



UNITED STATES DEPARTMENT OF COMMERCE
U.S. Census Bureau
Washington, DC 20233-0001

December 17, 2021

Mr. Austin R. Evers
1030 15th Street, N.W., Suite B255
Washington DC 20005
foia@americanoversight.org

Dear Mr. Evers:

This letter is in response to your Freedom of Information Act (FOIA), Title 5, United States Code, Section 552, request submitted October 7, 2020, to the U.S. Census Bureau's FOIA Office. We received your request in this office on October 7, 2020. We have assigned to it tracking number DOC-CEN-2021-000035 and are responding under the FOIA to your request for:

All e-mail communications (including full email chains and attachments) from September 5, 2020 to the date of search between (a) the agency officials listed below and (b) the White House Office (including any person using an email address ending in who.eop.gov).

- 1) Dr. Steven Dillingham, Director
- 2) Dr. Ron Jarmin, Deputy Director
- 3) Kevin Quinley, Special Advisor and Director of Strategic Initiatives
- 4) Christa Jones, Chief of Staff
- 5) Nathaniel Cogley, Deputy Director
- 6) Benjamin Overholt, Deputy Director for Data
- 7) Adam Korzeniewski, Senior Advisor to the Deputy Director
- 8) Earl "Trey" Mayfield, Counselor to the Director

Enclosed is a copy of one (1) record that is responsive to your request (495 pages) with withholding determinations noted. Responsive records or portions of these records are exempt from mandatory public disclosure, and are being withheld in whole or in part, under FOIA Exemptions 5, 6 and 7 (C), Title 5, United States Code, Sections 552 (b)(5), (b)(6), and (b)(7)(C).

Exemption 5 material consists of opinions, recommendations, and other reflections of staff thinking integral to pre-decisional, deliberative process. Exemption 6 protects from disclosure information about individuals, the release of which would constitute a clearly unwarranted invasion of personal privacy. Exemption 7(C) provides protection for law enforcement information the disclosure of which "could reasonably be expected to constitute an unwarranted invasion of personal privacy."

Based on the above information, this constitutes a partial denial of your request. You have the right to appeal this partial denial of the FOIA request. An appeal must be received within 90 calendar days of the date of this response letter. Address your appeal to the following office:

Assistant General Counsel for Employment, Litigation, and Information
Room 5896
U.S. Department of Commerce,
14th and Constitution Avenue, N.W.
Washington, D.C. 20230

An appeal may also be sent by e-mail to FOIAAppeals@doc.gov, or by FOIAonline, if you have an account in FOIAonline, at <https://foiaonline.gov/foiaonline/action/public/home>. The appeal should include a copy of the original request and initial denial, if any. All appeals should include a statement of the reasons why the records requested should be made available and why the adverse determination was in error. The appeal letter, the envelope and the e-mail subject line should be clearly marked "Freedom of Information Act Appeal."

The e-mail, FOIAonline, and Office are monitored only on working days during normal business hours (8:30 a.m. to 5:00 p.m., Eastern Time, Monday through Friday). FOIA appeals posted to the e-mail box, FOIAonline, or Office after normal business hours will be deemed received on the next normal business day. If the 90th calendar day for submitting an appeal falls on a Saturday, Sunday or legal public holiday, an appeal received by 5:00 p.m., Eastern Time, the next business day will be deemed timely.

In addition, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road-OGIS
College Park, Maryland 20740-6001
e-mail at ogis@nara.gov
telephone at 202-741-5770; toll free at 1 877-684-6448
facsimile at 202-741-5769

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Please contact Sarabeth Rodriguez or Paul Reyes of my staff, by telephone at 301-763-2127 or by e-mail at census.efoia@census.gov if you have any questions regarding your request.

Sincerely,

Vernon Curry

Vernon E. Curry, PMP, CIPP/G

Freedom of Information Act/Privacy Act Officer

Chief, Freedom of Information Act Office

Enclosure

Enclosure

From: [Nathaniel Cogley \(CENSUS/DEPDIR FED\)](#)
To: [Fleming, Who](#)
Subject: 2020 Census Progress in Montana.docx
Date: Wednesday, September 9, 2020 12:45:49 PM
Attachments: [2020 Census Progress in Montana.docx](#)
[ATT00001.txt](#)

Hi John,

Please find information about the current status of enumeration in Montana attached. Talk soon.

—Nathaniel

2020 Census Progress – Montana

September 9, 2020

Overall progress for Montana is 85.6% of the State's residents have been enumerated.

The Non Response Follow Up (NRFU) operation is the effort to contact the remaining addresses to collect information. That operation is currently 59% complete. There are nearly 1,100 enumerators working in Montana on this effort.

Here is the status of completion of the NRFU operation on the Federally-recognized American Indian Reservations in Montana:

- Blackfeet Tribe of the Blackfeet Reservation – 65%
- Crow Tribe of the Crow Reservation – 77%
- Confederated Salish & Kootenai Tribes of the Flathead Reservation – 78%
- Fort Belknap Tribes of the Fort Belknap Reservation – 72%
- Fort Peck Tribes of the Fort Peck Reservation – 64.4%
- Northern Cheyenne Tribe of the Northern Cheyenne Reservation – 89%
- Chippewa Cree Tribe of the Rocky Boy's Reservation – 69%

Challenges:

- Weather in the Northwestern part of the state has made in-person enumeration difficult. We are renting 4WD vehicles to access some of these areas. Some places will require us to wait until the weather clears.
- We continue to hire and train staff to complete the NRFU operation.
- We will be conducting a "Service-Based Enumeration" on September 22 – 24. We will contact facilities that provide services to the homeless – shelters, soup kitchens, etc. and go to outdoor locations to count the homeless.
- We are currently visiting Transitory Locations – RV Parks and Campgrounds, for example – to count residents who have not been counted elsewhere.

From: [Nathaniel Cogley \(CENSUS/DEPDIR FED\)](#)
To: [Fleming, John C. Jr. EOP/WHO](#)
Subject: Accompanying Declaration and Injunction
Date: Thursday, September 10, 2020 7:58:00 PM
Attachments: [165 - Court's Final Judgment and Injunction - NY v. Trump \(10 Sept 2020\).pdf](#)

Also attached.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

STATE OF NEW YORK, et al.,

Plaintiffs,

-v-

DONALD J. TRUMP, *in his official capacity as
President of the United States*, et al.,

Defendants.

20-CV-5770 (RCW) (PWH) (JMF)

NEW YORK IMMIGRANT COALITION, et al.,

Plaintiffs,

-v-

DONALD J. TRUMP, *in his official capacity as
President of the United States*, et al.,

Defendants.

20-CV-5770 (RCW) (PWH) (JMF)

(Consolidated)

FINAL JUDGMENT AND
PERMANENT INJUNCTION

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

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

FINAL JUDGMENT

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

DECLARATION AND PERMANENT INJUNCTION

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

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

SO ORDERED.

Dated: September 10, 2020
New York, New York

_____/s/_____
RICHARD C. WESLEY
United States Circuit Judge

_____/s/_____
PETER W. HALL
United States Circuit Judge

_____/s/_____
JESSE M. FURMAN
United States District Judge

From: [Earl N Mayfield \(CENSUS/DEPDIR FED\)](#)
To: [Philbin, Patrick F. EOP/WHO](#)
Cc: [Benjamin A Overholt \(CENSUS/DEPDIR FED\)](#)
Subject: Ascertaining Unlawful Status Data Rules
Date: Thursday, October 29, 2020 4:59:18 PM

Patrick,

We are working with our Demographic Programs Teams to get the information on the available specifics of how the Bureau intends to classify Unlawful Status. Ben has a meeting early Monday afternoon with the Team and should know everything about the available business rules (the flow chart applied to the data) by COB Monday.

We may be able to discuss preliminary issues tomorrow if needed.

