

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

NEW YORK IMMIGRATION
COALITION, CASA DE MARYLAND,
AMERICAN-ARAB ANTI-
DISCRIMINATION COMMITTEE,
ADC RESEARCH INSTITUTE, MAKE
THE ROAD NEW YORK, FAMILY
ACTION NETWORK MOVEMENT,
INC., and FLORIDA IMMIGRANT
COALITION,

Plaintiffs,

v.

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

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, and

DEPARTMENT OF JUSTICE;
JEFFERSON BEAUREGARD
SESSIONS III, in his official capacity as
Attorney General; and JOHN GORE, in
his official capacity as Acting Assistant
Attorney General,

Defendants.

Civil Action No. 1:18-cv-05025

AMENDED COMPLAINT

1. On March 26, 2018, Secretary of Commerce Wilbur Ross ordered that the 2020 Decennial Census include a question about the citizenship of all U.S. residents for the first time since 1950. The Secretary provided no legitimate reason for this decision,

let alone any justification for taking such action without any of the customary and essential preparatory testing for adding questions to the Decennial Census. There is no legitimate explanation. Rather, the addition of the citizenship question is a naked act of intentional discrimination directed at immigrant communities of color that is intended to punish their presence, avoid their recognition, stunt their growing political power, and deprive them and the communities in which they live of economic benefits.

2. As Secretary Ross recently testified, adding a citizenship question will lead to a “decline” in participation in the Decennial Census—which Ross estimated at 1 percent of the population (or more than 3 million people)—because there are “folks who may not feel comfortable answering” the citizenship question.

3. The “folks” Secretary Ross referenced are members of immigrant communities of color who have been the target of a series of tactics by the Trump Administration designed to foment fear. These tactics—fueled by the Trump Administration’s undisputed and undisguised animus directed towards these communities—have included draconian sweeps and other immigration enforcement actions at sensitive places such as schools and courthouses, the forced separation of parents from their children, and executive actions ending the legal status of entire categories of immigrants who have resided in the United States for years. All these actions have discouraged members of these communities from interacting with government agents or availing themselves of government services.

4. Against this backdrop, the addition of a citizenship question to the Decennial Census—in essence, a door-to-door government inquiry as to the citizenship status of every member of every household in the United States—will sow enormous fear

in immigrant communities of color that will deter participation in the 2020 Census, as Secretary Ross admitted. This will only exacerbate the Decennial Census' long-standing problem of undercounting immigrants of color, and Latinos in particular. The resulting undercount will impact both non-citizens and U.S. citizens of color, including family members of non-citizens and those who live in mixed status households with non-citizens.

5. Because the Decennial Census is the basis for allocating a wide range of federal resources and apportioning political power, reduced census participation by members of immigrant communities of color will result in these communities losing government funding as well as political power and representation in the United States Congress, the Electoral College, and state legislatures. This is not an unintended consequence of Defendants' decision; it is the very purpose. President Trump, Attorney General Sessions, and their senior advisers have made no secret of their fear of the growing political power of immigrant communities of color.

6. Indeed, Defendants' discriminatory goals do not stop there. Even though the Constitution requires that all residents of each state be counted in apportionment calculations, proponents of adding a citizenship question to the Decennial Census maintain the express goal of using the citizenship information obtained from the Decennial Census to exclude non-citizens from legislative apportionment calculations. Defendants thus seek to facilitate the dilution of the constitutionally prescribed voting power for communities with higher percentages of non-citizens.

7. The process that led to Defendants' addition of the citizenship question lays bare their illicit motives. Secretary Ross has publicly endorsed the Administration's

anti-immigrant initiatives, and Secretary Ross and the Department of Commerce engaged in extraordinary violations of procedural and substantive regulations and guidelines governing the development of questions for the Decennial Census—regulations and guidelines that exist specifically to ensure that questions on the Decennial Census advance, rather than impede, the purpose of providing an actual enumeration of the U.S. population. And Secretary Ross and the Department of Commerce ignored the advice of the Census Bureau’s professional staff, its scientific advisory committee, and six previous Census directors from both Republican and Democratic administrations, all of whom warned that adding such a question would exacerbate existing problems with lower response rates among certain communities.

8. The sole justification that Defendants have mounted for their decision is transparently pretextual. Defendants claim that the addition was necessary because the Department of Justice (“DOJ”) purportedly needs better data to enforce the Voting Rights Act (“VRA”). But Secretary Ross had already decided to add the citizenship question in early 2017 in order to diminish the political power of immigrant communities of color, and he expressed exasperation in May 2017 that his “months old request that we include the citizenship question” had not been acted upon. Ross and other senior officials at the Department of Commerce then reached out to Defendant Attorney General Sessions, Defendant Acting Assistant Attorney General Gore, and other senior officials at DOJ and requested that DOJ send a memo to the Census Bureau requesting the citizenship question be added to the Decennial Census; Defendant Gore further worked within the Department of Justice to make it appear as though the request originated from career staff at DOJ.

9. Moreover, the VRA has been enforced by the government and private parties for more than 50 years, with *no* citizenship question on the short-form Decennial Census. And for that same 50 plus years, DOJ has *never* had access to individual-level citizenship data. DOJ has provided no explanation, let alone any detailed analysis, as to why gathering citizenship data through the Decennial Census is suddenly necessary to enforcing the Voting Rights Act. It is not.

10. The addition of the citizenship question will result in an inaccurate Decennial Census that will undermine and fail to achieve its constitutional objective: an actual enumeration of the United States' population. In his unprecedented abandonment of his constitutional mandate to conduct an actual enumeration of all people in the United States, Secretary Ross has violated and otherwise failed to abide by Constitutional, statutory, and regulatory mandates, as well as Census Bureau policy.

11. The Decennial Census should not be weaponized to target disfavored groups. But that is exactly what the Trump Administration has done by adding a citizenship question. Because this decision was motivated by invidious discrimination, is inconsistent with the Constitution's mandate of an actual enumeration of the population, and is irrational, arbitrary, and capricious, the Court should declare it in violation of the Constitution and the Administrative Procedures Act and enjoin the inclusion of any citizenship question on the 2020 Decennial Census.

JURISDICTION AND VENUE

12. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331.

13. The declaratory and injunctive relief sought is authorized under 28 U.S.C. §§ 2201 and 2202.

14. Venue in this district is proper under 28 U.S.C. § 1391(e)(1)(C) because Secretary Ross is a Defendant and is an Officer or Employee of the United States. As such, a civil action may be brought in any venue where “the plaintiff resides if no real property is involved in the action.” This matter does not involve real property, and the Plaintiff the New York Immigration Coalition has its principal place of business in the district of the United States District Court for the Southern District of New York.

PARTIES

A. Plaintiffs

15. The New York Immigration Coalition (“NYIC”) is an umbrella policy and advocacy organization for more than 200 groups in New York State, representing the collective interests of New York’s diverse immigrant communities and organizations. It has its principal place of business at 131 West 33rd St, New York, NY 10001.

16. NYIC’s mission is to unite immigrants, members, and allies so that all New Yorkers can thrive. It envisions a New York state that is stronger because all people are welcome, treated fairly, and given the chance to pursue their dreams. NYIC pursues solutions to advance the interests of New York’s diverse immigrant communities and advocates for laws, policies, and programs that lead to justice and opportunity for all immigrant groups. It seeks to build the power of immigrants and the organizations that serve them to ensure their sustainability, improve people’s lives, and strengthen New York State.

17. NYIC's nearly 200 members are dues-paying, nonprofit organizations that are committed to advancing work on immigrant justice, empowerment, and integration. NYIC's members are located throughout New York State and beyond and share NYIC's mission to serve and empower immigrant communities. NYIC's members include grassroots community groups, social services providers, large-scale labor and academic institutions, and organizations working in economic, social, and racial justice. Representatives of NYIC's member organizations serve on the NYIC Board of Directors.

18. Several NYIC members, including Chhaya Community Development Corporation ("Chhaya"), receive funding through the Community Development Block Grant program. As another example, NYIC members Family Health Centers at NYU Langone, LSA Family Health Services, Korean Community Services of Metropolitan New York, and Planned Parenthood of New York City receive funding through Medicaid to provide community health services. Additionally, NYIC member Chinese-American Planning Council ("CPC") receives funding through the Workforce Innovation and Opportunity Act to provide education, training, and other services to aid job seekers in securing employment.

19. NYIC also receives the value of \$799,109 in Census-guided funding from the Corporation for National & Community Service for 21 positions filled by AmeriCorps VISTA members and approximately \$20,000 for travel and administrative costs related to those positions. Through this program, NYIC has placed 17 AmeriCorps VISTA members into positions at member organizations, while 4 AmeriCorps VISTA members work directly with NYIC.

20. The differential undercount¹ caused by the addition of the citizenship question in the 2020 Decennial Census will reduce the amount of federal funds that are distributed to the states and localities within the states and localities where Latinos, Asian-Americans, Arab-Americans, and other immigrant communities of color constitute significant portions of the population, and diminish the political power of those same areas in terms of state and federal legislative redistricting. This will injure a number of NYIC's member organizations that receive funding to carry out social service, health, and education programs in these areas as well as those organizations' individual members who live in those areas both in terms of census-related funding and political power.

21. As an organization, NYIC has an ongoing commitment to promoting engagement in the Decennial Census among individuals served by its member organizations. For example, NYIC partnered with the New York Community Media Alliance to launch an outreach campaign to boost immigrant participation in the 2010 Census. As part of that effort, NYIC coordinated public service announcements in 24 languages that appeared in 69 newspapers. NYIC also held press briefings with elected officials. These efforts helped to increase New York City's mail-in 2010 Census participation rate by approximately 3%.

22. For the 2020 Census, NYIC has already begun its outreach efforts. Since the beginning of 2018, it has helped form New York Counts 2020, a growing, non-partisan coalition of more than 50 diverse organizational stakeholders across New York to advocate for a fair and complete enumeration. This broad-based coalition, formally

¹ The Census Bureau describes the undercounting of particular racial and ethnic groups as a "differential undercount," as distinct from a "net undercount" of the entire population.

launched in March 2018, is composed of racial, ethnic, immigrant, religious, health, education, labor, housing, social services, and business groups working in partnership with state and local government officials.

23. NYIC is investing resources to solidify the work and reach of New York Counts 2020 through robust advocacy, outreach, and mass educational forums. It has already begun disseminating online petitions, petitioning Community Boards to pass resolutions for a fair and accurate count, and co-convened an all-day statewide conference, “Making New York Count in 2020.” NYIC will continue coordinating the working committees of New York Counts 2020, including by coordinating “train the trainer” sessions throughout the state to equip leaders with tools to educate their communities on the importance of the Census; devising effective messaging to convince hard-to-reach communities to participate; empowering coalition members to assist their communities in completing the Census online; and advocating to ensure that there are no unnecessary barriers impeding marginalized communities from being counted while also ensuring their privacy is protected.

24. The Trump Administration and its officials have already demonstrated hostility to immigrant communities of color through numerous acts and statements. Immigrant communities of color, which have historically been reluctant to engage with government officials, are even more reluctant now due to the consistent racism and xenophobia exhibited by the Administration and its officials. But even under these challenging conditions, the citizenship question creates a heightened fear and incremental obstacle to Census participation because it ties immigrant communities of color’s fear directly to the Decennial Census instrument.

25. In its already extensive 2020 Census outreach, NYIC has faced and will continue to face, a more difficult Census-response environment due to New York immigrant communities' heightened fear of interacting with government workers which will be increased by the addition of the citizenship question. This fear extends not only to undocumented immigrants or non-citizens with legal status, but also to family and household members of non-citizens who will be concerned that participating might endanger their loved ones.

26. Due to the inclusion of a citizenship question, NYIC will need to increase considerably its communications and community engagement expenses to dissipate the fear instilled in the immigrant communities of color it and its members serve in addition to its baseline message of explaining the purposes of the Census and encouraging people to respond. These efforts will include building out additional layers of community outreach through public service announcements, ethnic media outlets, and training in numerous languages to help address the concerns of community members in terms they can understand and in a sufficient number of ways to overcome the high barrier of fear of responding to the Census generated by the citizenship question. NYIC will need to reach far and wide using every tool at its disposal to educate and inform communities. This will also include engaging all NYIC members through their NYIC liaisons, including many members who otherwise would not have done Census education and outreach work.

27. For example, NYIC's Health Policy team, who otherwise would not have participated in Census work, has now held a training on the Census for their Health Collaborative members and engaged one-on-one with more than a dozen member organizations. Similarly, NYIC's Member Engagement team is working with members

across the state to ensure all are educated on the Census and working to understand what a citizenship question would mean. The considerable staff time needed to bring in so many additional staff representatives balloons its costs well beyond what it had anticipated or expected.

28. Over the next three years, NYIC is planning to spend approximately \$1 million on community education and outreach efforts to work towards a complete and accurate count within the communities that NYIC and its member organizations serve. Upon information and belief, the \$1 million that NYIC anticipates spending on Census-related work represents an increase of approximately 60% over what the organization would have spent in the absence of a citizenship question.

29. NYIC member organizations, including CPC, Arab-American Association of New York (“AAANY”), Masa, Chinese Progressive Association, MinKwon Center for Community Action, and “Chhaya,” have reported members of the immigrant communities of color they serve expressing an unwillingness to participate in the Census as a result of the citizenship question.

30. For example, in CPC’s Childhood Development Programs, parents who are immigrants of color have been asking CPC staff members whether or not it is “the law” to fill out the Census form and if or how they would be penalized if they chose not to respond. They also ask what will happen if they don’t answer a question during an in-person visit. Some have expressed concern that they may receive a visit from Immigration and Customs Enforcement (ICE) if they indicate that there are noncitizens in their household. They have expressed reluctance to participate in the Census at all. In CPC’s Senior Centers, some seniors who are immigrants of color have been asking

whether an incomplete mail-in form would be enough to trigger an in-person visit from ICE or another government official. In CPC's Brooklyn Community Center, the senior services program has received an unusually high number of inquiries from community members on how to apply for citizenship. Some seniors and some younger generation Asian-Americans have also expressed concern because they are aware of the use of Census data to identify Japanese-Americans and place them in internment camps during World War II.

31. As another example, AAANY has reported that many members of the Arab and Arab-American community they serve in and around the Bay Ridge section of Brooklyn have been reaching out to ask if they can refuse to fill out the Census because they are worried about the impact it will have on them or members of their households who have uncertain legal status. AAANY's Adult Education Program Manager, Somia Elrowmeim shared the fearful sentiments expressed by her students, many of whom said that they were apprehensive about having their names disclosed because of their legal status. AAANY's adult education program consists of 110 women who are recent immigrants, primarily from Yemen and Egypt and between the ages of 18-68. According to Ms. Elrowmeim:

“A lot of the women who I work with do not feel comfortable if someone asks them if they are a citizen. They feel like they will be targeted and treated like second-class citizens. Usually, if they see a question like that on any application they usually do not fill it out. Especially under this administration, the Arab community does not feel comfortable to say if they are a citizen or even a green card holder. Many struggle and endure many difficulties to become citizens and at the end they are still being asked where they are from. Our students and women have expressed how they feel like something is wrong and that they are being targeted with these questions. My members do not want their name out there, they are not comfortable because they are not citizens yet and do not feel like they have enough protections.”

32. For a third example, Chhaya has reported to NYIC that they have heard from members of the South Asian community they serve that the citizenship question is very concerning to them and they do not trust the federal government with such information. Those community members have expressed hesitation about participating in the Census specifically because of the citizenship question, including one community member who said at Chhaya's monthly community meeting in May 2018 that if a citizenship question is added to the Census she will not fill out the Census, and will advise her family to do the same. She expressed that she felt scared that the information would be used to target members of her community for adverse immigration consequences. Chhaya has reported that they anticipate lower than average Census participation among their community members in 2020 if the citizenship question is included and has reported that the fear generated by the citizenship question will require it to conduct more extensive education and outreach to the South Asian community regarding the 2020 Census than Chhaya would have conducted otherwise. Chhaya is planning a massive outreach effort around the 2020 Census, and they anticipate spending at least 50% more in resources on outreach dedicated to the Census for 2020 than the approximately \$100,000 they spent on Census outreach efforts in 2010.

33. As a fourth example, Desis Rising Up and Moving (DRUM) reported that a man who emigrated to the United States from Guyana in the 1970s said that even as a citizen, he would not complete the Census if it contains a citizenship question because many people in his family and community are not citizens and because he believed that this information could be used to target them for deportation based on his understanding

that Census data was used to target Japanese-American citizens for internment camps during the Second World War.

34. NYIC has also received these reports directly, including one from an immigrant from India who told an NYIC staff member that he would not fully participate in the Census because he is still trying to build a life within his community in New York and that after everything he has had to sacrifice to live in this city and country, he cannot afford to put himself in danger of deportation.

35. Because of the heightened fear and suspicion created by the citizenship question, NYIC and its member organizations will be forced to expend more resources on their outreach efforts to try to reduce the effect of this question on the response rate in the immigrant communities they serve. Due to this strain on resources, NYIC is already fundraising to try to support its 2020 Census work. NYIC will need to apply for additional grants to sustain the increased need for 2020 Census outreach, further diverting its resources that would otherwise be spent on trying to obtain grants for other areas.

36. NYIC has already and will continue to, divert resources from its other organizational priorities, including its work on health care and language access issues. For example, NYIC was undertaking a study and publication on adult English literacy and workforce development, which examines the critical role of English language acquisition in integrating immigrants into the workforce and preparing them to earn higher wages; however, that project has been postponed indefinitely because of the resources required to perform additional Census outreach and education work as a result of the heightened fear created by the Trump Administration's immigration-related policies and the citizenship question in particular. Finally, based on information reported

by the Communications Committee of New York Counts 2020, NYIC and some of its member organizations will have to divert resources that would have been spent on education and outreach efforts to increase Census response rates among immigrant communities of color towards addressing the heightened fear generated by the citizenship question.

37. NYIC has already spent more resources than initially planned on 2020 Census education and outreach and anticipates that it will have to spend far more resources than initially planned to generate the same response rates of people because of the heightened fear in the immigrant communities of color generated by the citizenship question.

38. Similarly, NYIC's member organizations also report that as a result of the heightened fear generated by the citizenship questions in the immigrant communities of color that they serve, they have spent and will continue to spend more than initially anticipated on education and outreach for the 2020 Census. Many of NYIC's member organizations have also reported that they have to divert resources from their existing organizational priorities to fund additional outreach and education activities for the 2020 Census in order to avoid an undercount among the immigrant communities of color they serve that is worse than usual as a result of the citizenship question. For example, to allocate the additional resources necessary to address the heightened fear created by the citizenship question, CPC has reported that they have already and will continue to divert resources from other organizational priorities, including their policy and advocacy division, education and career services, and multi social services programs. CPC has reported hiring personnel specifically for the purpose of meeting the heightened fear

created by the citizenship question, including additional translators to address community members' concerns about responding to the citizenship questions in precisely their own languages.

