.S.C. § 552(a)(4)(A)(ii)(II) and 28 C.F.R. § 16.10(c)(1)–(3).

³⁷ 28 C.F.R. § 16.10(b)(5).

July 1, 2020

Page 10

identify problems and provide in-depth empirical findings and compelling analyses of pressing legal and policy issues.”³⁸

C. *The Brennan Center is an Educational Institution*

If the Brennan Center’s request for a fee waiver is not granted, fees should be limited to standard duplication fees because the Center also qualifies as an educational institution.³⁹ The Brennan Center qualifies as an educational institution because it is affiliated with the New York University School of Law, which is a “school that operates a program of scholarly research” falling under the Department of Justice’s definition of an “[e]ducational institution.”⁴⁰

D. *The Brennan Center is a Representative of the News Media*

Finally, if fees are not waived, they should be limited to standard duplication fees because the Brennan Center also qualifies as a representative of the news media.⁴¹ Representatives of the news media are not limited only to traditional media outlets like newspapers and periodicals.⁴² Rather, a representative of the news media is defined as “any person or entity that [] gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work and distributes that work to an audience.”⁴³ Moreover, posting content to a public website can qualify as a means of distributing it for the purposes of qualifying as a representative of the news media.⁴⁴

The Brennan Center regularly publishes news articles and research reports on its website, [brennancenter.org](https://www.brennancenter.org), which was visited by 1.9 million people in 2019.⁴⁵ The Center gathers information about the American political system, synthesizes that research, and reports that

³⁸ *Research & Reports*, Brennan Ctr, <https://www.brennancenter.org/our-work/research-reports> (last accessed May 18, 2020). See, e.g., Laura Royden & Michael Li, *Extreme Maps*, Brennan Ctr. (May 9, 2017), <https://www.brennancenter.org/our-work/research-reports/extreme-maps>; Ames Grawert, *Crime Trends: 1990-2016*, Brennan Ctr. (Apr. 18, 2017), <https://www.brennancenter.org/our-work/research-reports/crime-trends-1990-2016> (examining crime statistics at the national and city level during the last quarter century).

³⁹ See 5 U.S.C. § 552(a)(4)(A)(ii)(II) and 28 C.F.R. § 16.10(c)(1)–(3).

⁴⁰ 28 C.F.R. § 16.10(b)(4).

⁴¹ See 5 U.S.C. § 552(a)(4)(A)(ii)(II) and 28 C.F.R. § 16.10(c)(1)–(3).

⁴² See *Cause of Action v. FTC*, 799 F.3d 1108, 1119-1120 (D.C. Cir. 2015) (citing *Nat’l Sec. Archive v. Dep’t of Def.*, 880 F.2d 1381 (D.C. Cir. 1989)).

⁴³ 5 U.S.C. § 552(a)(4)(A)(ii) and 28 C.F.R. § 16.10(b)(6).

⁴⁴ See *Cause of Action*, 799 F.3d at 1123.

⁴⁵ See *2019 Annual Report* 15, Brennan Ctr. (2019), https://www.brennancenter.org/sites/default/files/2020-04/2019__AnnualReport.pdf.

WILMERHALE

July 1, 2020
Page 11

information to the public. It therefore plainly falls within the definition of a representative of the news media and should be exempt from all fees associated with this request except for standard duplication fees.

In the event you deny our waiver request, please contact us if you expect the costs to exceed the amount of \$500.00.

* * *

To the extent that some of the requested records may be available before other records, please provide responsive records on a rolling basis as they become available.

If you determine that any requested record or portion of a requested record is exempt from disclosure, please identify each such record or portion of such record and the basis for the asserted exemption by reference to specific exemptions of FOIA. We expect release of all nonexempt records and segregable portions of otherwise exempt records. We reserve the right to appeal a decision to withhold any information.

Thank you for your prompt attention to this matter. Please copy all responsive records and furnish copies in electronic format by email or U.S. mail to undersigned counsel for the Requestors at:

Jared W. Grubow
Wilmer Cutler Pickering Hale and Dorr LLP
7 World Trade Center
250 Greenwich Street, 42nd Floor
New York, NY 10007
120 Broadway
jared.grubow@wilmerhale.com

WILMERHALE

July 1, 2020

Page 12

As indicated above, we are applying for expedited processing of this request. Notwithstanding your determination of expedited processing, we would appreciate a response within twenty days of receipt of this request consistent with 5 U.S.C. § 552(a)(6)(A)(i).

Respectfully,

/s/ Patrick Carome

Patrick Carome

Mikayla C. Foster

Jared V. Grubow

Christian Ronald

Rieko H. Shepherd

Counsel for Requestors