Thanks,

Trey

Trey Mayfield

Counsel to the Director of the United States Census

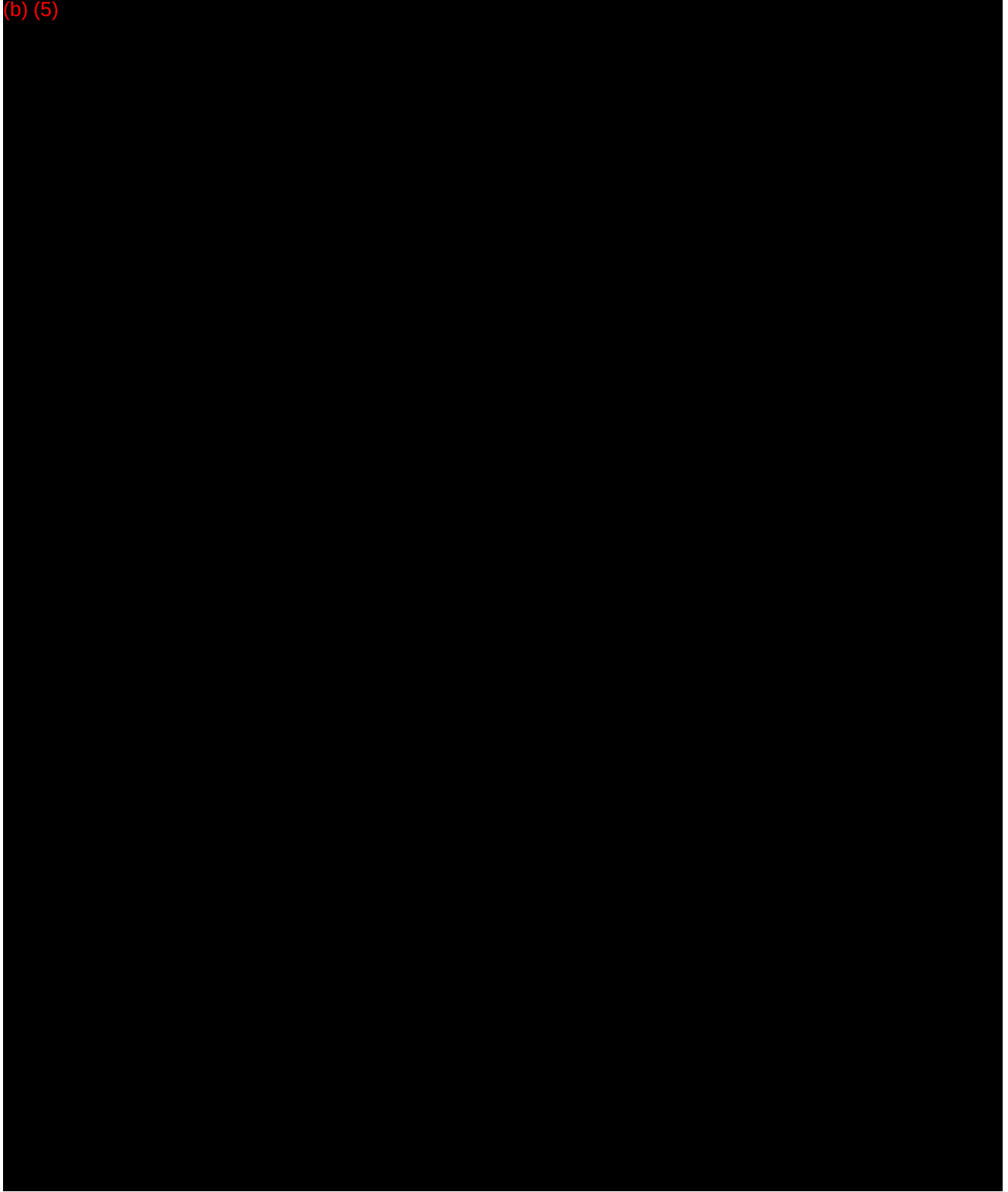
Office (301) 763-0707

(b) (5)

From: [Earl N Mayfield \(CENSUS/DEPDIR FED\)](#)
To: [Philbin, Patrick F. EOP/WHO](#)
Cc: [Benjamin A Overholt \(CENSUS/DEPDIR FED\)](#); [\(b\)\(6\)](#); [DeBacker, Devin A. \(OLC\)](#); [Bhirud, Ketan](#); [Hamilton, Eric J. EOP/WHO](#); [Hamilton, Gene \(OAG\)](#)
Subject: Census Response on PWAP Determinations
Date: Monday, December 14, 2020 10:39:23 AM

Pat,

(b) (5)



Trey Mayfield

Counsel to the Director of the United States Census

Office (301) 763-0707

(b)(6)

From: [Nathaniel Cogley \(CENSUS/DEPDIR FED\)](#)
To: [Fleming, John C. Jr. EOP/WHO](#)
Subject: District Court Order
Date: Sunday, September 6, 2020 12:27:14 PM
Attachments: [National-Urban-League-Sept-5-2020-Order.pdf](#)

Hi John,

I hope you are having a good weekend. Please find the recent District Court Order attached.

Sincerely,
Nathaniel

Nathaniel Cogley, Ph.D.
Deputy Director for Policy
U.S. Census Bureau

United States District Court
Northern District of California

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

NATIONAL URBAN LEAGUE, et al.,	Case No. 20-CV-05799-LHK
Plaintiffs,	
v.	ORDER GRANTING MOTION FOR
	TEMPORARY RESTRAINING ORDER
WILBUR L. ROSS, et al.,	Re: Dkt. No. 66
Defendants.	

Plaintiffs National Urban League; League of Women Voters; Black Alliance for Just Immigration; Harris County, Texas; King County, Washington; City of Los Angeles, California; City of Salinas, California; City of San Jose, California; Rodney Ellis; Adrian Garcia; National Association for the Advancement of Colored People; City of Chicago, Illinois; County of Los Angeles, California; Navajo Nation; and Gila River Indian Community (collectively, “Plaintiffs”) sue Defendants Commerce Secretary Wilbur L. Ross, Jr.; the U.S. Department of Commerce; the Director of the U.S. Census Bureau Steven Dillingham, and the U.S. Census Bureau (“Bureau”) (collectively, “Defendants”) for violations of the Enumeration Clause and Administrative Procedure Act.

Before the Court is Plaintiffs’ September 3, 2020 motion for a temporary restraining order

(“TRO motion”), enjoining Defendants from implementing Defendants’ August 3, 2020 Replan, which shortens census data collection and processing timelines from the eight months set forth in the Defendants’ April 13, 2020 COVID-19 Plan to four months. Plaintiffs claim that the Replan’s shortened timelines will unlawfully harm the accuracy of crucial census data. Plaintiffs request that the TRO remain in effect for twelve days, until the September 17, 2020 hearing on Plaintiffs’ motion for stay and preliminary injunction (“PI motion”).

Temporary restraining orders “serv[e] the[] underlying purpose of preserving the status quo and preventing irreparable harm just so long as is necessary to hold a hearing, and no longer.” *Granny Goose Foods, Inc. v. Bhd. of Teamsters & Auto Truck Drivers Local No. 70 of Alameda Cty.*, 415 U.S. 423, 439 (1974); *accord, e.g., E. Bay Sanctuary Covenant v. Trump*, 932 F.3d 742, 779 (9th Cir. 2018) (“a TRO ‘should be restricted to . . . preserving the status quo and preventing irreparable harm just so long as is necessary to hold a hearing and no longer’”) (ellipsis in original).

“‘[S]erious questions going to the merits’ and a balance of hardships that tips sharply towards the plaintiff can support issuance of a preliminary injunction [or TRO], so long as the plaintiff also shows that there is a likelihood of irreparable injury and that the injunction [or TRO] is in the public interest.” *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th Cir. 2011); *accord Short v. Brown*, 893 F.3d 671, 675 (9th Cir. 2018) (holding that these factors are “on a sliding scale”). Thus, “when the balance of hardships tips sharply in the plaintiff’s favor, the plaintiff need demonstrate only ‘serious questions going to the merits.’” *hiQ Labs, Inc. v. LinkedIn Corp.*, 938 F.3d 985, 992 (9th Cir. 2019) (quoting *All. for the Wild Rockies*, 632 F.3d at 1135). The issuance of a TRO is at the Court’s discretion. *See All. for the Wild Rockies*, 632 F.3d at 1131.

The Court has considered the TRO motion, opposition, and reply; the parties’ oral arguments at the September 4, 2020 TRO hearing; the PI motion and opposition; the relevant law; and the record in this case. Below the Court analyzes in turn (1) the presence of serious questions going to the merits; (2) irreparable harm; (3) the balance of hardships; and (4) the public interest. *All. for the Wild Rockies*, 632 F.3d at 1135.

1 The Court finds that Plaintiffs have presented serious questions going to the merits at least
2 as to Plaintiffs' claims under the Administrative Procedure Act ("APA"). The Court does not
3 prejudge these claims, but merely recognizes that the Plaintiffs have presented serious questions
4 going to the merits of these claims.