39. An undercount caused by the addition of the citizenship question in the 2020 Census will reduce the amount of federal funds that are distributed to the states and localities and within the states and localities where Latinos, Asian-Americans, Arab-Americans, and other immigrant communities of color that are served by NYIC and its members constitute significant portions of the population. Such an undercount will also injure NYIC and its member organizations that receive funding to carry out social service, health, and education and other programs and services supported by Census-guided funds in these areas.

40. Plaintiff CASA de Maryland, Inc. ("CASA") is a nonprofit 501(c)(3) membership organization headquartered in Langley Park, Maryland. It has offices in Maryland, Virginia, and Pennsylvania.

41. CASA's mission is to create a more just society by increasing the power of and improving the quality of life in low-income immigrant communities. To advance this mission, CASA offers social, health, job training, employment, and legal services to immigrant communities. CASA serves nearly 20,000 people a year through its offices and provides support to additional clients over the phone and through email.

42. CASA has more than 90,000 members in Maryland, Virginia, and Pennsylvania, making it the largest membership-based immigrant rights organization in the Mid-Atlantic region. Over 32,000 of CASA's members reside in Prince George's County, Maryland, a jurisdiction where both the Latino and Central American immigrant

population exceed both the national and state average. The differential undercount that will result from adding the citizenship question to the 2020 Decennial Census will result in a lower percentage of federal funding allocated to this jurisdiction, injuring CASA members who reside there. For example, CASA's members in Prince George's County include parents with children enrolled in Title I schools, and commercial drivers who use the roads on a daily basis and thus depend on federal highway funds to perform their jobs.

43. The differential undercount that will result from adding the citizenship question to the 2020 Decennial Census will also diminish the political power and influence of CASA's members in jurisdictions such as Prince George's County, Maryland and Fairfax County, Virginia. In jurisdictions such as these where immigrant populations of color exceed both the national and state average, the differential undercount will cause immigrants of color to be placed in malapportioned congressional and state legislative districts that have a greater population than other districts in the same state. These communities, moreover, will comprise a lesser percentage of the total population of the congressional or state legislative district than they would but-for the differential undercount.

44. One of the many CASA members who will suffer injury due to the addition of a citizenship question is M.L.D. M.L.D. is a resident of Prince George's County, Maryland, a county for which the number of Latino and immigrant residents far exceeds the Maryland state average. An undercount of Latino and immigrant residents of Prince George's County will cause M.L.D. and other CASA members in Prince George's County to lose out on political power and funding that will instead go to other areas of

Maryland. For example, M.L.D. has a 10-year-old daughter who attends Springhill Lake Elementary, a Title I school in Prince George's County where over 50% of students are Hispanic/Latino. M.L.D. — as a parent and active participant in school meetings, fundraisers, and other engagements — is concerned about the loss of funding to Springhill Lake that would result from a census undercount of children in the school district. M.L.D. also owns a catering business which requires her to make frequent deliveries using public roads in Prince George's County. M.L.D. is aware of the deteriorating state of many public roads and is concerned that reductions in federal funding for road maintenance and repair would negatively affect her livelihood.

45. CASA member A.A.'s livelihood as a food delivery driver would be severely impacted if the Decennial Census were to include a citizenship question that would require individuals to disclose their United States Citizenship Status. Because he knows people will fear to answer the question, he knows that this will lead to underreporting which will directly impact federal funding for road maintenance and repair that he requires for work each and every day. Less funding for roads would impact A.A. with regards to both his professional and personal life. His livelihood as a whole will be affected.

46. E.R., another CASA member, would also be negatively impacted by the inclusion of a citizenship question on the census. She has an 11-year-old granddaughter who attends a Title 1 public school, Mary Harris "Mother" Jones Elementary School in Adelphi, Maryland, which may lose funding if its students in the school district are undercounted in the Census. Underreporting on the Census will also have a direct

negative impact on the schools, roads, and other public infrastructure on which E.R. relies.

47. As an organization, CASA also receives governmental funding that is directly tied to the Decennial Census. Among other things, CASA receives Community Development Block Grant (CDBG) funds that are allocated based on population and demographics determined by the Decennial Census, including poverty levels. The differential undercount that will result from adding the citizenship question to the 2020 Decennial Census will result in a lower percentage of CDBG funds allocated to the areas that CASA serves, and therefore CASA anticipates its funding will decrease as a result of the addition of the question.

48. CASA has an ongoing commitment to promoting engagement in the Decennial Census among its members, constituents, and communities. Member participation in the Decennial Census advances CASA's mission by increasing the political power of low-income immigrant communities and improving quality of life for those communities through increased population-driven government funding.

49. For example, in the months leading up to and during the 2010 Decennial Census, CASA conducted outreach and engagement work with the immigrant community in its region concerning census participation. These efforts included reaching out to 4,000 community members in Maryland, educating them about the importance of the census count, and encouraging them to respond. To reach these community members, CASA mobilized a team of more than 40 staff and volunteers and canvassed neighborhoods including communities in Langley Park, Long Branch, Wheaton, and Takoma Park—

some of the most ethnically, racially and linguistically diverse regions in the Washington D.C. metropolitan area.

50. For the 2020 Decennial Census, CASA plans on participating in outreach and education work and hopes to receive outside funding to help support this work. Based on its familiarity with its community, CASA believes its plans and efforts to promote engagement in the 2020 Decennial Census' efforts will be undermined by the Trump Administration's intentional effort to instill heightened fear of interacting with government workers among immigrant communities of color. This fear extends not only to undocumented immigrants or non-citizens with legal status but also to family members of non-citizens, who will be concerned that participating in the Decennial Census might endanger their loved ones.

51. Based on its familiarity with its community and how the U.S. Government is perceived, CASA expects it will need to expend more resources to reach the same number of people as it did in 2010, and that, notwithstanding these efforts, ultimately it will be less successful in convincing its constituents to participate in the 2020 Decennial Census due in large part to the presence of the citizenship question.

52. In particular, because of the heightened fear and suspicion created by the citizenship question, CASA will be forced to expend more resources on its Decennial Census outreach efforts to try to reduce the effect of this question on the response rate in the immigrant communities of color it serves. While CASA intends to invest more resources in communications (including through social media and videos to engage more people), CASA still expects it will need to interact with community members multiple

times to answer questions and try to convince them to participate in the 2020 Decennial Census.

53. Specifically, CASA anticipates that outreach during the 2020 Census will require an even larger devotion of resources than those required in 2010 to reach a comparable population, due to rising fear in the immigrant community and a reluctance to respond to questions about citizenship status. For 2020, CASA currently plans that it will have to more than double its outreach efforts over what it expended for the 2010 Census. Because of the need to increase the time and money spent on Decennial Census outreach due to the addition of the citizenship question, CASA will need to divert resources from other areas critical to its mission, including job training and health outreach. Indeed, CASA has already had to divert resources from these areas in order to address concerns from its constituents stemming from the announcement of the citizenship question.

54. Because of the need to increase the time and money spent on Decennial Census outreach due to the addition of the citizenship question, CASA will need to divert resources from other areas critical to its mission, including job training and health outreach. Indeed, CASA has already had to divert resources from these areas in order to address concerns from its constituents stemming from the announcement of the citizenship question.

55. Plaintiff American-Arab Anti-Discrimination Committee (“ADC”) is a civil rights organization committed to defending and promoting the rights and liberties of Arab-Americans and other persons of Arab heritage. ADC is the largest American-Arab grassroots civil rights organization in the United States.

56. Founded in 1980 by former Senator James Abourezk, ADC's objectives include combating stereotypes and discrimination against and affecting the Arab-American community in the United States, serving as a public voice for the Arab-American community in the United States on domestic and foreign policy issues, and educating the American public in order to promote greater understanding of Arab history and culture. ADC advocates, educates, and organizes to defend and promote human rights and civil liberties of Arab-Americans and other persons of Arab heritage.

57. ADC has several thousand members who reside in all 50 states and the District of Columbia. Many of these members are active in ADC's 28 local chapters, which are located in 20 states and the District of Columbia. These include active chapters with members leading local efforts, including in Tucson and Phoenix, Arizona, Los Angeles and Orange County, California, Miami and Orlando, Florida, New York, Austin and Dallas, Texas.

58. For example, ADC has members in places such as Wayne County, Michigan, San Antonio, Austin, and Houston, Texas and Miami-Dade, Broward, and Orange Counties, Florida, Kings County, New York, and Prince George's County, Maryland, and Maricopa County, Arizona, the populations of which include immigrant communities of color that far exceed state and national averages. An undercount of those populations deprive ADC members of political power by diluting the amount of state and congressional representatives to their areas and depriving them of Census-influenced funding in programs to which they would be entitled by a more accurate count.

59. Specifically, ADC members across the nation rely on a number of facilities and services whose funding allocation relates to population and demographic

data derived from the Decennial Census. This includes parents with children enrolled in schools that receive funding under Title I of the Elementary and Secondary Education Act; families whose children benefit from insurance funded by the State Children's Health Insurance Program; drivers who use interstate highways and mass transit on a daily basis and thus depend on federal highway funds to perform their jobs; and people who rely on housing assistance through various funding provided under Section 8, among other Census-guided funding streams.

60. ADC also has members who live in states such as Texas and Florida, who are likely to lose political power through the congressional apportionment process, as the differential undercount as a result of the citizenship question will likely cause both Texas and Florida to lose at least one seat it otherwise would have gained. These communities, moreover, will comprise a lesser percentage of the total population of the congressional or state legislative district than they would but-for the differential undercount, resulting in a loss of intrastate political power.

61. One of the many ADC members who will suffer injury due to the addition of a citizenship question is a community leader and local advocate. She is a resident of Brooklyn, New York. The residential area of the member has a substantial Arab community. The member indicated that the citizenship question has many in the community apprehensive about participating in the 2020 Census, including those who are U.S. Citizens. The member also indicated that the addition of this question has led to fear and concern within the community. Given the apprehension to participate in the 2020 Census, if the Arab community in Brooklyn decides not to participate, ADC members in

the city will lose out on political power and funding that will instead go to other areas of New York State.

62. An ADC member in Austin, Texas expressed similar concerns regarding the citizenship question. The member is an active member of the ADC Chapter and Network in Austin and has a pulse on the community. The community in Austin has expressed similar concern and fear shared by Arab community members across the country. There is fear and apprehension at participating in the 2020 Census because of the citizenship question. If the Arab community in Austin, Texas decides not to participate, ADC members in the city will lose out on political power and funding that will instead go to other areas of Texas.

63. The Metro-Detroit Area in Michigan is home to the largest concentration of Arabs in the country. An ADC Member from Dearborn, Michigan expressed that the inclusion of the citizenship question has led to fear from community members. The Dearborn resident is an advocate and has worked on behalf of the community for many years. He has found it difficult to persuade the community to participate in the 2020 Census, and the citizenship question is often cited as the reason for apprehension. Given the large number of Arab immigrants in the Metro-Detroit area, including Dearborn, an undercount of the Arab and immigrant residents will cause ADC members to lose out on political power and funding will instead go to other areas of Michigan.

64. ADC has an ongoing commitment to promoting engagement in the Decennial Census among its members and constituents. Since the 1980s, ADC has served in numerous capacities on the Census Bureau advisory committees. In 2000, ADC reinvigorated its census campaign and policy initiatives, actively educating Arab-

Americans and other minority populations about the importance of the census and mobilizing participation and outreach events. In 2008, ADC actively worked with the Census Bureau to identify classification concerns of Arab-Americans on the United States census.

65. In the months leading up to and during the 2010 Decennial Census, ADC conducted outreach and engagement work with the Arab-American community concerning census engagement. That work consisted of creating messaging about participating in the Decennial Census that was focused on the Arab-American community including launching a national campaign advocating for the completion of census forms and holding outreach events to counter concerns of sharing of information with government and law enforcement agencies. ADC also engaged in efforts to “get out the count” in that community as well, including hosting town halls and symposiums in select cities across the country. ADC also produced and published material for distribution which encouraged participation in the 2010 Census, and highlighted its importance. ADC also served on the U.S. Census Bureau’s 2010 Census Advisory Committee.

66. For the 2020 Census, ADC has already begun its working within the Arab-American community. In 2017, it focused on educating community members about the Decennial Census and its importance. This year, ADC will hold focus groups to test messaging about Decennial Census participation and will follow up with polling afterward. As the Decennial Census draws nearer, ADC will conduct training for census enumerators, run advertisements encouraging participation, and hold a strategy symposium, among other activities. ADC will also host community town halls and symposiums across the country in an effort to address community concerns and answer

questions. In addition, ADC will be working with coalition partners on issues of mutual concern relating to the 2020 Census.

67. Despite these efforts, ADC is already facing a much more challenging environment for conducting outreach and encouraging Arab-Americans, both citizens and noncitizens, to respond to the 2020 Census than the 2010 Census. While its members' and community's heightened fear of interacting with government workers stems in part because of the Trump Administration's persistently hostile and discriminatory actions and attitudes towards Arab-Americans, Muslim-Americans, and immigrants of color generally, it has been greatly exacerbated by the Administration's efforts to add a citizenship question and will be further exacerbated if the citizenship question is included in the 2020 Census. This fear is not unique to undocumented immigrants or non-citizens with documented legal status, but also to family and household members of non-citizens and their friends and neighbors, who have expressed concern that participating in the Census might endanger their loved ones.

68. ADC has confirmed from conversations with several of its members and people in the communities it serves that some of them would be fearful of responding to the Census questionnaire if the citizenship question is added. ADC hosted different town hall events throughout the country, and Census 2020 was covered. Many community members provided direct feedback on the citizenship question, expressing fear as to the purpose of the citizenship question. Another common sentiment was the willingness to not participate in the 2020 Census, out of the fear deriving from the citizenship question.

69. Because of the heightened fear and suspicion created by the citizenship question, ADC has recognized the need to expand upon the census-related services,

programming, and support it had already to try to reduce the negative effect of this question on the response rate in the Arab-American community. The citizenship question has posed greater challenges for ADC to engage with the Arab-American community on Census 2020 related matters. In 2010, and prior Census outreach efforts, ADC found it easier to work with the community on pushing the importance of Census participation. The citizenship question adds a new dynamic of fear and uncertainty. Additional outreach, meetings, and informational sessions are being planned and implemented, in an effort to answer questions and address concerns.

70. ADC expects that it will need to interact with its constituents multiple times to answer questions and try to convince them to participate in the 2020 census, spending more resources to reach the same number of people. Despite this, it expects that it will be less successful in convincing its constituents to participate in the 2020 Census than in 2010 due in large part to the presence of the citizenship question. ADC anticipates expending at least \$150,000 amount more on 2020 Census education and outreach than the organization spent on its efforts to encourage participation in the 2010 Census as a result largely of the presence of the citizenship question.

71. Because of the need to increase the time and money spent on Census outreach due to the addition of the citizenship question, ADC will need to divert resources from other areas critical to its mission including organizing, issue advocacy efforts and educational initiatives. ADC has already diverted resources from these other areas in order to address concerns from its constituents stemming from the announcement of the citizenship question. As the largest department in ADC, resources will be diverted from legal work to Census-related matters. The diverting of resources means ADC will

have less money to use towards assisting victims of hate crimes and providing pro bono legal services. The ADC Legal Department is pro bono, thus the resources committed to the department are essential in providing services to community members across the country.

72. Plaintiff ADC Research Institute (“ADCRI”) is a 501(c)(3) corporation founded in 1982 by former Senator James Abourezk. ADCRI sponsors public programs and initiatives in support of the constitutional and First Amendment rights of Arab-Americans, as well as research studies, publications, seminars, and conferences that document discrimination faced by Arab-Americans in the workplace, schools, media and government agencies. These programs also promote a better understanding of Arab cultural heritage by the public and policymakers.

73. ADCRI is also committed to promoting engagement in the Decennial Census among its constituents. In the months leading up to and during the 2010 Decennial Census, ADCRI conducted outreach and engagement work with the Arab-American community concerning census engagement. ADCRI has already begun such engagement work for the 2020 Decennial Census.

74. This time, however, ADCRI will face a much more difficult environment due to increased fear in the Arab-American community of interacting with government workers due in part to the addition of the citizenship question. Because of this heightened fear and suspicion created by the citizenship question, ADCRI will be forced to invest more resources in its outreach efforts to try to reduce the effect of this question on the response rate in the communities it serves. As a result, ADCRI expects it will need more resources to reach the same number of people as it did in 2010 and that ultimately, it will

be less successful in convincing its constituents to participate in the 2020 Decennial Census due in large part to the presence of the citizenship question.

75. Because of the need to increase the time and money spent on Decennial Census outreach due to the addition of the citizenship question, ADCRI will need to divert resources from other areas critical to its mission, including its engagement with public school teachers and other educational issues. ADCRI has already needed to divert resources from these areas to address increased concerns by its constituents stemming from the announcement of the citizenship question.

76. Plaintiff Make the Road New York is a nonprofit membership organization with offices and service centers in Brooklyn, Queens, Staten Island, Suffolk County, and White Plains.

77. Make the Road New York's mission is to build the power of immigrant and working class communities to achieve dignity and justice. To achieve this mission, they engage in four core strategies: Legal and Survival Services, Transformative Education, Community Organizing and Policy Innovation.

78. Make the Road New York has more than 22,000 members who reside in New York City, Long Island and Westchester County. These members lead multiple organizing committees across numerous issues and program areas of concern to the organization. Members take on leadership roles in the campaigns, determine priorities, and elect the representatives who comprise most of the Board of Directors.

79. The jurisdictions where Make the Road New York members reside, including New York City, have Latino immigrant populations that exceed the national and state averages. Make the Road New York members in these areas rely on a number

of facilities and services whose funding is allocated based on population and demographics determined by the Decennial Census. These facilities and services include parents with children enrolled in schools that receive funding under Title I of the Elementary and Secondary Education Act; families whose children benefit from insurance funded by the State Children's Health Insurance Program; drivers who use interstate highways and mass transit on a daily basis and thus depend on federal highway funds to perform their jobs; and people who rely on housing assistance through various funding provided under Section 8, among other Census-guided funding streams.

80. The differential undercount caused by the addition of the citizenship question in the 2020 Decennial Census will reduce the political power of individual residing in area where Latinos, Asian-Americans, Arab-Americans, and other immigrant communities of color constitute significant portions of the population, and will reduce the federal funds that are distributed to the states and localities within the states where Latinos, Asian-Americans, Arab-Americans, and other immigrant communities of color constitute significant portions of the population. Specifically, Make the Road New York members reside in New York City, Westchester, Nassau, and Suffolk Counties, the populations of which include immigrant communities of color that far exceed state and national averages. An undercount of those populations will deprive Make the Road New York members of political influence by affording them less representation in state and federal redistricting and Census-guided funding to which they would be entitled by a more accurate count.