5 For example, there are serious questions as to whether the Replan is reviewable by this
6 Court. There is a serious question as to whether Plaintiffs have standing to challenge the Replan.
7 *See Dep't of Commerce v. New York*, 139 S. Ct. 2551, 2565–66 (2019) (holding that Plaintiffs had
8 standing because an undercount of "as little as 2%" of noncitizen households constituted an injury
9 in fact and was traceable to the Defendants' actions). Additionally, there is a serious question as to
10 whether the Replan constitutes final agency action. Although the United States Supreme Court
11 decided in *Franklin v. Massachusetts* that the Secretary of Commerce's transmission of a final
12 Census report to the President is not final agency action, there is a serious question as to whether
13 *Franklin* governs the facts in the instant case. 505 U.S. 788, 798 (1992) (explaining that the
14 transmission was not final agency action because it "carries no direct consequences for the
15 apportionment"). Finally, there is a serious question as to whether the Replan is committed to
16 agency discretion by law. *See Dep't of Commerce v. New York*, 139 S. Ct. at 2568 (noting that
17 "census-related decisionmaking" is traditionally reviewable under the Administrative Procedure
18 Act).

19 There are also serious questions as to whether the Replan was arbitrary and capricious in
20 violation of the APA. *See* 5 U.S.C. § 706(2)(A). The APA requires that Defendants consider the
21 "important aspect[s] of the problem" before them. *Motor Vehicle Mfrs. Ass'n v. State Farm Mut.*
22 *Ins. Co.*, 463 U.S. 29, 43 (1983). Although Defendants justify the Replan based on the statutory
23 deadline, Plaintiffs suggest that Defendants have failed to consider their other statutory
24 obligations, including the statutory requirement that Defendants "conduct a census that is accurate
25 and that fairly accounts for the crucial representational rights that depend on the census and the
26 apportionment." *Dep't of Commerce v. New York*, 139 S. Ct. at 2569 (quoting *Franklin*, 505 U.S.
27 at 819–20 (Stevens, J., concurring in part and concurring in the judgment)). Thus, there are

1 serious questions going to the merits of the Plaintiffs' APA claims.

2 As to irreparable harm, Plaintiffs identify and support with affidavits four potential
3 irreparable harms that Plaintiffs will suffer as a result of inaccurate census data. First, Plaintiffs
4 state that an inaccurate apportionment will violate their constitutional rights to political
5 representation. Mot. 29. Second, Plaintiffs risk losing important federal funding from
6 undercounting. Mot. 30. Third, Plaintiffs will need to expend resources to mitigate the
7 undercounting that will result from the Replan. Mot. 31. Lastly, local government Plaintiffs' costs
8 will increase because those Plaintiffs rely on accurate granular census data to deploy services and
9 allocate capital.

10 These harms are potentially irreparable in two ways. To start, at least part of the harms
11 may be constitutional in nature, and "the deprivation of constitutional rights 'unquestionably
12 constitutes irreparable injury.'" *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (quoting
13 *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). Moreover, to the extent the harm involves expending
14 money or resources, "[i]f those expenditures cannot be recouped, the resulting loss may be
15 irreparable." *Philip Morris USA Inc. v. Scott*, 561 U.S. 1301, 1304 (2010) (Scalia, J., in
16 chambers). Because the decennial census is at issue here, an inaccurate count would not be
17 remedied for another decade, which would affect the distribution of federal and state funding, the
18 deployment of services, and the allocation of local resources for a decade. Similar harms have
19 thus justified equitable relief in previous census litigation. *See, e.g., Dep't of Commerce v. U.S.*
20 *House of Representatives*, 525 U.S. 316, 328–34 (1999) (affirming injunction against the planned
21 use of statistical sampling in census and citing apportionment harms, among others); *New York v.*
22 *United States Dep't of Commerce*, 351 F. Supp. 3d 502, 675 (S.D.N.Y.) (issuing injunction and
23 finding irreparable "the loss of political representation and the degradation of information"), *aff'd*
24 *in part, rev'd in part and remanded sub nom. Dep't of Commerce v. New York*, 139 S. Ct. 2551.
25 Plaintiffs attached to their TRO motion an internal Bureau document indicating that the Replan's
26 compressed deadlines increase the risk of inaccuracy in the census count. ECF No. 66-3.
27 Plaintiffs aver that each day that the Census does not conduct its field operations to reach and

count hard to reach populations increases the inaccuracy of the census count and thus increases their irreparable harm.

By contrast, a temporary restraining order would merely require Defendants to do what Defendants had planned to do and were doing since April 13, 2020, when Defendants adopted the COVID-19 Plan, through August 3, 2020, when Defendants adopted the Replan. Moreover, the sole evidence Defendants submit in opposition to the TRO motion and the PI motion is the declaration of Albert E. Fontenot, Jr., Associate Director for Decennial Census Programs at the U.S. Census Bureau (hereafter, “Fontenot”). In his September 5, 2020 declaration, Fontenot declares that:

Lack of field staff would be a barrier to reverting to the COVID Schedule were the Court to rule later in September. The Census Bureau begins terminating staff as operations wind down, even prior to closeout. Based on progress to date, as is standard in prior censuses, we have already begun terminating some of our temporary field staff in areas that have completed their work. It is difficult to bring back field staff once we have terminated their employment. Were the Court to enjoin us tomorrow we would be able to keep more staff on board than were the Court to enjoin us on September 29, at which point we will have terminated many more employees.

Font. Decl. at ¶ 98. Thus, Fontenot’s declaration underscores Plaintiffs’ claims of irreparable harm because the Bureau is terminating field staff now and will have difficulty rehiring such staff. Moreover, Fontenot’s declaration suggests that the burden of an injunction on Defendants is far less now than later in September.

Furthermore, Defendants’ stated reason for the August 3, 2020 Replan is to get the Census count to the President by December 31, 2020 instead of April 30, 2021 as scheduled in the Bureau’s COVID-19 Plan. Font. Decl. at ¶ 81. However, Defendants’ sole declarant, Fontenot, acknowledged publicly less than two months ago that the Bureau is “past the window of being able to get accurate counts to the President by December 31, 2020.” *U.S. Census Bureau, Operational Press Briefing – 2020 Census Update* at 21 (July 8, 2020), <https://www.census.gov/content/dam/Census/newsroom/press-kits/2020/news-briefing-programtranscript-july8.pdf>. Similarly, on May 27, 2020, Tim Olson, head of field operations for the 2020 Census, stated during a May 26, 2020 webinar organized by the National Congress of

American Indians that, “we have passed the point where we could even meet the current legislative requirement of December 31st. We can’t do that anymore.” Nat’l Conf. of Am. Indians, *2020 Census Webinar: American Indian/Alaska Native*, YouTube (May 26, 2020), <https://www.youtube.com/watch?v=F6IyJMtDDgY&feature=youtu.be&t=4689>. These statements support Plaintiffs’ claims of irreparable harm arising from an inaccurate census count. On balance, the Court finds that the balance of hardships tips sharply in favor of Plaintiffs.

As to the public interest, when the government is a party, the analysis of the balance of the hardships and the public interest merge. *See Drakes Bay Oyster Co. v. Jewell*, 747 F.3d 1073, 1092 (9th Cir. 2014) (citing *Nken v. Holder*, 556 U.S. 418, 435 (2009)). As the United States Supreme Court recognized, Congress has codified the public’s interest in “a census that is accurate and that fairly accounts for the crucial representational rights that depend on the census and the apportionment.” *Dep’t of Commerce v. New York*, 139 S. Ct. at 2569 (quoting *Franklin*, 505 U.S. at 819–820 (Stevens, J., concurring in part and concurring in judgment)) (discussing the Census Act, 2 U.S.C. § 2a). Other courts have held that “the public interest . . . requires obedience to the Constitution and to the requirement that Congress be fairly apportioned, based on accurate census figures” and that “it is in the public interest that the federal government distribute its funds . . . on the basis of accurate census data.” *Carey v. Klutznick*, 637 F.2d 834, 839 (2d Cir. 1980) (per curiam). Thus, the balance of the hardships and public interest tip sharply in Plaintiffs’ favor.

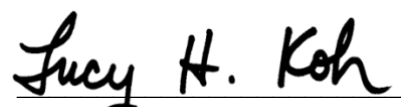
Accordingly, having considered the TRO motion, opposition, and reply; the parties’ oral arguments at the September 4, 2020 TRO hearing; the PI motion and opposition; the relevant law; and the record in this case, the Court GRANTS Plaintiffs’ motion for a temporary restraining order. The Court finds that no security is necessary. *See Jorgensen v. Cassidy*, 320 F.3d 906, 919 (9th Cir. 2003) (“Rule 65(c) invests the district court ‘with discretion as to the amount of security required, *if any*.’” (quoting *Barahona–Gomez v. Reno*, 167 F.3d 1228, 1237 (9th Cir. 1999))).

IT IS HEREBY ORDERED THAT, effective as of the date of this Order, Defendants Commerce Secretary Wilbur L. Ross, Jr.; the U.S. Department of Commerce; the Director of the U.S. Census Bureau Steven Dillingham, and the U.S. Census Bureau are enjoined from

1 implementing the August 3, 2020 Replan or allowing to be implemented any actions as a result of
2 the shortened timelines in the August 3, 2020 Replan, including but not limited to winding down
3 or altering any Census field operations, until the Court conducts its September 17, 2020 hearing on
4 Plaintiffs' PI motion.

5 **IT IS SO ORDERED.**

6
7 Dated: September 5, 2020

8 
9 LUCY H. KOH
United States District Judge

United States District Court
Northern District of California

From: [Adam Michael Korzeniewski \(CENSUS/DEPDIR FED\)](#)
To: katherine.e.kline@who.eop.gov
Subject: Dr Fleming - Korzeniewski meeting request
Date: Thursday, October 1, 2020 4:09:35 PM

Hi Katherine,

I'm a Senior Advisor at the Census Bureau, Dan Risko at Commerce DepSec's office just connected us. I'm currently working on writing books about Henry Clay (my project keeps expanding as I discover new things I believe historians completely missed). I understand that Dr. Fleming is a relative of Senator Clay five generations removed and would like an opportunity to speak with him to see if he can provide insight, connection to the Clay family, knowledge of unpublished contemporary period records, etc.

(b)(6)

I am happy to provide further details as appropriate. I am able to meet in person or speak by phone, whatever is easiest for Dr. Fleming. Thank you for all of your assistance.

Best regards,

Adam Korzeniewski, Senior Advisor

Office of the Director

U.S. Census Bureau

O: 301.763.9590 | (b)(6)

adam.m.korzeniewski@census.gov

census.gov | 2020census.gov | [@uscensusbureau](https://twitter.com/uscensusbureau)

From: [Nathaniel Cogley \(CENSUS/DEPDIR FED\)](#)
To: [Steven Dillingham \(CENSUS/DEPDIR FED\)](#)
Subject: Email
Date: Friday, November 20, 2020 10:40:36 AM

katherine.e.kline@who.eop.gov

From: [Earl N Mayfield \(CENSUS/DEPDIR FED\)](#)
To: [Bhirud, Ketan](#)
Cc: [Leing, George \(Federal\)](#); [Tatum, Tobias \(Federal\)](#)
Subject: Fw: Categories of Aliens Who May Need to Be Removed from the Census Count
Date: Monday, November 23, 2020 12:54:58 PM

Hi Ketan,
Hope you got some well-deserved rest this weekend. I wanted to check in on this; who else are we still waiting on?
Thanks,

Trey Mayfield
Counsel to the Director of the United States Census
Office (301) 763-0707

(b)(6)

From: Bhirud, Ketan (b)(6)
Sent: Thursday, November 19, 2020 4:59 PM
To: Philbin, Patrick F. EOP/WHO <Patrick.F.Philbin@who.eop.gov>; Devin.A.DeBacker@usdoj.gov <Devin.A.DeBacker@usdoj.gov>; Hamilton, Eric J. EOP/WHO <Eric.J.Hamilton@who.eop.gov>; Earl N Mayfield (CENSUS/DEPDIR FED) <earl.n.mayfield@census.gov>; MWalsh@doc.gov <MWalsh@doc.gov>; Mizelle, Chad (b)(6)

(b)(6)

Subject: RE: Categories of Aliens Who May Need to Be Removed from the Census Count

(b) (5)

Best,

Ketan Bhirud
Deputy General Counsel
U.S. Department of Homeland Security

(b)(6)

From: Bhirud, Ketan
Sent: Thursday, November 19, 2020 12:08 AM
To: Philbin, Patrick F. EOP/WHO <Patrick.F.Philbin@who.eop.gov>; Devin.A.DeBacker@usdoj.gov; Hamilton, Eric J. EOP/WHO <Eric.J.Hamilton@who.eop.gov>; earl.n.mayfield@census.gov; MWalsh@doc.gov; Mizelle, Chad (b)(6)

(b)(6)

Subject: Categories of Aliens Who May Need to Be Removed from the Census Count

Chad, please see below for my request to you.

All,

(b) (5) [REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

Best,

Ketan Bhirud
Deputy General Counsel
U.S. Department of Homeland Security

(b)(6) [REDACTED]

From: [Earl N Mayfield \(CENSUS/DEPDIR FED\)](#)
To: [Benjamin A Overholt \(CENSUS/DEPDIR FED\)](#)
Subject: Fw: Census Information
Date: Thursday, October 29, 2020 3:01:59 PM
Attachments: [unlawful presence memo.pdf](#)
[Types of Parole.docx](#)
[Parole Codes.docx](#)
[Census Data.xlsx](#)

Just got off the call. This is what DHS provided just prior to the call.

Philbin has asked that you and I produce by mid-day tomorrow an outline of how Census intends to ascertain unlawful status from the data we have.

You definitely need to be in these calls going forward.

Trey Mayfield

Counsel to the Director of the United States Census

Office (301) 763-0707

(b)(6)

From: Bhirud, Ketan (b)(6)
Sent: Thursday, October 29, 2020 1:57 PM
To: Philbin, Patrick F. EOP/WHO <Patrick.F.Philbin@who.eop.gov>; Hamilton, Eric J. EOP/WHO <Eric.J.Hamilton@who.eop.gov>; Devin.A.DeBacker@usdoj.gov <Devin.A.DeBacker@usdoj.gov>; Earl N Mayfield (CENSUS/DEPDIR FED) <earl.n.mayfield@census.gov>; (b)(6)
(b)(6)
Subject: Census Information

Team,

I write to provide some additional information that I have learned since our last conversation. I do not intend for this information to be determinative or final, but I am writing to provide what I know as of now. Please let me know if you have any questions or concerns.

Information regarding data already provided:

(b) (5)
[Redacted]
[Redacted]
[Redacted]

[Redacted]
[Redacted]
[Redacted]

[Redacted]

[Redacted]
[Redacted]

(b) (5)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Ketan Bhirud
Deputy General Counsel
U.S. Department of Homeland Security
(b)(6)

From: [Steven Dillingham \(CENSUS/DEPDIR FED\)](#)
To: [Earl N Mayfield \(CENSUS/DEPDIR FED\)](#)
Subject: Fw: Census Meeting
Date: Wednesday, October 14, 2020 4:55:12 PM

FYI

From: Kline, Katherine E. EOP/WHO <Katherine.E.Kline@who.eop.gov>
Sent: Wednesday, October 14, 2020 4:47 PM
To: Steven Dillingham (CENSUS/DEPDIR FED) <steven.dillingham@census.gov>
Subject: FW: Census Meeting

[Link below..](#)

Best,

Katherine Kline
Office of the Chief of Staff
O: 202-456-1208

From: Kline, Katherine E. EOP/WHO
Sent: Wednesday, October 14, 2020 10:43 AM
To: 'Nathaniel Cogley (CENSUS/DEPDIR FED)' <nathaniel.cogley@census.gov>
Cc: Goudarzi, Talat (Federal) <TGoudarzi@doc.gov>; Martin, Nicole (Federal) <NMartin1@doc.gov>; Risko, Daniel (Federal) <DRisko@doc.gov>
Subject: RE: Census Meeting

Waves link for tomorrow.
<https://events.whitehouse.gov/AppointmentRsvpForm?rid=RT47MCTKEF>

From: Nathaniel Cogley (CENSUS/DEPDIR FED) <nathaniel.cogley@census.gov>
Sent: Wednesday, October 14, 2020 10:40 AM
To: Kline, Katherine E. EOP/WHO <Katherine.E.Kline@who.eop.gov>
Cc: Goudarzi, Talat (Federal) <TGoudarzi@doc.gov>; Martin, Nicole (Federal) <NMartin1@doc.gov>; Risko, Daniel (Federal) <DRisko@doc.gov>
Subject: Re: Census Meeting

Hi Katherine,

Greetings. In terms of who is invited from the Census Bureau, I believe that the meeting would benefit from the presence of both Dr. Dillingham and Dr. Overholt. Thanks in advance for your attention and efforts.

Sincerely,
Nathaniel

Sent from my iPhone

On Oct 14, 2020, at 10:02 AM, Kline, Katherine E. EOP/WHO <Katherine.E.Kline@who.eop.gov> wrote:

Great!

Confirming tomorrow, **October 15th at 4:30 p.m.** with the group. Please let me know who all from Commerce/Census team will be joining other than the DepSec and Mike. I am working on a meeting space and will circle back soon.