81. One of the many Make the Road New York members who will suffer injury due to the addition of a citizenship question is Perla Lopez. Ms. Lopez is a resident

of Queens County, New York. Because the number of Latino and immigrant residents of Queens County far exceeds the New York state average, an undercount of Latino and immigrant residents of Queens County will cause Ms. Lopez and other Make the Road New York members in Queens to be deprived of political power and funding that will instead go to other areas of New York State.

82. Another Make the Road New York member will suffer injury due to the addition of a citizenship question is Yatziri Tovar. Ms. Tovar is a resident of Bronx County, New York. Because the number of Latino and immigrant residents of Bronx County far exceeds the New York state average, an undercount of Latino and immigrant residents of Bronx County will cause Ms. Tovar and other Make the Road New York members in Queens to be deprived of political power and funding that will instead go to other areas of New York State.

83. Marlenis de los Santos is another Make the Road New York member who will suffer injury due to the addition of a citizenship question is. Ms. De Los Santos is a resident of Suffolk County. The number of Latino and immigrant residents of Suffolk County far exceeds the New York state average. An undercount of Latino and immigrant residents will cause Ms. De Los Santos and other Make the Road New York members in Suffolk County to lose out on political power and funding that will instead go to other areas of New York State. For example, Ms. De Los Santos has a child who attends Title I school in a Suffolk County that has a large population of Latino students. Ms. De Los Santos is concerned about the loss of funding to her child's school that would result from a census undercount of children in the school district.

84. Yet another Make the Road New York member who will suffer injury due to the addition of a citizenship question is Alejandra Martin. Ms. Martin is a resident of Baldwin in Nassau County. The number of Latino and immigrant residents of Nassau County far exceeds the New York state average. An undercount of Latino and immigrant residents will cause Ms. Martin and other Make the Road New York members in Suffolk County to lose out on political power and funding that will instead go to other areas of New York State. For example, Ms. Martin owns a car and regularly travels on highways in Nassau County that are maintained with federal highway funding. Ms. Martin is concerned about the loss of funding and a decline in maintenance for the highways that she relies upon that would result from a census undercount of people in Nassau County.

85. A fifth Make the Road New York member who will suffer injury due to the addition of a citizenship question is Bertha Perez. Ms. Perez is a resident of Long Island. The number of Latino and immigrant residents in Long Island counties far exceed the New York state average. An undercount of Latino and immigrant residents will cause Ms. Martin and other Make the Road New York members on Long Island to lose out on political power and funding that will instead go to other areas of New York State. For example, Ms. Perez owns a car and regularly travels on highways on Long Island that are maintained with federal highway funding. Ms. Perez is concerned about the loss of funding and a decline in maintenance for the highways that she relies upon that would result from a census undercount of people in Nassau County.

86. Make the Road New York has an ongoing commitment to promoting engagement in the Decennial Census among its members and constituents. In the months leading up to and during the 2010 Decennial Census, Make the Road New York

conducted outreach and engagement work with the immigrant community in its region concerning census participation. That work consisted of educating constituents about the Decennial Census and its importance to the community.

87. During the 2010 Census, Make the Road New York was part of a coalition of organizations participating in an initiative titled, “Yes We Count,” designed to improve the completeness and accuracy of the count in the New York City area. Like other groups in the coalition, Make the Road New York was responsible for conducting outreach in specific geographic areas. Make the Road New York created educational materials to be distributed to community members and hired people to conduct door-to-door canvassing at thousands of homes. Make the Road New York also operated a series of workshops for the public, as well as for canvassers and community leaders, aimed at educating New York City residents about the purpose and uses of the Census as well as the importance of responding to the Census. Make the Road New York expended approximately \$150,000 and thousands of personnel hours on its census education and outreach efforts for the 2010 Census.

88. For the 2020 Census, Make the Road New York once again plans on participating in outreach and education work and hopes to receive outside funding to help support this work. This work will include, among other activities, general education programs, workshops for members and door-to-door outreach. Make the Road New York is already facing a much more challenging environment for conducting outreach and encouraging immigrants of color to respond to the 2020 Census than the 2010 Census because of its members and constituents’ heightened fear of interacting with government

workers as a result of the Trump Administration's persistently hostile and discriminatory actions and attitudes towards immigrants of color.

89. This fear has already been exacerbated by the Administration's efforts to add a citizenship question and will be further exacerbated if the citizenship question is included in the 2020 Census. This fear is not unique to undocumented immigrants or non-citizens with documented legal status, but also to family and household members of non-citizens, who have expressed concern that participating in the Census might endanger their loved ones. Make the Road New York has confirmed from conversations with several of its members that some of them would be fearful of responding to the Census questionnaire if the citizenship question is added.

90. For example, at a Make the Road New York event in Manhattan in June 2018, a Make the Road New York member—a Latino non-citizen—told a staff member that she would be afraid to open the door for any government official, especially if they were asking about citizenship status, and expressed reluctance to respond to the Census if it included a citizenship question.

91. As another example, in May 2018, at one of Make the Road New York's offices in Brooklyn, a DACA recipient who lives in a household that includes both undocumented persons and persons with documented legal status also said to a Make the Road New York staff member that he was afraid to answer the Census out of fear of subjecting anyone in the household to deportation.

92. For a third example, in June 2018, an Make the Road New York member who is a naturalized US citizen and resident of Long Island said that she would be less

likely to respond to the Census if it included a citizenship question because she is fearful of the consequences of answering the question for non-citizens in her neighborhood.

93. Because of the heightened fear and suspicion created by the citizenship question, Make the Road New York has begun its 2020 Census outreach earlier than initially anticipated and will be forced to expend more resources than initially anticipated to try to reduce the negative effect of this question on the response rate in the immigrant communities of color it serves. Make the Road New York has already started to offer workshops in the communities that it serves regarding the 2020 Census. Make the Road New York has been preparing educational materials and training its staff members to provide education regarding the purpose of the Census and the importance of responding, and also to conduct outreach, particularly to Spanish-speaking audiences, to encourage the communities it serves to participate in the census. It is preparing all of its offices and service centers to provide Census education and outreach through the direct services that it provides. It is also planning a door-to-door canvassing operation on an even greater scale than in 2010. Make the Road New York has been organizing dozens of organizations around New York State, including a coalition of 19 organizations on Long Island, to work together towards the purpose of making the 2020 Census a fair and complete count.

94. Make the Road New York expects that it will need to interact with its constituents multiple times to answer questions and try to convince them to participate in the 2020 census. Make the Road New York expects that it will need to spend more resources to reach the same number of people and that ultimately it will be less successful in convincing its constituents to participate in the 2020 Census than in 2010 due in large

part to the presence of the citizenship question. Make the Road New York anticipates expending at least double the amount on 2020 Census education and outreach that the organization spent on its efforts to encourage participation in the 2010 Census.

95. Because of the need to increase the time and money spent on Census outreach due to the addition of the citizenship question, Make the Road New York will need to divert resources from other areas critical to its mission including civic engagement and providing legal services. Make the Road New York has already diverted resources from other areas in order to address concerns from its constituents stemming from the announcement of the citizenship question, including voter registration and voter engagement, which are mission-critical programs during the Spring and Summer of an election year.

96. As an organization, Make the Road New York receives governmental funding that is tied to the Decennial Census. For example, Make the Road New York receives funding through the Community Services Block Grant program to fund adult literacy programs and legal services and outreach. An undercount of the immigrant communities of color that Make the Road New York serves that will result from adding the citizenship question to the 2020 Census will result in a relative reduction in funds allocated to areas that Make the Road New York serves, and therefore Make the Road New York will receive a comparative reduction of such funds.

97. The FAMILY ACTION NETWORK MOVEMENT, Inc. (“FANM”), is a non-profit organization based in Little Haiti, Miami, Florida, that seeks to empower low to moderate income families socially, financially, and politically, and to give them the tools to transform their communities.

98. FANM has been a major catalyst for addressing issues that affect low income and immigrant families in South Florida. It has done so since 1991 by providing counseling, wrap-around services, access to health care, community outreach/education, job training/economic development, financial literacy, organizing, and advocacy services.

99. FANM serves over 5,000 low-to-moderate income individuals, children and families in Miami-Dade, especially members of Miami's large Haitian-American community.

100. FANM members and constituents in Miami-Dade rely on a number of facilities and services whose funding allocation relates to population and demographic data derived from the Decennial Census. This includes individuals and their family members who depend on Medicaid, parents with children enrolled in schools that receive funding under Title I of the Elementary and Secondary Education Act, families whose children benefit from insurance funded by the State Children's Health Insurance Program, drivers who use interstate highways and mass transit on a daily basis and thus depend on federal highway funds to perform their jobs, and people who rely on housing assistance through various funding provided under Section 8, among other Census-guided funding streams.

101. FANM has an ongoing commitment to promoting engagement in the Decennial Census among its members and constituents. For example, in 2000-2001, FANM President Marleine Bastien served as Chair of the Hard to Reach Census Committee for the Miami-Dade area. Both Ms. Bastien and FANM have also been advocating for improved systems to deal with the undercount of Haitians in Miami-Dade in the decennial census.

102. For the 2020 Census, FANM has already begun working within the Haitian-American community. To promote census engagement, FANM expects to run radio ads and hire door knockers to make sure people are not intimidated into filling out only part or none of the census form, among other things.

103. Despite these efforts, the decennial census has traditionally undercounted Haitian-Americans. In light of the Trump Administration's persistently hostile and discriminatory actions and attitudes towards immigrants of color, especially Haitians seeking Temporary Protected Status (TPS), FANM is facing a much more challenging environment for conducting outreach and education efforts with respect to the 2020 Census. The Trump Administration's efforts to add a citizenship question to the Census form will further exacerbate many Haitian-Americans' heightened fear of interacting with government census workers.

104. This fear is not unique to FANM's members and service recipients who are undocumented immigrants or non-citizens with documented legal status, but also to Haitian family and household members of non-citizens and their friends and neighbors, who are concerned that participating in the Census might endanger their loved ones. The citizenship question adds a new dynamic of fear and uncertainty. Additional outreach, including the efforts described above, are being planned and implemented in an effort to answer questions and address concerns related to the citizenship question.

105. FANM expects it will need to divert over \$50,000 of its funding to hire part-time staff members, publish materials, and assemble toolkits to counter the reluctance or refusal of Haitians to complete the census form given community concerns about how the citizenship question might be used against them.

106. As noted above, FANM members reside primarily in South Florida, which has significant Caribbean and Latin American communities that far exceed state and national averages. A disproportionate undercount of those populations dilutes FANM members' political power by reducing the number of state and congressional representatives in their areas and depriving them of Census-influenced funding in programs such as those mentioned above, to which they would be entitled by a more accurate count.

107. Moreover, the disproportionate undercount of Haitians as a result of the citizenship question will harm efforts to recognize Haitian Creole under Section 203 of the Voting Rights Act for purposes of language assistance. Because the addition of a citizenship question will discourage Haitians from responding to the census, the threshold population number for triggering Section 203 coverage will be much more difficult, if not impossible, to establish, thereby harming the community's voting interests.

108. As an organization that is actively seeking comprehensive immigration reform and other legislation to benefit immigrant communities, FANM relies heavily on the collective political power with the Haitian community. Given the apprehension to participate in the 2020 Census, if Haitians and other immigrant communities of color in South Florida are not counted in the census, FANM members will lose out on political power in terms of congressional and legislative redistricting and congressional apportionment, as well as census-guided funding, to counties and other states with much lower immigrant populations.

109. The Florida Immigrant Coalition ("FLIC") is a statewide coalition of approximately 55 member organizations and over 100 individual members representing

the collective interests of Florida's diverse immigrant communities and organizations. It is headquartered in Miami, Florida.

110. FLIC's mission is to grow the connection, capacity, and consciousness of immigrant families, organizations, and communities. FLIC envisions a Florida based on inclusion and equality, without racism and exclusion, where immigrants can live and love without fear. It serves as a hub for building a strategic multi-racial, intergenerational, social movement. It primarily serves communities in eight Florida counties: Alachua, Broward, Hillsborough, Miami-Dade, Orange, Palm Beach, Pinellas, and Polk.

111. FLIC's member organizations include groups representing farmworkers, undocumented families, students, unions, legal advocates, service providers and other community-based and grassroots organizations. FLIC's member organizations vote on organizational priorities and elect the Board of Directors. Examples of these membership organizations include Miami Workers Center in Miami-Dade County, QLatinx in Orange County, and Redlands Christian Migrant Association in Collier County.

112. As an organization, FLIC has an ongoing commitment to promoting engagement in the Decennial Census among individuals served by its member organizations. For example, in 2010, FLIC members and hired staff engaged in door knocking, appeared on the radio, developed and distributed census-related materials and toolkits. Overall, the organization spent over \$40,000 in actual money and in-kind services.

113. For the 2020 Census, FLIC intends to engage in similar outreach efforts but will need to significantly increase the amount of dedicated resources in light of the

climate of fear in which so many immigrants, both documented and undocumented, are living.

114. The Trump Administration and its officials have already demonstrated hostility to immigrant communities of color through numerous acts and statements. Immigrant communities of color, which have historically been reluctant to engage with government officials, are even more hesitant now due to the consistent racism and xenophobia exhibited by the Administration and its officials. Because the citizenship question ties immigrant communities' fear directly to the Decennial Census instrument, FLIC's efforts to increase census participation will be even more challenging. The communities' fear extends not only to undocumented immigrants or non-citizens with legal status but also to family and household members of non-citizens who are concerned that participating might endanger their loved ones.

115. Similarly, FLIC's member organizations also report that as a result of the heightened fear generated by the citizenship questions in the immigrant communities of color that they serve, they have spent and will continue to spend more than initially anticipated on education and outreach for the 2020 Census. Many of FLIC's member organizations have also expressed concern about the impact of a citizenship question on the census form and the diversion of their own resources to counter community fears that could lead to an undercount.

116. As noted above, some FLIC members reside in Miami-Dade County and Orange County, Florida, areas where the Latino and overall immigrant population far exceed state and national averages. Moreover, all FLIC members reside in Florida, the population of which includes Latinos and immigrant communities of color that exceeds

the national average. An undercount of those populations will deprive individual FLIC members and individual members of FLIC organizational members of political power by diluting the amount of state and congressional representatives to their areas and likely causing Florida to lose a seat during congressional reapportionment.

117. Further, an undercount of these populations will deprive FLIC's individual members and its member-organizations' members of Census-influenced funding to which they would be entitled by a more accurate count. These individuals rely on facilities and services whose funding allocation relates to population and demographic data derived from the Decennial Census. This includes individuals and their family members who depend on Medicaid, parents with children enrolled in schools that receive funding under Title I of the Elementary and Secondary Education Act, families whose children benefit from insurance funded by the State Children's Health Insurance Program, drivers who use interstate highways and mass transit on a daily basis and thus depend on federal highway funds to perform their jobs, and people who rely on housing assistance through various funding provided under Section 8, among other Census-guided funding streams.

B. Defendants

118. 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 Decennial Census.²

² 13 U.S.C. § 4.

119. Defendant Wilbur L. Ross, Jr. is the Secretary of Commerce. He oversees the Bureau of the Census (“Census Bureau”) and is thus responsible for conducting the Decennial Census of the population.³ He is sued in his official capacity.

120. Defendant Census Bureau is an agency within, and under the jurisdiction of, the Department of Commerce.⁴ The Census Bureau is the agency responsible for planning and administering the Decennial Census.

121. Defendant Ron S. Jarmin is the Associate Director of the Census Bureau who is currently performing the nonexclusive functions and duties of the Director of the Census Bureau. He is sued in his official capacity.

122. Defendant Department of Justice (“DOJ”) 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 Department of Justice is responsible for enforcing the Voting Rights Act, 52 U.S.C. § 10101.

123. Defendant Jefferson Beauregard Sessions III is the Attorney General. As the head of the Department of Justice, he is responsible for enforcing the Voting Rights Act. He is sued in his official capacity.

124. Defendant John Gore is an Acting Assistant Attorney General at the Department of Justice. He oversees the Civil Rights Division of the Department of Justice and in that role is responsible for enforcing the Voting Rights Act. He is sued in his official capacity.

³ 13 U.S.C. § 141(a).

⁴ 13 U.S.C. § 2.

FACTS

A. Background on the Decennial Census

1. The Constitutional and Statutory Framework around the Decennial Census

125. 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 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.

126. Through the Census Act, Congress has assigned the responsibility of making this enumeration to the Secretary of Commerce, and created the Census Bureau within the Department of Commerce to spearhead this effort.⁵ The Secretary has delegated authority for establishing procedures to conduct the census to the Census Bureau. The central constitutional purpose of the Census Bureau in taking the Decennial Census is to conduct an accurate enumeration of the population.

127. Under these provisions, the Secretary of Commerce is charged with the responsibility to take a Decennial Census to create an actual enumeration of the United States population.⁶ The Secretary’s discretion in performing the census, however, is not without limits—the Secretary must comply with legal requirements established by the

⁵ 13 U.S.C. §§ 2, 4, 5, 141(a).

⁶ 13 U.S.C. § 141(a).

Constitution, statutes, and regulations governing the census. For example, the Secretary’s decisions must be consistent with the “constitutional goal of equal representation” and that bear a “reasonable relationship to the accomplishment of any actual enumeration of the population.”⁷

128. To enable a person-by-person count, the Census Bureau sends a questionnaire to virtually every housing unit in the United States. The questionnaire is 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 each state.

129. The Census Bureau’s constitutional obligation requires that the Census Bureau obtain as accurate an enumeration as possible by ensuring the maximum participation in the Decennial Census.

2. The Decennial Census’ Role in the Apportionment of Political Representation and the Distribution of Federal Resources

130. The population data collected through the Decennial Census determines the apportionment of seats in the U.S. House of Representatives among the states. Such apportionment is “based on total population,” including both citizens and non-citizens.⁸

131. The population data collected through the Decennial Census also determines the number of electoral votes each state has in the Electoral College.

132. States also use Decennial Census data to draw congressional, state, and local legislative districts.

⁷ *Wisconsin v. City of New York*, 517 U.S. 1 (1996).

⁸ *Evenwel v. Abbott*, 136 S. Ct. 1120, 1128-29 (2016).

133. All states use Decennial Census data to draw their congressional districts.⁹ When drawing these districts, states must adhere to the U.S. Constitution's one-person, one-vote requirement that congressional districts within a state be equal in population.¹⁰ Consequently, when a local community is disproportionately undercounted in the Decennial Census, the community will be placed in a malapportioned congressional district that has greater population than other congressional districts in the same state. The community, moreover, will comprise a lesser percentage of the total pop the community will be placed in a malapportioned congressional district that has greater population than other congressional districts in the same state. The community, moreover, will comprise a lesser percentage of the total population of the congressional district than it would but-for the differential undercount.

134. Most states, including Florida, Texas, and New York, also use Decennial Census data to draw state legislative districts. Some states have state constitutional provisions prohibiting their state legislature from adjusting census data in drawing state legislative districts consistent with one-person, one-vote requirements.¹¹ And some municipalities, including New York City, use Decennial Census data to apportion municipal legislative districts. Consequently, when a local community in any of these states is disproportionately undercounted in the Decennial Census, the community will be placed in a malapportioned legislative district that has greater population than other legislative districts in the same state. The community, moreover, will comprise a lesser

⁹ *Id.* at 1124.

¹⁰ *Wesberry v. Sanders*, 376 U.S. 1 (1964).

¹¹ *See* Fla. Const. art. X § 8; Tex. Const. art III, § 26; *see also Reynolds v. Sims*, 377 U.S. 533, 559, 577 (1964); *Brown v. Thomson*, 462 U.S. 835, 842-43 (1983).

percentage of the total population of the legislative district than it would but-for the differential undercount.

135. The federal government also uses Decennial Census data to allocate hundreds of billions of dollars in public funding each year, including to states and local governments. A total of approximately \$700 billion is distributed annually to nearly 300 different census-guided federal grant and funding programs. These funds determine the ability of state and local governments to provide for quality education, public housing, transportation, health care and other services, for all their residents, citizens and non-citizens alike.

B. The Decennial Census' Undercount of Immigrant Communities of Color and Past Practice of Excluding a Question Concerning Citizenship

1. The Decennial Census' Historical Undercount of Immigrant Communities of Color

136. Some demographic groups have proven more difficult to count than others. The Census Bureau refers to these groups as “hard-to-count.” Racial and ethnic minorities, immigrant populations, and non-English speakers 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.

137. The Census Bureau itself has determined that Latinos are at a greater risk of not being counted. Recent data shows that of the estimated 56.5 million Latinos living in the United States, “roughly one in three live in hard-to-count census tracts [i.e., communities].”¹²

¹² The Leadership Conference Education Fund, *Will You Count? Latinos in the 2020 Census 1* (April 2018).

138. Individuals identifying as Hispanic were undercounted by almost 5% in the 1990 Decennial Census, and though the number has decreased some over the past two censuses, it remains significant. The 2010 Decennial Census failed to count more than 1.5 million Hispanic and African-American individuals. Other immigrant communities, including Asian-Americans and Arab-Americans, have historically been undercounted as well.

139. The Census Bureau describes the undercounting of particular racial and ethnic groups as a “differential undercount,” as distinct from a “net undercount” of the entire population.¹³ Indeed, the population of the United States as a whole is typically over-counted. For example, in 2010, the total U.S. population was over-counted by approximately .01%, due mostly to duplicate counts of whites owning multiple homes.¹⁴

140. Over time, the Census Bureau has developed a range of strategies to address the differential undercount of “hard-to-count” populations—including targeted marketing and outreach efforts, partnerships with community organizations, deployment of field staff to follow up with individuals who do not respond, and retention of staff with foreign language skills. In conjunction with prior Decennial Censuses, the Census Bureau designed and implemented public advertising campaigns to reach hard-to-count immigrant communities, including using paid media in over a dozen different languages to improve responsiveness.

¹³ See Coverage Measurement Definitions, Census.gov (last visited Jun. 2, 2018), https://www.census.gov/coverage_measurement/definitions/.

¹⁴ Associated Press, *2010 Census Missed 1.5 Million Minorities*, CBS News, May 22, 2012, <https://www.cbsnews.com/news/2010-census-missed-15-million-minorities/>.

141. For the 2000 and 2010 Decennial Censuses, the Census Bureau partnered with local businesses, faith-based groups, community organizations, elected officials, and ethnic organizations to reach these communities and improve the accuracy of the count. These efforts and increased investment of resources in the 2000 and 2010 Decennial Censuses reduced the undercount of all populations, including hard-to-count populations.

2. The Census Bureau’s Decades-Long Opposition to the Inclusion of a Citizenship Question on the Decennial Census

142. For decades, the Census Bureau opposed the inclusion of a question about citizenship status on the Decennial Census questionnaire based on its longstanding expert conclusion that the inclusion of such a question would impair accuracy, and exacerbate the undercounting of immigrant communities of color.

143. The question concerning citizenship did not appear on the short-form Decennial Census questionnaire sent to every household in the United States, in 1960, 1970, 1980, 1990, 2000, or 2010.

144. Prior to the 1980 Decennial Census, an interagency council tasked with examining the census questionnaire recommended that a citizenship question not be included on the 1980 Decennial Census questionnaire sent to every household in the United States.¹⁵

145. Similarly, in 1980, the Census Bureau opposed adding a citizenship question, stating that “any effort to ascertain citizenship will inevitably jeopardize the overall accuracy of the population count. . . . Questions as to citizenship are particularly

¹⁵ 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. Jan. 9, 1983).

sensitive in minority communities and would inevitably trigger hostility, resentment and refusal to cooperate.”¹⁶

146. Prior to the 1990 Decennial Census, the Census Bureau once again opposed the addition of inquiries into immigration status in the Decennial Census.¹⁷ The then-Director of the Bureau testified before Congress that asking about citizenship or legal status could cause the Census Bureau to be “perceived as an enforcement agency” and that doing so would have “a major effect on census coverage.”¹⁸ He also told Congress that the Census Bureau believed that the addition of a citizenship question would cause immigrants and legal residents to “misunderstand or mistrust the census and fail or refuse to respond.”¹⁹

147. Similarly, the Census Bureau declined to include a question on citizenship in the 2000 and 2010 Censuses. In 2005, former Census Bureau Director Kenneth Prewitt testified that adding a citizenship question would reduce response rates by non-citizens and the accuracy of counts for both citizens and non-citizens would be worse if the question was included.²⁰

¹⁶ *Fed’n for Am. Immigration Reform v. Klutznick*, 486 F. Supp. 564, 568 (D.D.C. 1980).

¹⁷ See Census Equity Act: Hearings Before the Subcomm. on Census & Population of the H. Comm. on Post Office & Civ. Serv., 101st Cong. 43–45, 59 (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) (hereinafter “Keane Testimony 1988”).

¹⁸ 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. 16, 23, 32 (1985) (statement of John Keane, Dir., Bureau of the Census).

¹⁹ Keane Testimony 1988, *supra* n.18, at 50.

²⁰ Counting the Vote: Should Only U.S. Citizens Be Included in Apportioning Our Elected Representatives?: Hr’g Before the Subcomm. on Federalism & the Census of the H. Comm. on Gov’t Reform, 109th Cong. 72-73, 76-78 (2005) (statement of Kenneth Prewitt).

148. In 2009, eight former Census Bureau Directors—from both political parties—issued a statement in response to a congressional attempt to add a question on citizenship and immigration status to the 2010 Decennial Census. The former directors raised concerns that the Census Bureau would not have enough time to determine the effect of suggested questions concerning citizenship and immigration status on data quality and about the potential impact on participation in the 2010 Decennial Census of both legal and undocumented immigrants, particularly in mixed immigration status households.²¹

149. In 2010, the Director of the Census Bureau explained that “we don’t ask citizenship or documentation status” on the Decennial Census and that the form does not include “things that may make some people uncomfortable.”²²

150. As recently as 2016, four former Census Bureau Directors appointed by presidents of both political parties filed a Supreme Court amicus brief in which they explained that “a [person-by-person] 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.”²³

²¹ Vincent P. Barabba, et al, *Statement of Former Census Directors on Adding a New Question to the 2010 Census* (Oct. 16, 2009), https://reformimmigrationforamerica.org/wp-content/uploads/2009/10/thecensusproject.org_letters_cp-formerdirs-16oct2009.pdf.

²² *Video of Robert Groves, C-SPAN* (Mar. 26, 2010), <https://www.c-span.org/video/?292743-6/2010-us-census&start=1902>.

²³ 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).

151. The almost 70-year long practice of not inquiring about citizenship on the Decennial Census has ensured that the Census Bureau has the best opportunity to achieve the constitutional mandate of a complete count of every person—both citizens and non-citizens—in the United States.

3. Reliable Citizenship Data Gathered by the Census Bureau through Means Other than the Decennial Census Questionnaire

152. Of course, the Census Bureau is able to gather citizenship data through surveys, but it does so separate and apart from the Decennial Census' actual enumeration of the population.

153. Through the 2000 Decennial Census, the Census Bureau also used a second, "long form" questionnaire, which was sent to approximately one in six households, and which contained additional questions. From 1970 to 2000, one of the questions on the long form questionnaire concerned citizenship status.

154. Beginning in 2010, the long form Decennial Census questionnaire was discontinued. Its functions were replaced by the American Community Survey ("ACS"), which began operating in 2000 and was at full sample size for housing units in 2005, and for group quarters in 2006. The ACS is a yearly survey of approximately 2% of households across the United States (about 3.5 million). Unlike the Decennial Census, the ACS is not a hard count, but rather a sample that is used to generate statistical estimates, and which can be adjusted to correct for an undercount. Although the ACS survey is conducted annually, ACS data from individual years can also be aggregated in multi-year estimates (referred to as "3-year" or "5-year" estimates," depending on the number of years of data aggregated together) to produce greater levels of statistical precision for estimates concerning smaller geographical units.

155. As the Census Bureau points out, the Decennial Census and ACS “serve different purposes.” While the Decennial Census is intended to “provide an official count of the entire U.S. population to Congress,” the ACS is intended to provide information on the social and economic needs of communities.²⁴

156. A question concerning citizenship status currently appears as among one of more than 50 questions on the detailed 28-page ACS questionnaire. The citizenship question that appears on the ACS is not a simple binary yes/no question. Rather, for U.S. citizens, it also asks more detailed information about a person’s place of birth; and for some U.S. citizens, it also requests information about the citizenship status of their parents, and whether they became a U.S. citizen by naturalization. The ACS citizenship question appears as follows:

The image shows a screenshot of a questionnaire question titled "Is this person a citizen of the United States?". The question is presented in a light blue box with a white background. Below the title, there are five radio button options, each with a corresponding checkbox. The first four options are for "Yes" responses, and the fifth is for "No". The fourth option includes a sub-question about the year of naturalization, which is followed by a four-digit input field. A mouse cursor is pointing at the right side of the input field.

Is this person a citizen of the United States?

Yes, born in the United States

Yes, born in Puerto Rico, Guam, the U.S. Virgin Islands, or Northern Marianas

Yes, born abroad of U.S. citizen parent or parents

Yes, U.S. citizen by naturalization – *Print year of naturalization* ↗

No, not a U.S. citizen

157. The citizenship information gathered through the ACS surveys has been, and continues to be, used by a wide array of local, state, and federal agencies, as well as civic organizations and researchers.

²⁴ *ACS and the 2020 Census*, U.S. Census Bureau (last updated Jan. 12, 2018), <https://www.census.gov/programs-surveys/acs/about/acs-and-census.html>.

158. The inclusion of a citizenship question on the ACS questionnaire does not implicate the same concerns as including a citizenship question on the Decennial Census. The highly detailed ACS questionnaire, which is sent only to a smaller representative sample of the population, does not carry the same appearance as a federal door-to-door inquiry of the entire population of the United States. Moreover, unlike the Decennial Census, which is a hard count of the population that cannot be adjusted statistically to account for non-respondents, population data from the ACS is based on a sample that may be adjusted statistically to produce reliable estimates for the larger population.

C. Advocacy Efforts by Members and Associates of the Trump Administration to Add a Citizenship Question to the Decennial Census in Response to the Growing Political Power of Immigrant Communities of Color

159. For years, individuals who are now members and associates of the Trump Administration have expressed concern about the presence and growth of immigrant communities of color in this country and their attendant political power, and have advocated adding a citizenship question to the Decennial Census for the express purpose of facilitating efforts to reduce the political clout of those communities.

160. For example, when Christopher Stanley, President Trump's Census Bureau Chief of Congressional Affairs, served as a senior legislative aide to former Senator David Vitter, Vitter sponsored legislation in 2010, 2012, and again in 2014 seeking to add a citizenship question to the Decennial Census. Vitter said he wanted to

prevent “large populations of illegals [from being] rewarded” in congressional apportionment.²⁵

161. Trump Administration advisors on the issues of elections and voting—including members of President Trump’s appointees to his now-defunct Presidential Commission on Election Integrity (“PCEI”), made repeated statements to the same effect. For example, PCEI Commissioner Hans von Spakovsky said adding the citizenship question was “essential,”²⁶ and criticized inclusion of non-citizens in the census, complaining that it “dilutes the votes of citizens by including large numbers of ineligible individuals such as noncitizens . . . [in] redistricting, allowing them to manipulate and gerrymander legislative districts.”²⁷

162. President Trump’s PCEI Vice-Chair, Kansas Secretary of State Kris Kobach, is an anti-immigrant zealot who says that he proposed to President Trump that he add a citizenship question to the Decennial Census “shortly after he was inaugurated” in January 2017. Kobach reports that President Trump “absolutely was interested in this.”²⁸

163. In January 2018, Kobach blogged that adding a citizenship question to the Decennial Census was for the express purpose of draining political representation from

²⁵ Jonathan Tilove, *Census Bureau knocks Sen. David Vitter's proposal to ask about immigration status*, Times-Picayune, Oct. 13, 2009, http://www.nola.com/politics/index.ssf/2009/10/census_bureau_knocks_sen_david.html.

²⁶ Hans A. von Spakovsky, *Commentary: Citizenship Question Essential for Accurate U.S. Census*, Orlando Sentinel, Feb. 19, 2018, <http://www.orlandosentinel.com/opinion/os-ed-accurate-census-important-front-burner-20180214-story.html>.

²⁷ Hans A. von Spakovsky, *Evenwel v. Abbott: Destroying Electoral Equality and Eroding “One Person, One Vote,”* CATO SUPREME COURT REVIEW 2016, <https://object.cato.org/sites/cato.org/files/serials/files/supreme-court-review/2016/9/2016-supreme-court-review-chapter-4.pdf>.

²⁸ Bryan Lowry, *That citizenship question on the 2020 Census? Kobach says he pitched it to Trump*, Kansas City Star, Mar. 27, 2018, <http://www.kansascity.com/news/politics-government/article207007581.html>.

immigrant communities. He complained that currently when “congressional districts are drawn up . . . not only are legal aliens counted, but illegal aliens are counted too,” and that having this information was necessary “so Congress [can] consider excluding illegal aliens from the apportionment process” and reduce the political power of those communities, as well as to provide the government “information about the movement of people in and out of the country.”²⁹ Kobach’s blog post did not mention VRA enforcement as any reason for adding a citizenship question to the Decennial Census.

164. And at about the same time as Kobach was pitching the citizenship question to President Trump, Chair of the White House Domestic Policy Council, Andrew Bremberg, released a draft Executive Order proposing census questions to determine immigration and citizenship status.³⁰

165. The Administration’s hostility towards immigrants is motivated by animus toward people of color and is in response to the growing political power of immigrant communities of color. The vast majority of immigrants in the United States—approximately 86.7%—are people of color and 44.9% are of Latino origin.³¹

166. The goal of reducing the political representation of immigrant communities of color is consistent with xenophobic rhetoric that immigration should be

²⁹ Kris Kobach, Exclusive—Kobach: Bring the Citizenship Question Back to the Census, Breitbart, Jan. 30, 2018, <http://www.breitbart.com/big-government/2018/01/30/exclusive-kobach-bring-citizenship-question-back-census/>.

³⁰ BREMBERG, MEMORANDUM FOR THE PRESIDENT, SUBJECT: EXECUTIVE ORDER ON PROTECTING TAXPAYER RESOURCES BY ENSURING OUR IMMIGRATION LAWS PROMOTE ACCOUNTABILITY AND RESPONSIBILITY (Jan. 23, 2017), <http://apps.washingtonpost.com/g/documents/national/draft-executive-orders-on-immigration/2315/>.

³¹ 2016 State Immigration Data Profiles, Migration Policy Institute (June 1, 2018), <https://www.migrationpolicy.org/data/state-profiles/state/demographics/US>.

restricted because of the political consequences.³² For example, Mark Krikorian, the Executive Director of the Center for Immigration Studies—a leading source for Trump Administration immigration policy and personnel—warned in 2015 that:

immigrants and their adult children are disproportionately big-government liberal who vote heavily Democrat because that party’s policies accord with their own views and interests.... Note that better control over illegal immigration—walls, mass deportations, whatever— isn’t going to fix this. Most immigration is legal immigration and that’s where change is most needed.³³

167. President Trump has similarly complained about the growth of immigrant communities of color. For example, on August 21, 2015, then-candidate Trump tweeted, “How crazy - 7.5% of all births in U.S. are to illegal immigrants, over 300,000 babies per year. This must stop. Unaffordable and not right!”³⁴ Just weeks before the election, candidate Trump similarly lamented that immigrants “as a share of national population is set to break all records.”³⁵

168. More recently, on April 5, 2018, President Trump criticized current U.S. immigration policy because in his view, it enhanced the political power of immigrant communities of color, saying:

we cannot let people enter our country... through chain migration....This is what the Democrats are doing to you. And they like it because they think they’re going to vote Democratic.... A lot of them aren’t going to be

³² See Jason Richwine, *More Immigration Would Mean More Democrats*, National Review (Oct. 3, 2017) <https://www.nationalreview.com/2017/10/immigration-democratic-party-republican-party-dream-act-party-affiliation-conservatives-limited-government-traditional-values/>; and Gillian Edevane, *Trump Laments People In Migrant Caravan: Immigrants All ‘Vote For Democrats,’* Newsweek, Apr. 30, 2018, <http://www.newsweek.com/trump-laments-caravan-immigrants-vote-democrats-906220>.

³³ Mark Krikorian, *Mass Legal Immigration Will Finish Conservatism*, National Review, Aug. 31, 2015, <https://www.nationalreview.com/2015/08/real-threat-conservatism-isnt-trump-mark-krikorian/>.

³⁴ Donald Trump (@realDonaldTrump), Twitter (Aug. 21, 2015 6:56 AM), <https://twitter.com/realdonaldtrump/status/634725641972248576>.

³⁵ Los Angeles Times Staff, *Transcript: Donald Trump’s full immigration speech, annotated*, L.A. Times, Aug. 31, 2016, <http://www.latimes.com/politics/la-na-pol-donald-trump-immigration-speech-transcript-20160831-snap-htmllstory.html>.

voting. A lot of times it doesn't matter, because in places, like California, the same person votes many times. You probably heard about that. They always like to say. 'Oh, that's a conspiracy theory.' Not a conspiracy theory, folks. Millions and millions of people.³⁶

169. Again, on April 28, 2018, President Trump said:

If a person puts their foot over the line, we have to take them into our country. We have to register them.... And you know, one of the reasons they do it is because the Democrats actually feel and they are probably right, that all of these people that are pouring across are going to vote for Democrats, they're not going to vote for Republicans, they're going to vote no matter what we do, they're going to vote.³⁷

170. President Trump's repeated statements lamenting the growth of immigrant communities of color and their attendant political power dovetail with his repeated denigration of non-white immigrants; characterizing them as violent criminals and terrorists, animals, and deadbeats; and calling for steps that would prevent immigrants of color from entering and/or to reduce their numbers within the United States. To take just a few examples:

- In launching his presidential campaign, Trump said: "When Mexico sends its people. . . . They're sending people that have lots of problems, and they're bringing those problems with us. They're bringing drugs. They're bringing crime. They're rapists. . . . It's coming from more than Mexico. It's coming from all over South and Latin America."³⁸
- Repeatedly over the course of his campaign, Trump characterized the U.S. citizen children of immigrants as "anchor babies"³⁹ and vowed to seek an end to "birthright citizenship."⁴⁰

³⁶ Donald Trump, Remarks by President Trump at a Roundtable Discussion on Tax Reform (Apr. 5, 2018), <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-roundtable-discussion-tax-reform/>.