Best,

Katherine Kline
Office of the Chief of Staff
O: 202-456-1208

From: Goudarzi, Talat (Federal) <TGoudarzi@doc.gov>
Sent: Wednesday, October 14, 2020 8:35 AM
To: Kline, Katherine E. EOP/WHO <Katherine.E.Kline@who.eop.gov>; Martin, Nicole (Federal) <NMartin1@doc.gov>; Cogley, Nathaniel <nathaniel.cogley@census.gov>; Risko, Daniel (Federal) <DRisko@doc.gov>
Subject: Re: Census Meeting

Thanks Nicole and Katherine! 4:30pm tomorrow works for Mike!

Get [Outlook for iOS](#)

From: Kline, Katherine E. EOP/WHO <Katherine.E.Kline@who.eop.gov>
Sent: Tuesday, October 13, 2020 8:43:44 PM
To: Martin, Nicole (Federal) <NMartin1@doc.gov>; Cogley, Nathaniel <nathaniel.cogley@census.gov>; Risko, Daniel (Federal) <DRisko@doc.gov>
Cc: Goudarzi, Talat (Federal) <TGoudarzi@doc.gov>
Subject: RE: Census Meeting

Thanks, Nicole! I just got two of the afternoon DC invites, so Dr. Fleming will also be in those. 4:30 works on our end, I believe. I will confirm first thing in the morning.

Best,

Katherine Kline
Office of the Chief of Staff
O: 202-456-1208

From: Martin, Nicole (Federal) <NMartin1@doc.gov>
Sent: Tuesday, October 13, 2020 6:25 PM
To: Kline, Katherine E. EOP/WHO <Katherine.E.Kline@who.eop.gov>; Cogley, Nathaniel <nathaniel.cogley@census.gov>; Risko, Daniel (Federal) <DRisko@doc.gov>
Cc: Goudarzi, Talat (Federal) <TGoudarzi@doc.gov>
Subject: RE: Census Meeting

Hi Katherine,

DS Kelley has three Deputy Committee meetings on Thursday (1-4), but is available at 4:30pm if that works well for Dr. Fleming.

I am adding Tala who can assist with Mike's availability.

Best,
Nicole

Nicole Martin
Office of the Deputy Secretary
U.S. Department of Commerce
NMartin1@doc.gov
(b)(6)

From: Kline, Katherine E. EOP/WHO <Katherine.E.Kline@who.eop.gov>
Sent: Tuesday, October 13, 2020 5:27 PM
To: Cogley, Nathaniel <nathaniel.cogley@census.gov>; Martin, Nicole (Federal) <NMartin1@doc.gov>; Risko, Daniel (Federal) <DRisko@doc.gov>
Subject: RE: Census Meeting

I appreciate that, Nathaniel.

Dan/Nicole, let me know what works best for the DepSec and Mike.

Best,

Katherine Kline
Office of the Chief of Staff
O: 202-456-1208

From: Nathaniel Cogley (CENSUS/DEPDIR FED) <nathaniel.cogley@census.gov>
Sent: Tuesday, October 13, 2020 5:20 PM

To: Kline, Katherine E. EOP/WHO <Katherine.E.Kline@who.eop.gov>; Martin, Nicole (Federal) <NMartin1@doc.gov>; Risko, Daniel (Federal) <DRisko@doc.gov>
Subject: Re: Census Meeting

Hi Katherine,

Given the importance of the meeting, I can accommodate whatever time the meeting is set for. Looking forward to it.

Sincerely,
Nathaniel

Nathaniel Cogley, Ph.D.
Deputy Director for Policy
U.S. Census Bureau

From: Kline, Katherine E. EOP/WHO <Katherine.E.Kline@who.eop.gov>
Sent: Tuesday, October 13, 2020 5:15 PM
To: Martin, Nicole (Federal) <NMartin1@doc.gov>; Risko, Daniel (Federal) <DRisko@doc.gov>
Cc: Nathaniel Cogley (CENSUS/DEPDIR FED) <nathaniel.cogley@census.gov>
Subject: Census Meeting

Good afternoon friends,

Given the SCOTUS announcement today, we would like to have the group meet on Thursday. Dr. Fleming has availability any time after 2:00 p.m. Please let me know what time works best for the Commerce/Census Team.

Best,

Katherine Kline
Office of the Chief of Staff
O: 202-456-1208

From: [Nathaniel Cogley \(CENSUS/DEPDIR FED\)](#)
To: [Steven Dillingham \(CENSUS/DEPDIR FED\)](#)
Subject: Fw: Census Update Meeting - Next Week
Date: Friday, October 16, 2020 3:27:13 PM

From: Kline, Katherine E. EOP/WHO <Katherine.E.Kline@who.eop.gov>
Sent: Friday, October 16, 2020 2:18 PM
To: Martin, Nicole (Federal) <NMartin1@doc.gov>; Goudarzi, Talat (Federal) <TGoudarzi@doc.gov>; Nathaniel Cogley (CENSUS/DEPDIR FED) <nathaniel.cogley@census.gov>
Cc: Risko, Daniel (Federal) <DRisko@doc.gov>
Subject: RE: Census Update Meeting - Next Week

Waves link for Tuesday at 10:30.. <https://events.whitehouse.gov/AppointmentRsvpForm?rid=YH3DKWQ7V8>

This meeting will be in the (b)(6)

Best,

Katherine Kline
Office of the Chief of Staff
O: 202-456-1208

From: Kline, Katherine E. EOP/WHO
Sent: Friday, October 16, 2020 12:24 PM
To: 'Martin, Nicole (Federal)' <NMartin1@doc.gov>; Goudarzi, Talat (Federal) <TGoudarzi@doc.gov>; Risko, Daniel (Federal) <DRisko@doc.gov>
Cc: Cogley, Nathaniel <nathaniel.cogley@census.gov>
Subject: RE: Census Update Meeting - Next Week

Thanks, team! I appreciate all of the prompt responses.

10:30 a.m. starting time on Tuesday works best for the group if that's ok.

From: Martin, Nicole (Federal) <NMartin1@doc.gov>
Sent: Friday, October 16, 2020 12:20 PM
To: Goudarzi, Talat (Federal) <TGoudarzi@doc.gov>; Kline, Katherine E. EOP/WHO <Katherine.E.Kline@who.eop.gov>; Risko, Daniel (Federal) <DRisko@doc.gov>
Cc: Cogley, Nathaniel <nathaniel.cogley@census.gov>
Subject: RE: Census Update Meeting - Next Week

Hi Katherine,

We have availability on Tuesday as well. Any time before 3pm is preferred. Maybe an 11am meeting?

Please let me know what works best!

Nicole

From: Goudarzi, Talat (Federal) <TGoudarzi@doc.gov>
Sent: Friday, October 16, 2020 12:10 PM
To: Kline, Katherine E. EOP/WHO <Katherine.E.Kline@who.eop.gov>; Risko, Daniel (Federal) <DRisko@doc.gov>; Martin, Nicole (Federal) <NMartin1@doc.gov>
Cc: Cogley, Nathaniel <nathaniel.cogley@census.gov>
Subject: Re: Census Update Meeting - Next Week

Thanks Katherine! Mike will be traveling on Wednesday, so Tuesday works best if possible!

Thanks so much,

Tala

From: Kline, Katherine E. EOP/WHO <Katherine.E.Kline@who.eop.gov>
Sent: Friday, October 16, 2020 11:54:57 AM
To: Goudarzi, Talat (Federal) <TGoudarzi@doc.gov>; Risko, Daniel (Federal) <DRisko@doc.gov>; Martin, Nicole (Federal) <NMartin1@doc.gov>
Cc: Cogley, Nathaniel <nathaniel.cogley@census.gov>
Subject: RE: Census Update Meeting - Next Week

Just Mike and KDK. Thank you for checking.

From: Goudarzi, Talat (Federal) <TGoudarzi@doc.gov>
Sent: Friday, October 16, 2020 10:37 AM
To: Kline, Katherine E. EOP/WHO <Katherine.E.Kline@who.eop.gov>; Risko, Daniel (Federal) <DRisko@doc.gov>; Martin, Nicole (Federal) <NMartin1@doc.gov>
Cc: Cogley, Nathaniel <nathaniel.cogley@census.gov>
Subject: Re: Census Update Meeting - Next Week

Thanks Katherine! Is this with SWR? or just Mike and KDK?

From: Kline, Katherine E. EOP/WHO <Katherine.E.Kline@who.eop.gov>
Sent: Friday, October 16, 2020 10:05 AM
To: Risko, Daniel (Federal) <DRisko@doc.gov>; Goudarzi, Talat (Federal) <TGoudarzi@doc.gov>; Martin, Nicole (Federal) <NMartin1@doc.gov>

Cc: Cogley, Nathaniel <nathaniel.cogley@census.gov>

Subject: Census Update Meeting - Next Week

Hi Team,

Just checking to see if Tuesday or Wednesday works best for the next Census meeting. We are flexible either day as of now.