³⁷ Draft Transcript, Donald Trump, Make America Great Again Rally in Washington, Michigan (Apr. 28, 2018), <https://factba.se/transcript/donald-trump-speech-maga-rally-washington-michigan-april-28-2018>

³⁸ Full text: Donald Trump announces a presidential bid, Wash. Post, June 16, 2015, https://www.washingtonpost.com/news/post-politics/wp/2015/06/16/full-text-donald-trump-announces-a-presidential-bid/?noredirect=on&utm_term=.0a30b7ba1f8a.

³⁹ Reena Flores, *Donald Trump: "Anchor babies" aren't American citizens*, CBS News, Aug. 19, 2015, <https://www.cbsnews.com/news/donald-trump-anchor-babies-arent-american-citizens/>.

- Trump called for “a total and complete shutdown of Muslims entering the United States until our country’s representatives can figure out what the hell is going on . . . [O]ur country cannot be the victims of horrendous attacks by people that believe only in Jihad. . . .”⁴¹
- On February 27, 2017, during a meeting with his advisors on the night before he would deliver his first address to Congress, President Trump “recited a few **made-up Hispanic names** and described potential crimes they could have committed, such as rape or murder.” His advisors “[Stephen] Miller and [Jared] Kushner laughed.”⁴²
- On January 11, 2018, in a meeting with members of Congress, President Trump questioned why immigrants were being admitted from El Salvador, Haiti, and Africa, asking “why are we having all these **people from shithole countries** come here.” In contrast, Trump said he preferred **immigrants “from places like Norway.”**⁴³
- As to the immigration diversity lottery, which provides visas to immigrants from countries with low rates of immigration to the U.S., President Trump stated in February 2018 that those selected “turn out to be horrendous. . . . They’re **not giving us their best people**, folks.”⁴⁴
- On May 16, 2018, President Trump said “We have people coming into the country, or trying to come in. . . You wouldn’t believe how bad these people are. These aren’t people, these are **animals**”⁴⁵

171. Consistent with his rhetoric, the Trump Administration has undertaken to

reduce the number of immigrants of color in this country. Its actions include:

⁴⁰ C. Brodesser-Akner & B. Johnson, *Trump: I’ll sue to revoke birthright citizenship*, NJ.com, Aug. 22, 2015,

http://www.nj.com/politics/index.ssf/2015/08/trump_revoke_us_citizenship_from_those_with_undocu.html

⁴¹ Jenna Johnson, *Trump calls for ‘total and complete shutdown of Muslims entering the United States,’* Wash. Post., Dec. 7, 2015, https://www.washingtonpost.com/news/post-politics/wp/2015/12/07/donald-trump-calls-for-total-and-complete-shutdown-of-muslims-entering-the-united-states/?utm_term=.49b5e0e287f7.

⁴² Josh Dawsey and Nick Miroff, *The Hostile Border between Trump and the Head of DHS*, Wash. Post, May 25, 2015, https://www.washingtonpost.com/politics/were-closed-trump-directs-his-anger-over-immigration-at-homeland-security-secretary/2018/05/24/4bd686ec-5abc-11e8-8b92-45fdd7aaef3c_story.html?utm_term=.fa5ec642b4a3.

⁴³ Ryan Teague Beckwith, *President Trump Called El Salvador, Haiti ‘Shithole Countries’; Report*, TIME Magazine, Jan. 11, 2018, <http://time.com/5100058/donald-trump-shithole-countries/>

⁴⁴ Dara Lind, “*The Snake*”: *Donald Trump brings back his favorite anti-immigrant fable at CPAC*, Vox, Feb. 23, 2018, <https://www.vox.com/policy-and-politics/2018/2/23/17044744/trump-snake-speech-cpac>.

⁴⁵ Julie Hirschfeld Davis, *Trump Calls Some Unauthorized Immigrants ‘Animals’ in Rant*, N.Y. Times, May 16, 2018, <https://www.nytimes.com/2018/05/16/us/politics/trump-undocumented-immigrants-animals.html>

- Banning individuals from six majority Arab and/or Muslim countries from entering the United States;
- Rescinding the Deferred Action for Childhood Arrivals (“DACA”) program, which allowed 800,000 individuals brought to this country as children to legally reside and work in the United States. Over 90% of the participants in the program were Latino;
- Rescinding Temporary Protected Status programs for individuals from El Salvador, Honduras, Nicaragua, Haiti, and Nepal. These programs had allowed over 310,000 individuals from these countries to reside legally in the United States.
- Calling to end the diversity visa lottery. Over 40 % of individuals admitted to the United States through the diversity visa program are from Africa, while another 30% are from Asia.
- Proposing to end family-based immigration. The countries that send the highest number of immigrants to the United States through family-based migration are in Latin America and Asia.

D. The Trump Administration’s Addition of a Citizenship Question to the 2020 Decennial Census Questionnaire Was Motivated by Discriminatory Animus against Immigrant Communities of Color

172. The primary purpose of the Administration’s unnecessary last-minute addition of a citizenship question was to harm Latinos and immigrants of color by reducing their political representation and access to federal resources. The evidence, just from public sources, is overwhelming. It includes: (1) the impact of adding the citizenship question on immigrant communities of color, both in terms of stoking fears of government among immigrants of color and reducing the political representation and access to resources in their communities; (2) the historical background of the decision to add the citizenship question, including other decisions by Secretary Ross to undermine measures that the Census Bureau has typically taken to mitigate the differential undercount; (3) the rushed and highly unusual sequence of events that led to the decision, including departures from procedural and substantive guidelines to test census questions

before implementation, ensure the overall accuracy of the Decennial Census enumeration, and protect the census from undue political influence; and (4) contemporaneous public statements by Trump Administration officials, allies, and the Trump campaign indicating that the purpose of adding a citizenship question to the Decennial Census was to reduce the political clout of immigrant communities of color.⁴⁶

1. The Impact of Adding a Citizenship Question to the Decennial Census on Immigrant Communities of Color

173. As described, *supra*, for decades under both Republican and Democratic administrations, the Census Bureau has consistently opposed the addition of a citizenship question to the Decennial Census questionnaire due to concerns that such a question would deter participation among Latinos and immigrants, and thereby undermine the accuracy of the Decennial Census enumeration. The overwhelming consensus of professional demographers, political scientists, and statisticians is that the inclusion of a question on citizenship in the Decennial Census will cause many Latinos and immigrants of color not to respond to the questionnaire, exacerbating the differential undercount, and thus reducing the political representation and access to resources for members of these groups and others who live in the same communities.

a. The Climate of Fear of Government among Latino and Immigrant Communities Created by the Trump Administration

174. Particularly when coupled with the toxic anti-immigrant environment the Trump Administration has fomented, adding a citizenship question to the Decennial

⁴⁶ See *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252 (1977) (setting forth the factors for assessing claims alleging invidious purpose).

Census will sow significantly more fear among Latinos and other immigrant communities of color.

175. For example, the Trump Administration has engaged in a series of high profile immigration enforcement actions—sweeps, raids, and high profile arrests—deliberately intended to promote fear in and among immigrant communities of color.

These include:

- Starting on February 6, 2017, less than three weeks after President Trump’s inauguration, ICE conducted a nationwide sweep by its Los Angeles, Atlanta, Chicago, New York and San Antonio field offices, resulting in 680 detentions.
- In September 2017, the Administration launched “Operation Safe City” which involved mass arrests of 450 individuals in Baltimore, Chicago, Denver, Los Angeles, New York, Philadelphia, Seattle, Washington, D.C., and Massachusetts.
- In April 2018, ICE raided a meatpacking plant in Morristown, Tennessee and detained 97 individuals, the largest workplace raid in a decade. According to press reports, during the raids ICE indiscriminately detained numerous Latino individuals who had authorization to work.

176. The Trump Administration’s enforcement actions specifically target Latinos and immigrants of color. Of the 226,119 ICE removals during FY 2017, 93.48% of individuals deported were from Latin American countries.⁴⁷

177. The Trump Administration’s enforcement actions also target immigrants during interactions with government agencies. For example, Immigration and Customs Enforcement (“ICE”) has begun summarily deporting individuals who reported for routine check-ins—even where they had received stays of deportation—and making

⁴⁷ Fiscal Year 2017 ICE Enforcement and Removal Operations Report, U.S. Immigration and Customs Enforcement (June 1, 2018), <https://www.ice.gov/sites/default/files/documents/Report/2017/iceEndOfYearFY2017.pdf>.

“collateral arrests” of individuals ICE encountered during operations targeting other individuals.

178. As one of his first actions following his confirmation as Secretary of the Department of Homeland Security (“DHS”), on February 20, 2017, John Kelly issued a memorandum providing that DHS will “no longer afford Privacy Act rights and protections to persons who are neither U.S. citizens nor lawful permanent residents.”⁴⁸ Previous DHS policy and numerous DHS programs expressly provided assurances to immigrants and applicants that their personal data would be protected and could not be used for immigration enforcement purposes.

179. ICE has also engaged in high profile arrests of immigrants in “sensitive locations,” including government venues previously considered safe spaces, including detaining:

- Parents after they drop off their children at schools;
- A ten-year-old child who was seeking medical care in a hospital;
- A woman in a hospital who was awaiting emergency surgery for brain cancer;
- Patients as they leave hospitals after seeking medical care;
- People in courthouses, including victims of domestic violence seeking protective orders or appearing at a custody hearing;

⁴⁸ JOHN KELLY, ENFORCEMENT OF THE IMMIGRATION LAWS TO SERVE THE NATIONAL INTEREST at 5 (Feb. 20, 2017), *available at* https://www.dhs.gov/sites/default/files/publications/17_0220_S1_Enforcement-of-the-Immigration-Laws-to-Serve-the-National-Interest.pdf (hereinafter “Kelly, Enforcement of Immigration Laws”).

180. The Immigrant Defense Project documented a 1,200% increase in ICE arrests at courthouses in New York State between 2016 and 2017.⁴⁹

181. These enforcement activities in sensitive spaces have been accompanied by the Trump Administration's public statements reinforcing the message that immigrant communities of color should fear the government. For example:

- On June 13, 2017, Acting ICE Director Thomas Homan testified in front of the House Appropriations Committee's Subcommittee on Homeland Security that “every immigrant in the country without papers . . . should be uncomfortable. You should look over your shoulder. And you need to be worried. . . . No population is off the table. . . .”⁵⁰
- On August 22, 2017, Homan again stated: “The message is clear: If you're in the United States illegally, if you happen to get by the Border Patrol, someone is looking for you. And that message is clear.”⁵¹
- On May 7, 2018, Attorney General Sessions announced a “zero tolerance” policy, including separating children from parents who cross the border unlawfully.⁵²
- On May 22, 2018, Secretary of Education Betsy DeVos testified in Congress that public schools can choose to call ICE to report potentially undocumented students, describing it as a “local community decision.”⁵³

⁴⁹ Immigrant Defense Project, *IDP Unveils New Statistics & Trends Detailing Statewide ICE Courthouse Arrests in 2017*, (Dec. 31, 2017), <https://www.immigrantdefenseproject.org/wp-content/uploads/ICE-Courthouse-Arrests-Stats-Trends-2017-Press-Release-FINAL.pdf>.

⁵⁰ Hearing on the ICE and CBP F.Y. 2018 Budget Before the Subcomm. on Homeland Security of the H. Comm. on Appropriations, 115th Cong. (2017) 2017 WLNR 18737622.

⁵¹ Press Release, The White House Office of the Press Secretary, Press Gaggle by Director of Immigration and Customs Enforcement Tom Homan et al. (June 28, 2017).

⁵² See JEFF SESSIONS, ATTORNEY GENERAL SESSIONS DELIVERS REMARKS TO THE ASSOCIATION OF STATE CRIMINAL INVESTIGATIVE AGENCIES 2018 SPRING CONFERENCE (May 7, 2018), available at <https://www.justice.gov/opa/speech/attorney-general-sessions-delivers-remarks-association-state-criminal-investigative>; see also JEFF SESSIONS, ATTORNEY GENERAL SESSIONS DELIVERS REMARKS DISCUSSING THE IMMIGRATION ENFORCEMENT ACTIONS OF THE TRUMP ADMINISTRATION (May 7, 2018), available at <https://www.justice.gov/opa/speech/attorney-general-sessions-delivers-remarks-discussing-immigration-enforcement-actions>; see generally Sari Horwitz and Maria Sacchetti, *Sessions Vows to Prosecute All Illegal Border Crossers and Separate Children From Their Parents*, Wash. Post, May 7, 2018, https://www.washingtonpost.com/world/national-security/sessions-says-justice-dept-will-prosecute-every-person-who-crosses-border-unlawfully/2018/05/07/e1312b7e-5216-11e8-9c91-7dab596e8252_story.html?utm_term=.9d4809c83868.

182. These actions and statements by the Trump Administration have been successful in instilling fear among Latinos and other immigrant communities of color. Immigrants of color more broadly are now avoiding interactions with public institutions, even when it concerns their own personal health or safety or the well-being of their children.

183. For example, a 2017 survey of judges, law enforcement personnel, prosecutors, and victims' advocates conducted by the American University National Immigrant Women's Advocacy Project found marked increases in fear among immigrants resulting in a decline in immigrant willingness to cooperate in criminal prosecutions and immigrant victims seeking protection from the legal system.⁵⁴ The report's findings included that:

- The “vast majority (88% to 94%)” of judges “reported being concerned about the impact increased immigration enforcement could have on access to justice for immigrant.” Judges similarly reported “that fear of coming to court, worry, and distrust of the police, courts, justice system, and getting involved with any government agencies impedes access to justice for immigrants.”
- Law enforcement officials reported “seeing the decline in cooperation and a rise in fear of law enforcement” among immigrant communities “because they believe local law enforcement have the authority (and in some cases, the desire) to deport these individuals.” 51% of law enforcement officials reported “fear of deportation” and 42% reported “[p]erpetrator threatened to turn victim in to immigration officials if [they] cooperated” as reasons for non-cooperation.
- Prosecutors reported that immigrants were less likely to cooperate in sexual assault and domestic violence cases than in prior years.

⁵³ Rebecca Klein, *Betsy DeVos Stirs Uproar By Saying Schools Can Call ICE On Undocumented Kids*, Huffington Post, May 23, 2018, https://m.huffpost.com/us/entry/us_5b05a297e4b05f0fc8441ce3/amp.

⁵⁴ National Immigrant Women's Advocacy Project, *Promoting Access to Justice for Immigrant and Limited English Proficient Crime Victims in an Age of Increased Immigration Enforcement: Initial Report from a 2017 National Survey*, May 3, 2018, <http://library.niwap.org/wp-content/uploads/Immigrant-Access-to-Justice-National-Report.pdf>.

Approximately 70% reported that the fear “that the perpetrator will have the victim deported” and “the perpetrator’s direct threats to deport the victim” played a role in victims’ unwillingness to cooperate.

- Victims’ advocates report that “[p]rimary among the reasons for [immigrants] not seeking help from police or courts and not following through with these agencies” are “fear of deportation”, “fear that the perpetrator will retaliate by calling immigration enforcement officials.”

184. Numerous police chiefs and prosecutors from across the country have confirmed that the Trump Administration’s actions have created deep insecurity and fear among immigrant communities, stopping many from coming to court or calling the police in the first place. For example:

- Los Angeles Police Chief Charlie Beck stated that reports of sexual assault and domestic violence made by Latino residents fell 25% and 10% respectively between 2016 and 2017 amidst deportation concerns.⁵⁵
- Houston Police Chief Art Acevedo stated that the number of Hispanics reporting rape decreased 42.8% between 2016 and 2017.⁵⁶ In comparison, the same study showed an 8.2% increase in non-Hispanic victims reporting rapes and 11.7% increase in non-Hispanics reporting violent crimes generally.⁵⁷
- In Denver, crime reports among non-Latinos increased 3.6% in the first three months of 2017 compared with the same period in 2016, and crime reports generally fell 12% among Latinos.⁵⁸ This drop occurred disproportionately in immigrant-heavy neighborhoods.⁵⁹
- Denver City Attorney Kristen Bronson reported that, in the months following the release of a videotape of ICE waiting in a courthouse to make an arrest, thirteen victims of physical and violent assault were “not

⁵⁵ Los Angeles Police Dep’t, DECLINE IN REPORTING OF CRIME AMONG HISPANIC POPULATION (March 21, 2017), available at http://www.lapdonline.org/newsroom/news_view/61998.

⁵⁶ Brooke A. Lewis, *HPD Chief Announces Decrease in Hispanics Reporting Rape and Violent Crimes Compared to Last Year*, Houston Chronicle, Apr. 6, 2017, <http://www.chron.com/news/houston-texas/houston/article/HPD-chief-announces-decrease-in-Hispanics-11053829.php>.

⁵⁷ *Id.*

⁵⁸ Rob Arthur, *Latinos In Three Cities Are Reporting Fewer Crimes Since Trump Took Office*, FiveThirtyEight, May 18, 2017, <https://fivethirtyeight.com/features/latinos-report-fewer-crimes-in-three-cities-amid-fears-of-deportation/>.

⁵⁹ *Id.*

willing to proceed with the case for fear that they would be spotted in the courthouse and deported.”⁶⁰

- In Philadelphia, crime reports by non-Latinos declined by 1.0%, while they fell 4.3% among Latinos.⁶¹ As in Denver, this drop occurred disproportionately in immigrant-heavy neighborhoods.⁶²

185. Similarly, a survey of advocates and attorneys in New York found that many had clients who were declining to pursue legal remedies due to fears of immigration enforcement: 67% reported clients who declined to seek help from the courts; 3% reported clients who declined to pursue an order of protection; 48% reported victims who declined to seek custody of their children or visitation rights; and 46% reported working with immigrant survivors of domestic violence who feared serving as a complaining witness.⁶³

186. Service providers also report a significant drop in immigrant victims contacting law enforcement or pursuing legal protection or redress. In a nationwide survey, 78% of organizations said that immigrant survivors of domestic violence or sexual assault had concerns contacting the police; 75% reported that immigrant survivors are concerned about going to court in a matter related to the abuser; and 43% reported immigrant victims who had dropped civil or criminal cases due to immigration-related

⁶⁰ Heidi Glenn, *Fear of Deportation Spurs 4 Women to Drop Domestic Abuse Cases in Denver*, N.P.R., Mar. 21, 2017, <http://www.npr.org/2017/03/21/520841332/fear-of-deportation-spurs-4-women-to-drop-domestic-abuse-cases-in-denver/>.