Best,

Katherine Kline
Office of the Chief of Staff
O: 202-456-1208

From: [Nathaniel Cogley \(CENSUS/DEPDIR FED\)](#)
To: [Benjamin A Overholt \(CENSUS/DEPDIR FED\)](#)
Subject: Fw: Census Update Meeting - Next Week
Date: Friday, October 16, 2020 3:27:34 PM

From: Kline, Katherine E. EOP/WHO <Katherine.E.Kline@who.eop.gov>
Sent: Friday, October 16, 2020 2:18 PM
To: Martin, Nicole (Federal) <NMartin1@doc.gov>; Goudarzi, Talat (Federal) <TGoudarzi@doc.gov>; Nathaniel Cogley (CENSUS/DEPDIR FED) <nathaniel.cogley@census.gov>
Cc: Risko, Daniel (Federal) <DRisko@doc.gov>
Subject: RE: Census Update Meeting - Next Week

Waves link for Tuesday at 10:30.. <https://events.whitehouse.gov/AppointmentRsvpForm?rid=YH3DKWQ7V8>

This meeting will be in the (b)(6)

Best,

Katherine Kline
Office of the Chief of Staff
O: 202-456-1208

From: Kline, Katherine E. EOP/WHO
Sent: Friday, October 16, 2020 12:24 PM
To: 'Martin, Nicole (Federal)' <NMartin1@doc.gov>; Goudarzi, Talat (Federal) <TGoudarzi@doc.gov>; Risko, Daniel (Federal) <DRisko@doc.gov>
Cc: Cogley, Nathaniel <nathaniel.cogley@census.gov>
Subject: RE: Census Update Meeting - Next Week

Thanks, team! I appreciate all of the prompt responses.

10:30 a.m. starting time on Tuesday works best for the group if that's ok.

From: Martin, Nicole (Federal) <NMartin1@doc.gov>
Sent: Friday, October 16, 2020 12:20 PM
To: Goudarzi, Talat (Federal) <TGoudarzi@doc.gov>; Kline, Katherine E. EOP/WHO <Katherine.E.Kline@who.eop.gov>; Risko, Daniel (Federal) <DRisko@doc.gov>
Cc: Cogley, Nathaniel <nathaniel.cogley@census.gov>
Subject: RE: Census Update Meeting - Next Week

Hi Katherine,

We have availability on Tuesday as well. Any time before 3pm is preferred. Maybe an 11am meeting?

Please let me know what works best!

Nicole

From: Goudarzi, Talat (Federal) <TGoudarzi@doc.gov>
Sent: Friday, October 16, 2020 12:10 PM
To: Kline, Katherine E. EOP/WHO <Katherine.E.Kline@who.eop.gov>; Risko, Daniel (Federal) <DRisko@doc.gov>; Martin, Nicole (Federal) <NMartin1@doc.gov>
Cc: Cogley, Nathaniel <nathaniel.cogley@census.gov>
Subject: Re: Census Update Meeting - Next Week

Thanks Katherine! Mike will be traveling on Wednesday, so Tuesday works best if possible!

Thanks so much,

Tala

From: Kline, Katherine E. EOP/WHO <Katherine.E.Kline@who.eop.gov>
Sent: Friday, October 16, 2020 11:54:57 AM
To: Goudarzi, Talat (Federal) <TGoudarzi@doc.gov>; Risko, Daniel (Federal) <DRisko@doc.gov>; Martin, Nicole (Federal) <NMartin1@doc.gov>
Cc: Cogley, Nathaniel <nathaniel.cogley@census.gov>
Subject: RE: Census Update Meeting - Next Week

Just Mike and KDK. Thank you for checking.

From: Goudarzi, Talat (Federal) <TGoudarzi@doc.gov>
Sent: Friday, October 16, 2020 10:37 AM
To: Kline, Katherine E. EOP/WHO <Katherine.E.Kline@who.eop.gov>; Risko, Daniel (Federal) <DRisko@doc.gov>; Martin, Nicole (Federal) <NMartin1@doc.gov>
Cc: Cogley, Nathaniel <nathaniel.cogley@census.gov>
Subject: Re: Census Update Meeting - Next Week

Thanks Katherine! Is this with SWR? or just Mike and KDK?

From: Kline, Katherine E. EOP/WHO <Katherine.E.Kline@who.eop.gov>
Sent: Friday, October 16, 2020 10:05 AM
To: Risko, Daniel (Federal) <DRisko@doc.gov>; Goudarzi, Talat (Federal) <TGoudarzi@doc.gov>; Martin, Nicole (Federal) <NMartin1@doc.gov>

Cc: Cogley, Nathaniel <nathaniel.cogley@census.gov>

Subject: Census Update Meeting - Next Week

Hi Team,

Just checking to see if Tuesday or Wednesday works best for the next Census meeting. We are flexible either day as of now.

Best,

Katherine Kline
Office of the Chief of Staff
O: 202-456-1208

From: [Katherine Dodson Hancher \(CENSUS/DEPDIR FED\)](#) on behalf of [Steven Dillingham \(CENSUS/DEPDIR FED\)](#)
To: Katherine.E.Kline@who.eop.gov
Subject: Fw: Census Update Meeting - Next Week
Date: Monday, October 19, 2020 4:25:38 PM

Good afternoon-

Can you please send a WAVES link again. I don't see where the Director filled one out and this link isn't working for me now.

Thanks!

Kathy Hancher
Exec Assistant to the Director

From: Risko, Daniel (Federal) <DRisko@doc.gov>
Sent: Friday, October 16, 2020 2:35 PM
To: Benjamin A Overholt (CENSUS/DEPDIR FED) <benjamin.a.overholt@census.gov>; Steven Dillingham (CENSUS/DEPDIR FED) <steven.dillingham@census.gov>
Subject: Fwd: Census Update Meeting - Next Week

FYI - Tuesday meeting at 1030 AM.

Dan Risko
Chief of Staff
Office of the Deputy Secretary
United States Department of Commerce
[202-482-6010](tel:202-482-6010) (o) | (b)(6)
drisko@doc.gov

Begin forwarded message:

From: "Kline, Katherine E. EOP/WHO" <Katherine.E.Kline@who.eop.gov>
Date: October 16, 2020 at 2:18:37 PM EDT
To: "Martin, Nicole (Federal)" <NMartin1@doc.gov>, "Goudarzi, Talat (Federal)" <TGoudarzi@doc.gov>, "Cogley, Nathaniel" <nathaniel.cogley@census.gov>
Cc: "Risko, Daniel (Federal)" <DRisko@doc.gov>
Subject: RE: Census Update Meeting - Next Week

[Waves link for Tuesday at 10:30..](#)

<https://events.whitehouse.gov/AppointmentRsvpForm?rid=YH3DKWQ7V8>

This meeting will be in the (b)(6)

Best,

Katherine Kline
Office of the Chief of Staff
O: 202-456-1208

From: Kline, Katherine E. EOP/WHO
Sent: Friday, October 16, 2020 12:24 PM
To: 'Martin, Nicole (Federal)' <NMartin1@doc.gov>; Goudarzi, Talat (Federal) <TGoudarzi@doc.gov>; Risko, Daniel (Federal) <DRisko@doc.gov>
Cc: Cogley, Nathaniel <nathaniel.cogley@census.gov>
Subject: RE: Census Update Meeting - Next Week

Thanks, team! I appreciate all of the prompt responses.

10:30 a.m. starting time on Tuesday works best for the group if that's ok.

From: Martin, Nicole (Federal) <NMartin1@doc.gov>
Sent: Friday, October 16, 2020 12:20 PM
To: Goudarzi, Talat (Federal) <TGoudarzi@doc.gov>; Kline, Katherine E. EOP/WHO <Katherine.E.Kline@who.eop.gov>; Risko, Daniel (Federal) <DRisko@doc.gov>
Cc: Cogley, Nathaniel <nathaniel.cogley@census.gov>
Subject: RE: Census Update Meeting - Next Week

Hi Katherine,

We have availability on Tuesday as well. Any time before 3pm is preferred. Maybe an 11am meeting?

Please let me know what works best!

Nicole

From: Goudarzi, Talat (Federal) <TGoudarzi@doc.gov>
Sent: Friday, October 16, 2020 12:10 PM
To: Kline, Katherine E. EOP/WHO <Katherine.E.Kline@who.eop.gov>; Risko, Daniel (Federal) <DRisko@doc.gov>; Martin, Nicole (Federal) <NMartin1@doc.gov>
Cc: Cogley, Nathaniel <nathaniel.cogley@census.gov>

Subject: Re: Census Update Meeting - Next Week

Thanks Katherine! Mike will be traveling on Wednesday, so Tuesday works best if possible!

Thanks so much,

Tala

From: Kline, Katherine E. EOP/WHO <Katherine.E.Kline@who.eop.gov>
Sent: Friday, October 16, 2020 11:54:57 AM
To: Goudarzi, Talat (Federal) <TGoudarzi@doc.gov>; Risko, Daniel (Federal) <DRisko@doc.gov>; Martin, Nicole (Federal) <NMartin1@doc.gov>
Cc: Cogley, Nathaniel <nathaniel.cogley@census.gov>
Subject: RE: Census Update Meeting - Next Week

Just Mike and KDK. Thank you for checking.

From: Goudarzi, Talat (Federal) <TGoudarzi@doc.gov>
Sent: Friday, October 16, 2020 10:37 AM
To: Kline, Katherine E. EOP/WHO <Katherine.E.Kline@who.eop.gov>; Risko, Daniel (Federal) <DRisko@doc.gov>; Martin, Nicole (Federal) <NMartin1@doc.gov>
Cc: Cogley, Nathaniel <nathaniel.cogley@census.gov>
Subject: Re: Census Update Meeting - Next Week

Thanks Katherine! Is this with SWR? or just Mike and KDK?

From: Kline, Katherine E. EOP/WHO <Katherine.E.Kline@who.eop.gov>
Sent: Friday, October 16, 2020 10:05 AM
To: Risko, Daniel (Federal) <DRisko@doc.gov>; Goudarzi, Talat (Federal) <TGoudarzi@doc.gov>; Martin, Nicole (Federal) <NMartin1@doc.gov>
Cc: Cogley, Nathaniel <nathaniel.cogley@census.gov>
Subject: Census Update Meeting - Next Week

Hi Team,

Just checking to see if Tuesday or Wednesday works best for the next Census meeting. We are flexible either day as of now.

Best,

Katherine Kline
Office of the Chief of Staff
O: 202-456-1208

From: [Nathaniel Cogley \(CENSUS/DEPDIR FED\)](#)
To: [Benjamin A Overholt \(CENSUS/DEPDIR FED\)](#)
Subject: Fw: Census Updates Meeting - Next Week
Date: Tuesday, October 27, 2020 3:13:27 PM

From: Kline, Katherine E. EOP/WHO <Katherine.E.Kline@who.eop.gov>
Sent: Tuesday, October 27, 2020 3:11 PM
To: Nathaniel Cogley (CENSUS/DEPDIR FED) <nathaniel.cogley@census.gov>
Subject: RE: Census Updates Meeting - Next Week

Great. Please forward to him.

From: Nathaniel Cogley (CENSUS/DEPDIR FED) <nathaniel.cogley@census.gov>
Sent: Tuesday, October 27, 2020 3:10 PM
To: Kline, Katherine E. EOP/WHO <Katherine.E.Kline@who.eop.gov>
Subject: Re: Census Updates Meeting - Next Week

Hi Katherine,

That time works for me. Assuming Dr. Fleming agrees, please add Dr. Overholt to the list of invitees, since he is a regular attendee of those meetings now, and a valuable contributor. Thanks in advance for your attention and all your efforts.

—Nathaniel

Nathaniel Cogley, Ph.D.
Deputy Director for Policy
U.S. Census Bureau

From: Kline, Katherine E. EOP/WHO <Katherine.E.Kline@who.eop.gov>
Sent: Tuesday, October 27, 2020 1:10 PM
To: Martin, Nicole (Federal) <NMartin1@doc.gov>; Risko, Daniel (Federal) <DRisko@doc.gov>; Goudarzi, Talat (Federal) <TGoudarzi@doc.gov>; Steven Dillingham (CENSUS/DEPDIR FED) <steven.dillingham@census.gov>; Earl N Mayfield (CENSUS/DEPDIR FED) <earl.n.mayfield@census.gov>; Nathaniel Cogley (CENSUS/DEPDIR FED) <nathaniel.cogley@census.gov>
Subject: Census Updates Meeting - Next Week

Hi Team,

Per Dr. Fleming, the next Census Updates Meeting will be on **Thursday, November 5th**. I would like to have this meeting at **10:00 a.m.** Please let me know if that works for the group.

Best,

Katherine Kline
Office of the Chief of Staff
O: 202-456-1208

From: [Nathaniel Cogley \(CENSUS/DEPDIR FED\)](#)
To: [Benjamin A Overholt \(CENSUS/DEPDIR FED\)](#); [Earl N Mayfield \(CENSUS/DEPDIR FED\)](#)
Subject: Fw: Monday Meeting
Date: Friday, October 16, 2020 1:53:29 PM

Gentlemen. Please see the link below. Monday meeting at 10:30am.

—Nathaniel

Nathaniel Cogley, Ph.D.
Deputy Director for Policy
U.S. Census Bureau

From: Kline, Katherine E. EOP/WHO <Katherine.E.Kline@who.eop.gov>
Sent: Friday, October 16, 2020 1:45 PM
To: Nathaniel Cogley (CENSUS/DEPDIR FED) <nathaniel.cogley@census.gov>
Subject: FW: Monday Meeting

<https://events.whitehouse.gov/AppointmentRsvpForm?rid=TX6RMC4XBD> Here is the waves link.
Would you mind sharing with Ben and Trey?

From: [Earl N Mayfield \(CENSUS/DEPDIR FED\)](#)
To: [Trey Mayfield](#)
Subject: Fw: My Departure
Date: Wednesday, January 13, 2021 10:10:55 AM

Trey Mayfield
Counsel to the Director of the United States Census
Office (301) 763-0707

(b)(6)

From: Leing, George (Federal) <GLEing@doc.gov>
Sent: Wednesday, January 13, 2021 10:09 AM
To: Earl N Mayfield (CENSUS/DEPDIR FED) <earl.n.mayfield@census.gov>
Subject: RE: My Departure

Trey,

It's been great to know you and work with you. I was always happy to see you involved on calls and emails since I knew you would be on top of matters and a positive influence on the conversation.

I wish you all the best for the future and hope that our paths cross again. I'm not sure when my offboarding will occur, but if you ever need to reach me, (b)(6)

(b)(6)

(b)(6)

Best,
George

George Leing | Senior Counsel
Office of the General Counsel
U.S. Department of Commerce
Direct: 202-482-5981

(b)(6)

From: Earl N Mayfield (CENSUS/DEPDIR FED) <earl.n.mayfield@census.gov>
Sent: Wednesday, January 13, 2021 9:44 AM
To: Dillingham, Steven <steven.dillingham@census.gov>; Cogley, Nathaniel <nathaniel.cogley@census.gov>; Overholt, Benjamin A <benjamin.a.overholt@census.gov>; Stanley, Christopher J <christopher.j.stanley@census.gov>; Ahmad, Ali M <ali.m.ahmad@census.gov>; Sprung, Michael J <michael.j.sprung@census.gov>; Smith, Steven K <steven.k.smith@census.gov>
Cc: Cannon, Michael (Federal) <MCannon@doc.gov>; Leing, George (Federal) <GLEing@doc.gov>; Kourkoumelis, Aristidis (Federal) <AKourkoumelis@doc.gov>; Brebbia, Sean (Federal) <SBrebbia@doc.gov>; Heller, Megan (Federal) <MHeller@doc.gov>; Creech, Melissa L <melissa.l.creech@census.gov>; Styles, Kathleen M <kathleen.m.styles@census.gov>; Walsh,

Michael (Federal) <MWalsh@doc.gov>; Mehr, Ben (Federal) <BMehr@doc.gov>; Furgione, Laura <laura.furgione@census.gov>; Fontenot, Albert E <albert.e.fontenot@census.gov>; Philbin, Patrick F. EOP/WHO <Patrick.F.Philbin@who.eop.gov>; Risko, Daniel (Federal) <DRisko@doc.gov>; Foti, Anthony (Federal) <AFoti@doc.gov>; daniel.huff@who.eop.gov

Subject: My Departure

Colleagues,

Today I will be offboarding, and thus losing access to my phone and computer, but will still be reachable by (b)(6)

(b)(6)). Feel free to reach me there if needed. It's been a privilege to assist in delivering the 2020 Census, and a pleasure getting to know and work with so many talented people. I wish you the best in your future endeavors, wherever they may be.

Sincerely,

Trey Mayfield

Counsel to the Director of the United States Census

Office (301) 763-0707

(b)(6)

From: [Nathaniel Cogley \(CENSUS/DEPDIR FED\)](#)
To: [Steven Dillingham \(CENSUS/DEPDIR FED\)](#)
Subject: Fw: Question from Sen. Daines
Date: Friday, September 11, 2020 4:34:21 PM
Attachments: [Daines and Census.pdf](#)

Forwarded.