⁶¹ Rob Arthur, *Latinos In Three Cities Are Reporting Fewer Crimes Since Trump Took Office*, FiveThirtyEight, May 18, 2017, <https://fivethirtyeight.com/features/latinos-report-fewer-crimes-in-three-cities-amid-fears-of-deportation/>.

⁶² *Id.*

⁶³ *ICE in New York State Courts Survey*, Immigrant Defense Project (last accessed July 26, 2017), <https://www.immigrantdefenseproject.org/ice-courts-survey/>.

fears.⁶⁴ Additionally, immigrants self-report that they are too afraid to enter domestic violence shelters or courts.

187. Immigrants are even avoiding contact with welfare programs for which they are legally eligible for fear of retribution or even deportation.⁶⁵ This includes programs such as Special Supplemental Nutrition Program for Women, Infants, and Children (“WIC”) and Supplemental Nutrition Assistance Program (“SNAP”). For example, counties in New Jersey with large immigrant communities collectively saw their food bank participation cut in half. SNAP enrollment in New Jersey fell by 8.1%, Florida WIC participation fell by 9.6%, and Texas WIC enrollment fell by 7.4%.

b. The Census Bureau’s Findings that the Climate of Fear Created by the Trump Administration Will Negatively Impact Census Participation by Latinos and Immigrants of Color

188. The climate of fear in immigrant communities caused by the Trump Administration has exacerbated concerns about participating in the Decennial Census. Since the start of the Trump Administration, numerous researchers within the Census Bureau itself have found that survey respondents from “hard to count” groups have expressed concern about the potential misuse of census data by the government.

189. For example, in September 2017, the Census Bureau’s own Center for Survey Measurement (“CSM”) published a memorandum in which it noted a “recent increase in respondents spontaneously expressing concerns about confidentiality in some

⁶⁴ TAHIRIH JUSTICE CENTER, 2017 ADVOCATE AND LEGAL SERVICE SURVEY REGARDING IMMIGRANT SURVIVORS, <http://www.tahirih.org/wp-content/uploads/2017/05/2017-Advocate-and-Legal-Service-Survey-Key-Findings.pdf>.

⁶⁵ Emily Baumgaertner, *Spooked by Trump Proposals, Immigrants Abandon Public Nutrition Services*, N.Y. Times, Mar. 6, 2018, <https://www.nytimes.com/2018/03/06/us/politics/trump-immigrants-public-nutrition-services.html>.

of our pretesting studies conducted in 2017.”⁶⁶ The memorandum explained that “CSM researchers heard respondents express new concerns about topics like the ‘Muslim ban,’ discomfort ‘registering’ other household members by reporting their demographic characteristics, the dissolution of the ‘DACA’ . . . repeated references to Immigration and Customs Enforcement (ICE),” and reported that “respondents’ fears, particularly among immigrant respondents, have increased markedly this year.”

190. Specifically, “Spanish-speakers brought up immigration raids, fear of government, and fear of deportation.”⁶⁷ The memorandum also recounts a report by an interviewer: “A Spanish-speaking respondent answered that he was not a citizen, and then appeared to lie about his country of origin. When the [Field Respondents] started asking about his year of entry into the U.S., he ‘shut down’ and stopped responding to her questions. He then walked out and left her alone in the apartment, which had never happened to her during an interview before.” Some pre-testing interviewees appeared to move out of their homes after being approached by census interviewers.

191. Respondents reported being told by community leaders not to open the door without a warrant signed by a judge, and CSM researchers observed respondents falsifying names, dates of birth, and other information on household rosters. They noted specific immigration-related fears among Spanish-speakers, Chinese-speakers, and Arabic-speakers. These fears included repeated requests for reassurances about data privacy and security, especially in the context of immigration enforcement.

⁶⁶ Memorandum, U.S. Census Bureau, Respondent Confidentiality Concerns, Sept. 20, 2017, <https://www2.census.gov/cac/nac/meetings/2017-11/Memo-Regarding-Respondent-Confidentiality-Concerns.pdf>.

⁶⁷ *Id.* at 3.

192. CSM described these findings as “particularly troubling given that they impact hard-to-count populations disproportionately, and have implications for data quality and nonresponse,” and cited the importance of pretesting questions in addressing these concerns. The memo also highlighted that this degree of non-participation, falsification, and unprompted exclamation of concern is both “unprecedented in the usability interviews that CSM has been conducting since 2014” and likely to be higher during the actual census-taking process because interviewees during pre-testing are financially incentivized and work with an interviewer with whom they have familiarity.⁶⁸

193. CSM thus recommended “systematically collecting data on this phenomenon, and development and pretesting of new messages to avoid increases in nonresponse among hard-to-count populations for the 2020 Census.”⁶⁹

194. On November 2, 2017, the National Advisory Committee on Racial, Ethnic, and Other Populations (“NAC”), a census advisory board, published a slide deck titled “Respondent Confidential Concerns and Possible Effects on Response Rates and Data Quality for the 2020 Census,” which includes evidence of pre-existing anxieties in immigrant communities and communities of color. Focus groups at NAC reported fear that census data would be used by other agencies such as ICE and of resulting deportation.⁷⁰ According to the NAC report, pre-testing respondents, focus group participants, and interviewers said:

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ NATIONAL ADVISORY COMMITTEE ON RACIAL, ETHNIC, AND OTHER POPULATIONS, RESPONDENT CONFIDENTIAL CONCERNS AND POSSIBLE EFFECTS ON RESPONSE RATES AND DATA QUALITY FOR THE 2020 CENSUS at 9, 12 (Nov. 2, 2017), *available at* <https://www.documentcloud.org/documents/4424705-Census-Confidentiality-Presentation.html>.

- “The possibility that the Census could give my information to internal security and immigration could come and arrest me for not having documents terrifies me” (Spanish interview);
- “Particularly with our current political climate, the Latino community will not sign up because they will think that Census will pass their information on and people can come looking for them” (Spanish interview);
- “They say, ‘Never open the door!’” and “This alert has been spread everywhere now” (Korean Focus Group);
- “In light of the current political situation, the immigrants, especially the Arabs and Mexicans, would be so scared when they see a government interviewer at their doorsteps” (Arabic Focus Group);
- “The immigrant is not going to trust the Census employee when they are continuously hearing a contradicting message from the media every day threatening to deport immigrants” (Arabic Focus Group);
- “This may just be a sign of the times, but in the recent several months before anything begins, I’m being asked times over, does it make a difference if I’m not a citizen?” (Interviewer).

195. At a May 2018 conference, Census Bureau officials presented on the topic of “Respondent Confidentiality Concerns in Multilingual Pretesting Studies and Possible Effects on Response Rates and Data Quality for the 2020 Census.”⁷¹ In that presentation, Census Bureau officials discussed findings that showed fear across various language focus groups, finding that these “concerns may have a disproportionate impact on an already ‘hard to count’ population: immigrants.”

196. The May 2018 presentation also noted specific statements from Spanish-speaking groups about “many people who are afraid of giving their information because they are illegally in this country...so they are afraid of being deported,” with one

⁷¹ Mikelyn Meyers and Patricia Goerman, RESPONDENT CONFIDENTIALITY CONCERNS IN MULTILINGUAL PRETESTING STUDIES AND POSSIBLE EFFECTS ON RESPONSE RATES AND DATA QUALITY FOR THE 2020 CENSUS (May 2018), available at <https://www.census.gov/content/dam/Census/newsroom/press-kits/2018/aapor/aapor-presentation-confidentiality.pdf>.

respondent stating that they “didn’t include like 4 or 5 people on the household roster.”⁷²

The CSM found an “unprecedented ground swell in confidentiality and data sharing concerns, particularly among immigrants or those who live with immigrants.”⁷³

197. The CSM reported that these concerns may “present a barrier to participation in the 2020 Census,” could “impact data quality and coverage for the 2020 Census,” and are “[p]articularly troubling due to the disproportionate impact on hard-to-count populations.”⁷⁴

198. Upon information and belief, the Census Bureau recently conducted at least forty focus groups about the questions on the 2020 Decennial Census. Many of these focus groups were conducted after the citizenship question was announced, and the groups discussed the new question. Respondents in these focus groups showed serious concern about the citizenship question, including non-citizen legal residents who told the Census Bureau personnel conducting the focus groups that they would not fill out the Decennial Census in response to the question. The Department of Commerce was briefed on the results of these focus groups, but has not publicly acknowledged their existence or content.

199. Upon information and belief, in the weeks following the announcement of the addition of the citizenship question to the 2020 Decennial Census response rates to

⁷² *Id.*

⁷³ Mikelyn Meyers, Center for Survey Management, U.S. Census Bureau, PRESENTATION ON RESPONDENT CONFIDENTIALITY CONCERNS AND POSSIBLE EFFECTS ON RESPONSE RATES AND DATA QUALITY FOR THE 2020 CENSUS, PRESENTED AT NATIONAL ADVISORY COMMITTEE ON RACIAL, ETHNIC, AND OTHER POPULATIONS FALL MEETING 15 (Nov. 2, 2017), <https://www.documentcloud.org/documents/4424705-Census-Confidentiality-Presentation.html>.

⁷⁴ *Id.*

other surveys conducted by the Census Bureau noticeably decreased according to some field survey takers.

200. Furthermore, press reports indicate that an ongoing “End-to-End” test of the 2020 Decennial Census being conducted in Providence County, Rhode Island is struggling to get Latinos and immigrants to participate. As the press has reported, “fear of the census among undocumented immigrants is rippling out to their relatives who have green cards or U.S. Citizenship . . . many are afraid of giving their information to the federal government.” And a test participant, explaining why he declined to complete the survey asked “what if our information is misused and lands in the hands of immigration? . . . you never know if it’s ICE or police knocking. No one wants to open the door.”⁷⁵

c. The Heightened Impact of Adding a Citizenship Question to the Decennial Census in the Anti-Immigrant Environment Created by the Trump Administration

201. Despite the longstanding consensus of Census Bureau professionals that the addition of a citizenship question would have deleterious effects on participation among Latinos and other immigrants, as well as the Census Bureau’s more recent determination that the Trump Administration has created a toxic anti-immigrant environment that already threatens participation by the same groups, Secretary Ross nevertheless ordered the addition of a citizenship question to the Decennial Census. That decision will sow significantly more fear among Latinos and immigrants of color and

⁷⁵ Hansi Lo Wang and Marisa Penaloza, *Many Noncitizens Plan To Avoid The 2020 Census, Test Run Indicates*, NPR, May 11, 2018, https://www.npr.org/2018/05/11/610492880/many-noncitizens-plan-to-avoid-the-2020-census-test-run-indicates?utm_campaign=storyshare&utm_source=twitter.com&utm_medium=social.

further decrease their willingness to interact with government agencies or make use of government services to which they are legally entitled.

202. The impact in this environment of adding the citizenship question to the Decennial Census on reducing participation by Latinos and Immigrants of color is known.

203. Former Deputy Assistant Attorney General for Civil Rights Justin Levitt recently testified in Congress that the “way that the federal government is currently perceived with respect to asking questions about citizenship is particularly fraught,” and not only for undocumented immigrants. Many legal permanent residents and citizens have “connections to those perceived to be at risk,” and “many others will not find reason to distinguish between personal experiences of discrimination . . . and the federal government’s Census enumerator at the door.”⁷⁶

204. Arturo Vargas, the executive director of NALEO Educational Fund, who also serves as a member of the Census Bureau’s National Advisory Committee on Racial, Ethnic, and other Populations, warned that: “If a citizenship question is added to the decennial census, then this fear people have is going to result in less people wanting to respond to the census, which will produce a very inaccurate census and will actually increase the Census Bureau’s cost and budget to conduct the census.”⁷⁷

⁷⁶ Testimony of Professor Justin Levitt Before the United States House of Representatives Committee on Oversight and Government Reform, Progress Report on the 2020 Census 6 (May 8, 2018) (emphasis in original), <https://oversight.house.gov/wp-content/uploads/2018/05/Levitt-Testimony-2020-Census-Hearing-05082018.pdf>.

⁷⁷ Priscilla Alvarez, *The Controversial Question DOJ Wants to Add to the U.S. Census*, The Atlantic (Jan. 10, 2018), <https://www.theatlantic.com/politics/archive/2018/01/the-controversial-question-doj-wants-to-add-to-the-us-census/550088/>.

205. In recent testimony before Congress, Secretary Ross acknowledged that “there will be some decline” due to the new citizenship question because “certain parts of the population might find it challenging” and that there may be some “folks who may not feel comfortable answering [the question].”⁷⁸

206. Acting Census Bureau Director Ron Jarmin also acknowledged in recent congressional testimony that there would be an impact on the “response rates of subgroups.”⁷⁹

207. Thus, the addition of a citizenship question—which would be controversial under almost any circumstances—is particularly charged in this context, and will reduce responses to the Decennial Census among immigrants, and thus reduce the political representation of and resources available to immigrant communities of color.

These injuries include:

- a. The loss of congressional seats and Electoral College votes in states where Latinos, Asian-Americans, Arab-Americans, and other immigrant communities of color constitute significant portions of the population;
- b. The malapportionment of congressional and state legislative districts within states, to the detriment of immigrant communities of color; and
- c. The reduction in the amount of federal funds that are distributed to the states and localities where Latinos, Asian-Americans, Arab-Americans, and other immigrant communities of color constitute significant portions of the population.

⁷⁸ Hearing to Review the FY2019 Budget Request for the U.S. Department of Commerce, Hr’g Before U.S. S. Subcomm. on Commerce, Justice, Science and Related Agencies, 115 Cong. (May 10, 2018) (testimony by Wilbur Ross, Sec. of Commerce), *video available at* <https://www.appropriations.senate.gov/hearings/review-of-the-fy2019-budget-request-for-the-us-dept-of-commerce>.

⁷⁹ FY 2019 Budget Hearing - Bureau of the Census, U.S. House of Representative Committee on Appropriations (April 18, 2018), <https://appropriations.house.gov/calendar/eventsingle.aspx?EventID=395239> (timestamp 1:42:30).

d. Background Decisions by Secretary Ross that Set the Stage for an Increased Differential Undercount of Immigrant Communities of Color

208. The decision to add a citizenship question was made against the backdrop of a concerted effort by Secretary Ross to undermine longstanding efforts by Census Bureau professionals to address the differential undercount of immigrant communities of color, and thus exacerbate the underrepresentation of those communities in the political process.

209. For one, supplements to the Administrative Record in this case produced by the Defendants show that diminishing the political power of immigrant communities was at the front of Secretary Ross' mind when he began browbeating subordinates at Commerce to work with the Justice Department to add a citizenship question. The earliest information provided to Ross after he inquired about the topic included information about how non-citizens are counted for apportionment purposes and a 2010 article entitled "The Pitfalls of Counting Illegal Immigrants."⁸⁰ And the Administrative Record reflects that Secretary Ross directly discussed the citizenship question with Kobach, who advised him there was a "problem the problem that aliens who do not actually "reside" in the United States are still counted for congressional apportionment purposes."⁸¹

210. Secretary Ross has also publicly supported the Trump Administration's anti-immigrant agenda. In October 2017, Secretary Ross applauded Trump

⁸⁰ AR 2521.

⁸¹ AR 763-764.

Administration programs to “swiftly return illegal entrants” and to “stop visa fraud and overstays, sanctuary cities, asylum abuse, and chain immigration”⁸²

211. In furtherance of the administration’s anti-immigrant agenda, Secretary Ross has taken tangible steps that will exacerbate the undercount in immigrant communities of color. In January 2018, the Census Bureau departed from precedent by announcing that it would not hire census enumerators who are not U.S. citizens for the 2020 Decennial Census, despite shortfalls in workers. In 2010, 3,487 census takers were non-citizens, the majority of whom possessed hard-to-find language skills and familiarity with hard-to-count immigrant communities.⁸³

212. Secretary Ross’s funding decisions will further imperil the Census Bureau’s efforts to conduct education and outreach to hard-to-count populations. The cost for the Decennial Census has roughly doubled each decade from 1970 to the present. Notwithstanding that, Congress has directed that the budget for the 2020 Decennial Census not exceed the cost of the 2010 Decennial Census, and Ross’s budgetary submissions do not call for the funding necessary to conduct the Decennial Census. As a result, the Census Bureau has had to scale back critical planning, delayed opening six Regional Census Centers and has canceled a number of 2020 field tests and “End-to-End” dress rehearsal tests. Indeed, the budget for the 2020 Decennial Census has been so

⁸² Press Release, Commerce Dep’t, Statement From U.S. Secretary of Commerce Wilbur Ross on the Release of President Trump’s Immigration Priorities (Oct. 9, 2017), <https://www.commerce.gov/news/press-releases/2017/10/statement-us-secretary-commerce-wilbur-ross-release-president-trumps>.

⁸³ Tara Bahrapour, *Non-citizens won’t be hired as census-takers in 2020, staff is told*, Wash. Post, Jan. 23, 2018, https://www.washingtonpost.com/local/social-issues/non-citizens-wont-be-hired-as-census-takers-in-2020-staff-is-told/2018/01/30/b327c8d8-05ee-11e8-94e8-e8b8600ade23_story.html?utm_term=.2c736148415b.

uncertain that in 2017 the Government Accountability Office cited that fact, among other reasons, in rating the 2020 Decennial Census as “high-risk.”⁸⁴

2. The Highly Irregular Sequence of Events Leading to the Eleventh-Hour Decision to Add a Citizenship Question to the Decennial Census

213. The decision to break with 60 years of Census Bureau practice and add an untested question to the Decennial Census just two years before the census will be administered is a serious deviation from the Census Bureau’s carefully calibrated procedures and timeline for the development of questions for the Decennial Census questionnaire. Due to this last minute nature of this decision, the citizenship question has never been tested, and no large-scale testing of the full Decennial Census questionnaire with the citizenship question will be conducted.

a. The rigorous statutory and regulatory framework governing the development of questions for the Decennial Census questionnaire

214. The development and content of the Decennial Census questionnaire is subject to an extensive statutory and regulatory framework and is to be conducted pursuant to an extensive, multi-year testing regimen. These statutory and regulatory provisions provide discernible standards that allow assessment of whether the Census Bureau and Commerce Department are abiding by their legal obligations. And the extensive testing regimen allows the Census Bureau to determine the impact of modifications to the Decennial Census questionnaire. In other words, among other things, the testing regimen makes the effect of a change to the questionnaire knowable.

215. Federal law requires “the integrity, objectivity, impartiality, [and] utility” of all information collected for statistical purposes, including the Decennial Census.⁸⁵

⁸⁴ U.S. Government Accountability Office, High-Risk Series 225 (Feb. 2017), <https://www.gao.gov/assets/690/682765.pdf>.

Relevant policy guidance from the Office of Management and Budget (“OMB”) and the Census Bureau similarly prohibit undue political influence. *See* OMB Statistical Policy Directive No. 1 (requiring that federal statistical agencies’ independence be protected “from political and other undue external influence in developing, Producing, and disseminating statistics”); Census Bureau Statement of Commitment to Scientific Integrity (stressing that the Bureau must ensure “the separation of the statistical agency from the parts of its department that are responsible for policy-making”).⁸⁶

216. OMB also requires federal statistical agencies, including the Census Bureau, to design statistical surveys in a manner that will ensure the “highest practical rate of response,” and to “minimize respondent burden while maximizing data quality.”⁸⁷ OMB therefore directs federal statistical agencies to “build and sustain trust” with survey respondents.⁸⁸ The Census Bureau also prioritizes high response rates as of paramount importance for accurate data collection and its guidelines mandate pre-testing of the Decennial Census questionnaire.

217. In order to ensure high response rates to surveys, Census Bureau guidelines require “extensive testing, review, and evaluation” whenever a question is revised or a new question is proposed. This process ensures that “[f]inal proposed

⁸⁵ 44 U.S.C. § 3504(e)(1)(B).

⁸⁶ Statement of Commitment to Scientific Integrity by Principal Statistical Agencies, https://www.census.gov/content/dam/Census/about/about-the-bureau/policies_and_notices/scientificintegrity/Scientific_Integrity_Statement_of_the_Principal_Statistical_Agencies.pdf.

⁸⁷ OMB, *Standards and Guidelines for Statistical Surveys* (Sept. 2016).

⁸⁸ OMB Statistical Policy Directive No. 1, 79 Fed. Reg. 71,610.

questions result from extensive cognitive and field testing.”⁸⁹ As a result, the Census Bureau’s Operational Plans for the 2020 Decennial Census included “pretesting questionnaire content . . . prior to making final decisions on questionnaire topics and wording[.]”⁹⁰

218. In accordance with this need for extensive testing under real-world conditions, the Census Bureau began testing for the 2020 Decennial Census questionnaire in 2007. This process continued in 2008, when the Census Bureau began its research on ways to rephrase questions on race and ethnicity as a way to reduce the undercounts of minority groups, and began testing this in 2010. The Census Bureau conducted annual tests to prepare for the 2020 Decennial Census in 2013 and 2014 and in 2015 conducted the National Content Test which reached approximately 1.2 million people. The Census Bureau also traditionally conducts three end-to-end tests of the Decennial Census. For the 2020 Decennial Census, the address canvassing portion of the 2018 Census Test took place at three sites: Bluefield-Beckley-Oak Hill, WV; Providence County, RI; and Pierce County, WA. Due to underfunding, however, the full end-to-end test is only being conducted in Providence County.

219. None of this decade-long testing for the 2020 Decennial Census questionnaire included a question relating to citizenship.

220. The Census Bureau has also constituted various advisory panels of academics and other professional social scientists, specifically to advise it on the content

⁸⁹ 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>.

⁹⁰ U.S. Census Bureau, 2020 Census Operational Plan 70 (Nov. 2015), <https://www2.census.gov/programs-surveys/decennial/2020/program-management/planning-docs/2020-oper-plan.pdf>.

of the questionnaire. These advisory panels include the National Advisory Committee on Racial, Ethnic, and Other Populations, which focuses on increasing census participation and reducing the differential undercount and the Census Scientific Advisory Committee, which advises on a wide range of Census Bureau activities, including survey methodology and census tests.

221. At no point did the Census Bureau ask either of these advisory panels to review any proposal to include a citizenship question. In fact, the Scientific Advisory Committee voiced its strong opposition to adding such a question. It cited the “flawed logic” behind the decision, stating that it could “threaten the accuracy and confidentiality” of the count and make it more expensive to conduct.⁹¹

222. As a result of the need for extensive pre-testing of the Decennial Census, the last minute addition of the citizenship question ignored all timelines for finalizing the content of the questionnaire, including those enshrined in federal law.

223. In accordance with 13 U.S.C. § 141(f)(1-2), the Secretary of Commerce must submit to Congress the subjects that will be included on the Decennial Census at least three years in advance and the questions at least two years in advance. After this information is sent to Congress, the Secretary may not modify the subjects or questions on the Decennial Census questionnaire unless the Secretary submits a report to Congress after finding that “new circumstances exist” which necessitate this change.⁹²

224. In order to meet this statutory requirement, the Census Bureau set deadlines for completion of the content creation portion of the 2020 Decennial Census,

⁹¹ Michael Wines, *Census Bureau’s Own Expert Panel Rebukes Decision to Add Citizenship Question*, N.Y. Times, March 30, 2018, <https://www.nytimes.com/2018/03/30/us/census-bureau-citizenship.html>.

⁹² 13 U.S.C. § 141(f)(3).

which called for Federal agencies to provide the Census Bureau with their expected data needs by July 1, 2016, content topics to be finalized by December 2016, and for the final questionnaire wording to be completed by December 2017.

225. In accordance with this timeline, Secretary Ross submitted the topics for the 2020 Decennial Census to Congress in March 2017. His submission did not include citizenship as a topic. Similarly, the Census Bureau's 2020 Census Operational Plan that was released in September 2017 stated that it had already "finalized the subjects planned for the 2020 Census."⁹³

b. The rushed and politicized process leading to the addition of a citizenship question on the Decennial Census questionnaire

226. On December 12, 2017, DOJ requested that a citizenship question be added to the Decennial Census questionnaire. On that day, Arthur E. Gary, General Counsel of the Justice Management Division at DOJ, sent a letter to Acting Census Bureau Director Defendant Jarmin requesting that "the Census Bureau reinstate on the 2020 Census questionnaire a question regarding citizenship."⁹⁴

227. This late request violated the Census Bureau's deadline for federal agencies to submit data needs. But it was also a political decision spurred by several months of efforts by Secretary Ross in conjunction with John Gore and other political appointees at the Justice Department to make it appear as though DOJ needed census citizenship data for Voting Rights Act enforcement when it was really due to Ross and

⁹³ U.S. Census Bureau, *2020 Census Operational Plan (version 2.0)* 70 (Sept. 2016), <https://www2.census.gov/programs-surveys/decennial/2020/program-management/planning-docs/2020-oper-plan2.pdf>.

⁹⁴ Letter from Arthur E. Gary, General Counsel, Justice Management Division, U.S. Department of Justice to Dr. Ron Jarmin, Performing the Non-Exclusive Functions and Duties of the Director, U.S. Census Bureau, Re: Request to Reinstate Citizenship Question on 2020 Census Questionnaire (Dec. 12, 2017), <https://www.documentcloud.org/documents/4340651-Text-of-Dec-2017-DOJ-letter-to-Census.html>.

the Trump administration's goal to strip communities protected by the VRA of political power. Up until this point, the Census Bureau had followed its well-honed internal processes to prepare for a successful Decennial Census. This immediately changed upon receipt of the DOJ request, itself based on months of orchestration by the Trump Administration to inject the citizenship issue into the mix for discriminatory reasons while attempting to insulate itself from litigation.

228. Moreover, upon information and belief, although OMB Statistical Policy Directives seek to protect the Census Bureau from "political and other under external influence,"⁹⁵ and Census Bureau guidelines further stress that the Bureau must ensure "the separation of the statistical agency from the parts of its department that are responsible for policy-making,"⁹⁶ this letter was ghost-written by Acting Assistant Attorney General and political appointee John Gore. In private practice, Gore represented defendants in voting rights litigation adverse to racial minorities.

229. In his recent congressional testimony, Gore declined to answer questions about who initiated the DOJ request and whether he consulted with career Civil Rights Division employees before making it.

230. In the letter, Gore claimed that adding a question concerning citizenship on the Decennial Census questionnaire was "critical to the Department's enforcement of Section 2 of the Voting Rights Act," because "the Department needs a reliable calculation of the citizen voting-age population." He also asserted that the "Department believes that

⁹⁵ OMB Statistical Policy Directive No. 1, 79 Fed. Reg. 71,610.

⁹⁶ Statement of Commitment to Scientific Integrity by Principal Statistical Agencies, https://www.census.gov/content/dam/Census/about/about-the-bureau/policies_and_notices/scientificintegrity/Scientific_Integrity_Statement_of_the_Principal_Statistical_Agencies.pdf.

Decennial Census questionnaire data regarding citizenship, if available, would be more appropriate for use in redistricting and in Section 2 litigation than ACS citizenship estimates.”⁹⁷

231. The letter does not explain why citizenship data from the Decennial Census is “critical,” or how DOJ had been able to enforce the VRA, which was enacted in 1965—for more than 50 years without such information.

232. The letter did not explain why this request was being made so long after both the deadline for agency requests and the submission to Congress of the topics for the 2020 Decennial Census.

233. On March 26, 2018, Secretary Ross issued a memo indicating that he had “determined that reinstatement of a citizenship question on the 2020 Decennial Census is necessary to provide complete and accurate data in response to the DOJ request.”⁹⁸

234. In violation of his obligation under 13 U.S.C. § 141(f)(3), Secretary Ross’s submission to Congress did not include any explanation for why citizenship was being added as a topic or a finding that “new circumstances exist” that would warrant such a change.⁹⁹

235. Secretary Ross downplayed any adverse effects of the citizenship question by stating there was no empirical evidence that there would be an adverse effect. Yet the

⁹⁷ Letter from Arthur E. Gary, General Counsel, Justice Management Division, U.S. Department of Justice to Dr. Ron Jarmin, Performing the Non-Exclusive Functions and Duties of the Director, U.S. Census Bureau, Re: Request to Reinstate Citizenship Question on 2020 Census Questionnaire (Dec. 12, 2017), <https://www.documentcloud.org/documents/4340651-Text-of-Dec-2017-DOJ-letter-to-Census.html>.

⁹⁸ Wilbur Ross, Sec. of Commerce, *Reinstatement of a Citizenship Question on the 202 Decennial Census Questionnaire* (Mar. 26, 2018), https://www.commerce.gov/sites/commerce.gov/files/2018-03-26_2.pdf (hereinafter “Ross Memo”).

⁹⁹ U.S. Census Bureau, *Questions Planned for the 2020 Census and American Community Survey 7* (Mar. 29, 2018), <https://www2.census.gov/library/publications/decennial/2020/operations/planned-questions-2020-acs.pdf>.

reason the Census Bureau has no empirical information is that—contrary to years of established administrative practice—it never tested the possible inclusion of a citizenship question on the Decennial Census.

236. Secretary Ross did not address how a citizenship question will affect response rates of U.S. citizens, especially those who have non-citizen family members and live in mixed status households and, in light of the Trump Administration’s stated views towards non-citizens, are likely to be fearful of the potential consequences of their participation in the census for their family members or immediate community.

237. Although Secretary Ross acknowledged that “the Decennial Census has differed significantly in nature from the sample surveys” like the ACS, he denied that adding a citizenship question to the Decennial Census is novel or needs testing, because it was used in the ACS (and on the long-form Decennial Census before that).¹⁰⁰

238. One of the only pieces of evidence Ross’s memo does cite is the supposed opinion of rating company Nielsen, which purportedly told Ross that it had not experienced disparate response rates when asking about citizenship in its surveys. Nielsen, however, has stated that it “does not support the inclusion of a question on citizenship for the 2020 U.S. census because [it] believe[s] its inclusion could lead to inaccuracies in the underlying data.”¹⁰¹ And, in any event, relying upon the reaction of a private company concerned with television ratings, using unknown methodology, and at

¹⁰⁰ *Id.* at 3, 7 (emphasis added).

¹⁰¹ Jeffrey Mervis, *Trump Officials Claim They Can Avoid 2020 Census Problems Caused By Controversial Citizenship Question. Experts Are Very Skeptical*, *Science*, Apr. 13, 2018, <http://www.sciencemag.org/news/2018/04/trump-officials-claim-they-can-avoid-2020-census-problems-caused-controversial>.

different points in time, only underscores what little analysis of the likely impact of his decision Ross actually performed.

239. Thomas Brunell, whom President Trump had at one point planned to appoint as Census Director, but who withdrew his name after bipartisan opposition, recently stated that the decision to add a citizenship question to the Decennial Census questionnaire was not based on social science needs, but rather was “a political decision. And they have every right to do that, because they won the election.”¹⁰²

3. Contemporaneous Statements by Members and Associates of the Trump Administration Regarding the Addition of a Citizenship Question to the Decennial Census Indicative of Discriminatory Intent

240. Shortly after the decision was announced, President Trump’s reelection campaign stated that President Trump expressly ordered the Commerce Department to add a citizenship question to the Decennial Census, and when Secretary Ross announced it would be added, celebrated its addition. Indeed, less than two days after Secretary Ross announced his decision to add the citizenship question, the Trump campaign sent an email to supporters with the subject: “GOOD NEWS: We are asking about citizenship.” In the message, the campaign stated that “President Trump has officially mandated that the 2020 United States Census ask people living in America whether or not they are citizens.” Similarly, an email the Trump campaign sent just before the announcement told supporters that the “President wants the 2020 United States Census to ask people whether or not they are citizens.” It continued: “In another era, this would be COMMON SENSE... but *19 attorneys general* said they will fight the President if he dares to ask

¹⁰² Jeffrey Mervis, *Exclusive: The would-be U.S. census director assails critics of citizenship question*, Science (May 16, 2018), <http://www.sciencemag.org/news/2018/05/exclusive-would-be-us-census-director-assails-critics-citizenship-question>.

people if they are citizens. The President wants to know if you're on his side." Neither Trump campaign email made any mention of the purported need for improved VRA enforcement.

241. J. Christian Adams, another former PCEI Commissioner, praised the decision, noting that it will reduce representation of Hispanic populations and lead to lower numbers of Hispanic-majority districts under the Voting Rights Act.¹⁰³ Adams also stated that "[o]nly citizens should be given political power," and added that it is "critical that the next redistricting cycle account for the citizen residents of districts so urban centers do not unfairly profit from the political subsidy that higher noncitizen populations provide."¹⁰⁴

242. Former Ohio Secretary of State Ken Blackwell, a senior member of President Trump's transition team in charge of domestic policy and another PCEI Commissioner, also praised the decision to add a citizenship question to the Decennial Census, noting that it would enable states to reapportion their legislative districts using only the number of citizens. Blackwell did not mention VRA enforcement as a purpose of adding the citizenship question.

243. Similarly, President Trump's ally Congressman Steve King of Iowa said he supported the decision because "[o]nly U.S. citizens should be represented in Congress," and if "we counted only citizens for redistributing seats, California would

¹⁰³ See J. Christian Adams, *Adams: Trump Census Citizenship Question Helps Black Americans*, TheACRU.org (March 30, 2018), <http://www.theacru.org/adams-trump-census-citizenship-question-helps-black-americans/>.

¹⁰⁴ Press Release, Publ. Int. Legal Foundation (March 27, 2018), <https://publicinterestlegal.org/blog/j-christian-adams-praises-inclusion-of-citizenship-question-in-2020-census/>.

give up several congressional seats to states that actually honor our Constitution and federal law.”¹⁰⁵

244. At least one state has already considered taking advantage of citizenship information from the Decennial Census to do precisely that. In May 2018, a bill was introduced in Missouri to conduct the state’s intra-state apportionment solely using citizen population

E. The Trump Administration’s Stated Rationale for Adding a Citizenship Question Is Blatantly Pretextual

1. Secretary Ross and Senior Trump Administration Officials Contrived DOJ’s Need for Citizenship Data, then Conspired with DOJ to Have it Plant the Citizenship Question Request

245. In his testimony before Congress about the decision-making process around adding the Citizenship Question, Secretary Ross testified that DOJ “initiated the request for inclusion of the citizenship question”¹⁰⁶ and that he was “responding solely to the Department of Justice’s request.”¹⁰⁷ This testimony was false.

246. Instead, the decision to add the citizenship question had already been made in early 2017, months before the DOJ request. Just thirteen days after the inauguration, on February 2, an email from David Langdon to Ellen Herbst at the Department of Commerce stated that, with respect to “the upcoming Congressional notification of decennial and ACS topics,” the incoming Director of the Office of Policy

¹⁰⁵ Emily Baumgaertner, *A Citizenship Question on the Census May Be Bad for Your Health*, N.Y. Times, Feb. 14, 2018, <https://www.nytimes.com/2018/02/14/us/politics/citizenship-question-census-public-health.html>.

¹⁰⁶ Transcript, Hearing with Commerce Secretary Ross, Hearing Before the Committee on Ways and Means, U.S. House of Representatives, at 51 (Mar. 22, 2018) (No. 115-FC09), available at <https://waysandmeans.house.gov/wp-content/uploads/2018/07/20180322FC-Transcript-Final.pdf>.

¹⁰⁷ Video, FY19 Budget Hearing - Department of Commerce, House Appropriations Committee, Commerce, Justice, Science Subcommittee at 36:25 (March 20, 2018), available at <https://appropriations.house.gov/calendar/eventsingle.aspx?EventID=395131>.

and Strategic Planning at the Department of Commerce, “Earl [Comstock] is very interested and thinks the Secretary will be as well.”¹⁰⁸ Then, on March 10, Secretary Ross had requested information about how non-citizens are counted in the Decennial Census and received an article titled: “The Pitfalls of Counting Illegal Immigrants.”¹⁰⁹ On May 2, 2017, Ross wrote to Earl Comstock, stating that he was “mystified why nothing have (sic) been done in response to my months old request that we include the citizenship question.” Comstock quickly replied that he would “get that in place” and that he needed to “work with Justice to get them to request that citizenship be added”¹¹⁰

247. On August 8, 2017, after a call about the Census, Secretary Ross followed up with Mr. Comstock about the status of Ross’ plea for DOJ to formally request that he add the citizenship question. He asked: “where is the DoJ in their analysis?” and said that he “will call the AG,” to which Mr. Comstock replied that he has “two attorneys in the DoC General Counsel’s office working on it.”¹¹¹

248. A month later, on September 8, 2017, Comstock drafted a memo to Secretary Ross updating him on his progress. He described how he was in touch with the White House’ DOJ liaison, Mary Blanche Hankey, with whom he “met in person to discuss the citizenship question” and who directed him “to James McHenry in the Department of Justice.” After speaking “several times with James McHenry by phone,” McHenry directed him to a contact at the Department of Homeland Security. After

¹⁰⁸ AR 1410.

¹⁰⁹ AR 2521.

¹¹⁰ AR 3710.

¹¹¹ AR 4004.

several phone calls, “DHS really felt that it was best handled by the Department of Justice.”¹¹²

249. A few days later, on September 13, Defendant Gore emailed Wendy Teramoto, one of Secretary Ross’ top aides, to set up a call “to talk to you about a DOJ-DOC issue.” The two arranged to talk on September 15.¹¹³

250. Shortly after talking, Gore connected Teramoto with Defendant Session’s top aide Danielle Cutrona at DOJ, to whom Teramoto asked “when the AG is available to speak to Secretary Ross.”¹¹⁴ Cutrona responded the next day that the “Attorney General is available on his cell,” adding that from “what John told me, it sounds like we can do whatever you all need us to do.... The AG is eager to assist.”¹¹⁵ On September 18, Teramoto confirmed to Gore that “AG and Sec spoke.”¹¹⁶ Following this call, Secretary Ross inquired several times about the status of DOJ making a request, and on November 27, Ross wrote to Peter Davidson, General Counsel for the Department of Commerce, that they were “out of time” and demanded Davidson set up a call “tomorrow with whoever is the responsible person at Justice. We must have this resolved.”¹¹⁷ Upon information and belief, Ross sent this email after spending part of Thanksgiving weekend with President Trump at the Mar-a-Lago estate.¹¹⁸

¹¹² AR 2458.

¹¹³ AR 2628.

¹¹⁴ AR 2639.

¹¹⁵ AR 2653.

¹¹⁶ AR 2636.

¹¹⁷ AR 2482-83, 2497, 2527, 11193.

¹¹⁸ Associated Press, *Trump Mar-a-Lago Stay a Welcome Break from DC Challenges*, Nov. 27, 2017, available at <http://www.chicagotribune.com/news/nationworld/politics/ct-maralago-winter-white-house-20171127-story.html>.

251. That same day – November 27, 2017 – the Administrative Record reflects, John Gore called Peter Davidson.¹¹⁹ The next day, Davidson wrote to Secretary Ross in response to his email requesting a call be set up that there was no longer a “need to call” anyone at DOJ.¹²⁰

252. Approximately two weeks later, on December 12, 2017, DOJ sent a letter to the Census Bureau requesting that the 2020 decennial census include a citizenship question to aid in the enforcement of Section 2 of the Voting Rights Act. Although signed by Arthur Gary, documents produced in response to FOIA requests revealed that John Gore ghostwrote the letter.

253. The coordination between Secretary Ross and his associates and the senior officials at DOJ continued as Ross purported to “consider” DOJ’s request to add the citizenship question. On January 31, Census Bureau Associate Director Enrique Lamas let Acting Director Jarmin know that Secretary Ross was “talking to DOJ” that day.¹²¹ And several days before the release of the Ross memo justifying his decision to add the citizenship question, Commerce Department officials shared the drafted memorandum with the senior civil division lawyers at DOJ tasked with defending this litigation, including Brett Shumate, who sent “comments and suggestions” back on March 24, 2018.¹²² Despite this coordination with political appointees at Commerce, Department of Justice officials declined to meet directly with the Census Bureau officials tasked with

¹¹⁹ AR 2496.

¹²⁰ AR 11193.

¹²¹ AR 8643.

¹²² AR 11357.

evaluating the proposal¹²³; an internal Census Bureau memo from early 2018 made clear that the Census Bureau was never able to raise its concerns regarding “the specific rate of accuracy regarding response to the ACS question on citizenship” with DOJ.¹²⁴

2. DOJ Does Not Now Require, and Has Not Ever Required, a Citizenship Question on the Decennial Census to Enforce the VRA.

254. The rationale that adding a citizenship question to the Decennial Census questionnaire is necessary for enforcement of the VRA is a pretext for Defendants’ discriminatory intent. For more than 50 years, DOJ has successfully enforced the VRA without citizenship information from the Decennial Census, suggesting that the facilitation of VRA enforcement was not the purpose of this disastrous last-minute change to the Decennial Census questionnaire.

255. VRA enforcement is not a priority of the Trump Administration. Upon information and belief, the Trump Administration has initiated only a single lawsuit under Section 2 of the Voting Rights Act, which was investigated and developed during the previous administration.

256. Upon information and belief, the DOJ’s VRA enforcement efforts have never been impaired due to a lack of Citizen Voting Age Population (“CVAP”) data from the Decennial Census. To the extent that courts have needed CVAP data in order to enforce the VRA, they have recognized that citizenship data from the ACS “is routinely relied upon in § 2 cases.”¹²⁵

¹²³ AR 3460.

¹²⁴ AR 10894.

¹²⁵ *Montes v. City of Yakima*, 40 F. Supp. 3d 1377, 1393 (E.D. Wash. 2014).

257. Voting rights experts, including former DOJ officials tasked with enforcing the VRA, have repeatedly stated that citizenship data from the Decennial Census is not necessary to successfully enforce the VRA. For example, Vanita Gupta, former head of the DOJ Civil Rights Division, has stated that “[r]igorous enforcement of the Voting Rights Act has never required the addition of a citizenship question on the census form sent to all households” and that “data from the ongoing American Community Survey was sufficient for us to do our work.”¹²⁶ Similarly, Justin Levitt, the former Deputy Assistant Attorney General who helped lead much of the DOJ Civil Rights Division’s voting rights work, submitted written testimony to the U.S. House of Representatives Committee on Oversight and Government Reform stating that “since the Voting Rights Act was enacted in 1965, existing survey data on citizenship — originally from the “long form” of the Census and now from the successor American Community Survey — has been largely sufficient to bring and win VRA cases.”¹²⁷

258. When asked during recent congressional testimony, the ghostwriter of the DOJ letter, Acting Assistant Attorney General John Gore, could not identify a single case litigated by DOJ in which a court declined to accept ACS citizenship data. He did identify a single district court case addressing the adequacy of ACS citizenship data, but

¹²⁶ Vanita Gupta, *The Bitter Lie Behind the Census Bureau’s Citizenship Question*, Wash. Post, Mar. 29, 2018, https://www.washingtonpost.com/opinions/the-bitter-lie-behind-the-census-citizenship-question/2018/03/29/f2991020-32cc-11e8-8bdd-cdb33a5eef83_story.html?utm_term=.3dedbb3898f2

¹²⁷ Testimony of Professor Justin Levitt, Progress Report on the 2020 Census, United States House of Representatives Committee on Oversight and Government Reform, at 14 (May 8, 2018), available at <https://oversight.house.gov/wp-content/uploads/2018/05/Levitt-Testimony-2020-Census-Hearing-05082018.pdf>.

it concerned an effort to use one-year ACS estimates in a small municipality, rather than more reliable five-year ACS data aggregated from a larger sample.¹²⁸

259. DOJ has not considered whether—given the reduction in response rates likely to result from the inclusion of a citizenship question on the Decennial Census—citizenship data obtained through the Decennial Census will be sufficiently reliable for purposes of VRA enforcement. Indeed, John Gore recently admitted in testimony to Congress that DOJ had no data as to how adding this question would affect response rates when DOJ proposed adding it.¹²⁹

260. Moreover, in the past, the Census Bureau has not cited VRA enforcement as a reason for including a citizenship question on the ACS. When the Census Bureau submitted its list of planned topics for the Decennial Census and ACS in March 2017, it only cited a need for the data for “agencies and policymakers setting and evaluating immigration policies and laws, seeking to understand the experience of different immigrant groups, and enforcing laws, policies, and regulations against discrimination based on national origin.”¹³⁰

261. Indeed, the Decennial Census will use the ACS citizenship question and thus ask about citizenship in a far broader way than is needed for VRA enforcement purposes. Rather than merely asking respondents whether or not they are a U.S. citizen, it

¹²⁸ See Progress Report on the 2020 Census, Hearing Before the U.S. House of Representatives Comm. on Oversight & Gov’t Reform (May 18, 2018), <https://oversight.house.gov/hearing/progress-on-the-2020-census-continued/> (timestamp 1:19:50)

¹²⁹ See Progress Report on the 2020 Census, Hearing Before the U.S. House of Representatives Comm. on Oversight & Gov’t Reform (May 18, 2018), <https://oversight.house.gov/hearing/progress-on-the-2020-census-continued/> (timestamp 1:40:50–1:42:42).

¹³⁰ U.S. Census Bureau, *Subjects Planned For The 2020 Census and American Community Survey* 51 (Mar. 28, 2017), <https://www2.census.gov/library/publications/decennial/2020/operations/planned-subjects-2020-acs.pdf>.

also requests, for some individuals, information about place of birth; the citizenship status of one's parents; and naturalization. This information has no use for purposes of VRA enforcement.

262. As a matter of both process and substance, the rushed addition of an untested and unnecessary citizenship question to the Decennial Census stands in stark contrast to the Census Bureau's extensive testing regarding potential changes to the race and ethnicity questions—which would have enhanced VRA enforcement. Based on years of testing and research, the Census Bureau had concluded that it would obtain better response rates by updating the Decennial Census form to combine race and ethnicity into a single category with multiple checkbox options, as well as adding a new “Middle Eastern or North African” option. These changes would have improved VRA enforcement by allowing the Census Bureau to provide more accurate group-based counts of various groups protected under the VRA. Nonetheless, Secretary Ross overruled the Census Bureau and decided not to make the change to the race and ethnicity questions, citing the purported need for more even more extensive testing before making such a substantial change to the Decennial Census questionnaire.

263. Finally, Attorney General Sessions undermined his own agency's request when he recently publicly stated that people concerned about the citizenship question should simply decline to answer it.¹³¹ Refusing to answer a question on the Decennial Census questionnaire, however, would violate 13 U.S.C. § 221 and subject non-respondents to a fine. Moreover, if DOJ truly needed CVAP data from the Decennial

¹³¹ Stephen Dinan, *People Worried About Census Citizenship Question 'Don't Have To Answer,'* Wash. Times (Apr. 25, 2018), <https://www.washingtontimes.com/news/2018/apr/25/sessions-americans-dont-have-answer-citizenship/>.

Census for VRA enforcement, the Attorney General presumably would not publicly encourage behavior that will lead to an inaccurate citizenship count.

CAUSES OF ACTION

I. Intentional Discrimination/Equal Protection (Fifth Amendment)

264. Plaintiffs repeat and re-allege the previous factual and jurisdictional allegations in this complaint.

265. The Fifth Amendment of the U.S. Constitution requires that the federal government not deny people the equal protection of its laws and prohibits the federal government from discriminating against individuals living in the United States on the basis of race, ethnicity, national origin, and citizenship.

266. Defendants acted with discriminatory intent toward Latinos, Asian-Americans, Arab-Americans, and immigrant communities of color generally in adding the citizenship question to the Decennial Census. Defendants maintain animus toward these groups and intend, *inter alia*, to diminish the political power and influence of these groups and to reduce the levels of federal and state funding, benefits, and other resources that these groups receive.

267. Latinos, Asian-Americans, Arab-Americans, and other immigrant communities of color will suffer discriminatory effects due to the differential undercount that will result from including the citizenship question.

268. The discriminatory effects will include, *inter alia*:

a. The loss of congressional seats and Electoral College votes in states where these groups constitute significant portions of the population. Based on recent population growth trends, absent the differential undercount, there is a substantial likelihood that

Florida and Texas would each gain an at least an additional congressional seat following the 2020 Decennial Census, among other possible changes in the appointment of congressional seats. Upon information and belief, the differential undercount caused by the addition of the citizenship question in the 2020 Census will result in at least these two states losing at least one of these additional seats.

b. The malapportionment of immigrant communities of color in congressional and state legislative districts because all states use Decennial Census data in drawing congressional districts and most states also use Decennial Census data in drawing state legislative districts, including states such as Florida and Texas whose state constitutions prohibit adjusting Decennial Census data in drawing districts. The differential undercount will cause immigrant communities of color in jurisdictions such as San Antonio and Houston, Texas and Miami-Dade, Broward, and Orange Counties, Florida, to live in congressional and state legislative districts that have greater populations than other congressional and state legislative districts in the same state.

c. The diminishment of political and voting power and influence of immigrant communities of color within congressional and state legislative districts, because members of these groups will constitute a lower percentage of a district's total population than they would absent the differential undercount. These effects will occur in immigrant communities of color such as those in Prince Georges' County, Maryland, New York City, New York, San Antonio and Houston, Texas and Miami-Dade, Broward, and Orange Counties, Florida.

d. The reduction in the amount of federal funds that are distributed to the states and localities within the states where Latinos, Asian-Americans, Arab-Americans,

and other immigrant communities of color constitute significant portions of the population because the Federal Government uses population data from the Decennial Census to allocate billions of dollars of federal funding involving numerous federal programs. This includes funding for federal transportation and highway funding, Medicaid, and a wide range of other programs, such as Head Start, home energy assistance and supplemental nutrition programs for women, infants and children. For example:

- i. The Federal Medical Assistance Percentage (“FMAP”) is calculated annually for each state and based in part on its Decennial Census count. The FMAP guides the allocation of the hundreds of billions of dollars of annual federal funding among the states for health programs, including Medicaid. Furthermore, Medicaid relies on “per capita income” information calculated with decennial data to determine the amount of the reimbursement for each state for medical assistance payments. 43 U.S. C. §§1301, 1396(d). A differential undercount will impact the calculation of the FMAP, and thus will reduce the federal funding for health programs such as Medicaid in those states using the FMAP where Latinos, Asian-Americans, Arab-Americans, and other immigrant communities of color constitute significant portions of the population, such as Florida and Texas.
- ii. Federal programs provide financial support for planning, construction, maintenance and operation of essential infrastructure projects, including the Highway Trust Fund program, the Urbanized Area Formula Funding program, the Metropolitan Planning Program and the Community Highway Safety Grant program. The funds for these programs are allocated, at least in part, on population figures collected through the Decennial Census. 23 U.S.C. §104(d)(3); 49 U.S.C. §§5305,5307,5340; 23 U.S.C. § 402. A differential undercount, therefore, will reduce the federal transportation funding distributed to the states and localities where Latinos, Asian-Americans, Arab-Americans, and other immigrant communities of color constitute significant portions of the population.
- iii. The differential undercount caused by the addition of the citizenship question in the 2020 Decennial Census will reduce the amount of federal funds that are distributed to the states and localities within the states and localities where Latinos, Asian-Americans, Arab-Americans, and other immigrant communities of color constitute significant portions of the population.

269. In addition to the other damages described herein, this intentional discrimination will cause ongoing harm to Plaintiffs and their members because, as explained, their members are immigrants of color and live in communities where immigrants of color constitute significant portions of the populations; and provide services to immigrant communities of color, and as such, these violations will deprive them of the political influence and funding to which they would be entitled by a more accurate census.

270. The decision to add a citizenship question was without any rational basis, let alone any important or compelling governmental interest.

271. The justification that citizenship data from all U.S. residents is needed to better enforce Section 2 of the VRA is a pretext—and a poor one at that—for Defendants’ discriminatory intent.

II. Census Clause (Article I, Section II, Clause 3 of the Constitution, as amended by the Fourteenth Amendment)

197. Plaintiffs repeat and re-allege the previous factual and jurisdictional allegations in this complaint.

198. Article I of the U.S. Constitution, in conjunction with the Fourteenth Amendment, requires that the federal government conduct an “actual Enumeration” of the national population every ten years by determining the “whole number of persons” in the United States and within each state for the purpose of apportioning members of the House of Representatives to the respective states according to their population. U.S. Const. art. I, § 2, cl. 3; id. amend. XIV, § 2.

199. Congress has delegated this duty to the Secretary of Commerce, who must conduct the census in a manner consistent with the constitutional goal of equal representation and bearing a “reasonable relationship to the accomplishment of an actual enumeration of the population.”

200. “The population” that the census must enumerate includes all persons living in the United States, and not only U.S. citizens.

201. Adding a citizenship question to the 2020 Decennial Census does not bear a “reasonable relationship to the accomplishment of an actual enumeration of the population.”

202. The citizenship question will in fact harm the accomplishment of an actual enumeration of the population. It will produce a significant and systemic undercount of certain groups within “the population” of the United States, including Latinos, Asian-Americans, Arab-Americans, and other immigrant communities of color.

205. Defendants’ Constitutional violations will cause ongoing harm to Plaintiffs and their members because, as explained, their members are immigrants of color and live in communities where immigrants of color constitute significant portions of the populations; and provide services to immigrant communities of color, and as such, these violations will deprive them of the political influence and funding to which they would be entitled by a more accurate census.

III. Administrative Procedure Act (APA)

206. Plaintiffs repeat and re-allege the previous factual and jurisdictional allegations in this complaint.

207. The Administrative Procedure Act (“APA”), 5 U.S.C. § 706(2), prohibits federal agencies from taking any action that is arbitrary, unconstitutional, and contrary to statute.

208. Defendants’ decision to add a citizenship question is contrary to the Census Clause as well as the Fifth Amendment, and therefore violates the APA as an unconstitutional agency action.

209. Defendants’ decision is also arbitrary and capricious for multiple independent reasons. These reasons include:

- a. Defendants violated 13 U.S.C. § 141(f);
- b. Defendants violated 44 U.S.C. § 3504(e);
- c. Defendants violated OMB Statistical Policy Directive No.1;
- d. Defendants violated OMB Statistical Policy Directive No. 2;
- e. Defendants violated the Census Bureau Statistical Quality Guidelines and the Census Bureau Statement of Commitment to Scientific Integrity;
- f. Defendants failed to follow key provisions of the 2020 Census Operational Plan;
- g. Defendants failed to consult with their advisory panels, including the National Advisory Committee on Racial, Ethnic, and Other Populations and the Census Scientific Advisory Committee;
- h. Defendants failed to adequately explain why adding a citizenship question is necessary for enforcement of the VRA, which is the purported purpose of adding the question;

- i. Defendants' stated purpose of adding the citizenship question to help enforce the VRA is pre-textual;
 - j. The Defendants' decision to add the citizenship question was as a result of political pressure applied on the process, and did not reflect reasoned decision-making;
 - k. Defendants' inclusion of the citizenship question will actually undermine enforcement of the VRA because it will produce skewed and inaccurate race and ethnicity data;
 - l. Defendants failed to adequately study and assess the impact of adding a citizenship question, in contravention of Defendants' policies, historical practices, and legal obligations.
 - m. Defendants failed to adequately explain why the citizenship question is being added to the 2020 Decennial Census when it has not been included on a Decennial Census since 1950; and
 - n. Defendants' decision was contrary to the evidence before them, which is that adding the citizenship question will produce a significant increase in the undercount of persons living in the United States, and particularly among Latinos, Asian-Americans, Arab-Americans, and other immigrant communities of color that have historically been undercounted;
210. Defendants' APA violations cause ongoing harm to Plaintiffs and their members because as explained their members are immigrants of color and live in communities where immigrants of color constitute significant portions of the populations; and provide services to immigrant communities of color, and as such, these violations

will deprive them of the political influence and funding to which they would be entitled by a more accurate census.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

- i. Declare that Defendants' addition of a citizenship demand to the questionnaire for the 2020 Decennial Census is unauthorized by and contrary to the Constitution and laws of the United States;
- ii. Declare that the Defendants' decision to add a citizenship question to the 2020 Decennial 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;
- iii. Preliminarily and permanently enjoin Defendants and all those acting on their behalf from adding a citizenship question to the 2020 Decennial Census.
- iv. Award Plaintiffs their reasonable fees, costs, and expenses, including attorneys' fees, pursuant to 28 U.S.C. § 2412; and
- v. Award such additional relief as the court deems proper.

Dated: August 22, 2018

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