From: Fleming, John C. Jr. EOP/WHO <John.C.Fleming@who.eop.gov>
Sent: Friday, September 11, 2020 4:07 PM
To: Nathaniel Cogley (CENSUS/DEPDIR FED) <nathaniel.cogley@census.gov>
Subject: Question from Sen. Daines

Nathaniel,

Please review this letter. Can you respond to the senator's question here?

Regards,

John C. Fleming, MD

Assistant to the President for Planning and Implementation
Office of the Chief of Staff

(b)(6)

Office 202-456-1208

(b)(6)

John.C.Fleming@who.eop.gov

From: [Earl N Mayfield \(CENSUS/DEPDIR FED\)](#)
To: [Philbin, Patrick F. EOP/WHO](#)
Cc: [Benjamin A Overholt \(CENSUS/DEPDIR FED\)](#); [Steinmetz, Michele](#); [Bhirud, Ketan](#)
Subject: Fw: Questions from Whitehouse regarding Ice Detention center and ADREC business rules
Date: Wednesday, December 9, 2020 5:59:06 PM
Attachments: [20201208 responses to WH.docx](#)

Pat,

Please find attached in advance of tomorrow's meeting the responses from our data folks about the business rules for the outstanding unlawful status questions.

Thanks,

Trey Mayfield

Counsel to the Director of the United States Census

Office (301) 763-0707

(b)(6)

From: John Maron Abowd (CENSUS/ADRM FED) <john.maron.abowd@census.gov>
Sent: Wednesday, December 9, 2020 4:53 PM
To: Benjamin A Overholt (CENSUS/DEPDIR FED) <benjamin.a.overholt@census.gov>; J David Brown (CENSUS/CES FED) <J.David.Brown@census.gov>; Matthew Spence (CENSUS/POP FED) <Matthew.Spence@census.gov>; Michael A Berning (CENSUS/ERD FED) <Michael.A.Berning@census.gov>; Ron S Jarmin (CENSUS/DEPDIR FED) <Ron.S.Jarmin@census.gov>; Victoria Velkoff (CENSUS/ADDP FED) <Victoria.A.Velkoff@census.gov>; Enrique Lamas (CENSUS/DEPDIR FED) <Enrique.Lamas@census.gov>
Cc: Earl N Mayfield (CENSUS/DEPDIR FED) <earl.n.mayfield@census.gov>
Subject: Re: Questions from Whitehouse regarding Ice Detention center and ADREC business rules

The attached document answers your questions.

Thanks,

John M. Abowd, PhD, Associate Director and Chief Scientist

Research and Methodology

U.S. Census Bureau

O: [301-763-5880](tel:301-763-5880) M: simulring on cell

[census.gov](https://www.census.gov) | [@uscensusbureau](https://twitter.com/uscensusbureau)

Shape your future. START HERE > 2020census.gov

From: Benjamin A Overholt (CENSUS/DEPDIR FED) <benjamin.a.overholt@census.gov>
Sent: Tuesday, December 8, 2020 12:47 PM
To: J David Brown (CENSUS/CES FED) <J.David.Brown@census.gov>; Matthew Spence (CENSUS/POP FED) <Matthew.Spence@census.gov>; Michael A Berning (CENSUS/ERD FED) <Michael.A.Berning@census.gov>; Ron S Jarmin (CENSUS/DEPDIR FED) <Ron.S.Jarmin@census.gov>;

From: [Nathaniel Cogley \(CENSUS/DEPDIR FED\)](#)
To: [Steven Dillingham \(CENSUS/DEPDIR FED\)](#)
Cc: [Benjamin A Overholt \(CENSUS/DEPDIR FED\)](#)
Subject: Fw: Scan
Date: Tuesday, December 1, 2020 2:16:23 PM
Attachments: [scan02.pdf](#)

FYI.

From: Nathaniel Cogley (CENSUS/DEPDIR FED)
Sent: Thursday, November 12, 2020 11:31 AM
To: Philbin, Patrick F. EOP/WHO <Patrick.F.Philbin@who.eop.gov>; pfp2dcp@who.eop.gov
<pfp2dcp@who.eop.gov>
Cc: Earl N Mayfield (CENSUS/DEPDIR FED) <earl.n.mayfield@census.gov>
Subject: Scan

Dear Pat,

Greetings. Please find the following scan concerning an ongoing deliberative legal issue attached. Trey Mayfield is CCed. Thanks in advance for your attention.

Sincerely,
Nathaniel

Nathaniel Cogley, Ph.D.
Deputy Director for Policy
U.S. Census Bureau

From: [Earl N Mayfield \(CENSUS/DEPDIR FED\)](#)
To: Katherine.E.Kline@who.eop.gov
Subject: Fw: Staff Announcement: Andrea Davis, Diversity and Inclusion Coordinator
Date: Monday, October 19, 2020 1:26:23 PM

Hi Katherine,
Dr. Flemming asked that the below be passed along per a mention in this morning's meeting.
Also, should I attend tomorrow's 10:30 meeting re: Census?
Thanks,
Trey

Trey Mayfield
Counsel to the Director of the United States Census
Office (301) 763-0707

(b) (5)

From: BOC BROADCAST (CENSUS/DIR) <boc.broadcast@census.gov>
Sent: Wednesday, October 7, 2020 2:04 PM
Subject: Staff Announcement: Andrea Davis, Diversity and Inclusion Coordinator

To: All Staff

From the Desk of Stefanie L. Watson, Diversity and Inclusion Officer . . .

Please join me in welcoming Andrea Davis, Ph.D., to the Diversity and Inclusion Office (DIO) team. Andrea recently joined DIO as the Diversity and Inclusion Coordinator for the Census Bureau. In this role, she serves as a strategic workforce development expert and is responsible for the development and implementation of the Census Bureau's diversity and inclusion strategic initiatives. She also assists with the planning, development and oversight of diversity and inclusion work groups, committees, conferences and off-site meetings.

Andrea is a recognized scholar and educator within the fields of diversity, equity and criminology. She has received many honors and awards for her work, including the Equal Opportunity Employment Leadership Award from the U.S. attorney general. Andrea earned her bachelor's degree from Alabama State University and her master's degree and Ph.D. from the University of Florida. Prior to joining the Census Bureau, she worked at the Department of Justice's Office of the Inspector General. In her free time, she loves to travel, complete do-it-yourself projects and spend time with friends and family.

Andrea can be reached at andrea.davis2@census.gov.

From: [Steven Dillingham \(CENSUS/DEPDIR FED\)](#)
To: [Fleming, John C. Jr. EOP/WHO](#)
Cc: [Nathaniel Cogley \(CENSUS/DEPDIR FED\)](#)
Bcc: [Steven K Smith \(CENSUS/DEPDIR FED\)](#); [Michael John Sprung \(CENSUS/DEPDIR FED\)](#)
Subject: Fw: Urgent request for age data by state and territory
Date: Wednesday, January 6, 2021 11:18:29 AM
Attachments: [65plus-US, States, and Territories-2019_010621.xlsx](#)

FYI - Source and description of data.

From: Victoria Velkoff (CENSUS/ADDP FED) <Victoria.A.Velkoff@census.gov>
Sent: Wednesday, January 6, 2021 11:06 AM
To: Steven Dillingham (CENSUS/DEPDIR FED) <steven.dillingham@census.gov>
Cc: Ron S Jarmin (CENSUS/DEPDIR FED) <Ron.S.Jarmin@census.gov>; Steven K Smith (CENSUS/DEPDIR FED) <steven.k.smith@census.gov>; Michael John Sprung (CENSUS/DEPDIR FED) <michael.j.sprung@census.gov>; Christa D Jones (CENSUS/DEPDIR FED) <Christa.D.Jones@census.gov>
Subject: Re: Urgent request for age data by state and territory

Please see attached.

The data for the states are from the Vintage 2019 pop estimates which are the latest available. The numbers for the territories and based on projections and are from our International Data Base. We have provided both the 2020 and 2021 projections for the territories.

Please let me know if you need more.

Thanks

Tori

Victoria (Tori) Velkoff, PhD
Associate Director and Chief Demographer
Demographic Programs Directorate
U.S. Census Bureau
O: 301-763-1372 | (b) (5)
[census.gov](#) | [@uscensusbureau](#) | [2020census.gov](#)

From: Steven Dillingham (CENSUS/DEPDIR FED) <steven.dillingham@census.gov>
Sent: Wednesday, January 6, 2021 9:40 AM
To: Victoria Velkoff (CENSUS/ADDP FED) <Victoria.A.Velkoff@census.gov>
Cc: Ron S Jarmin (CENSUS/DEPDIR FED) <Ron.S.Jarmin@census.gov>; Steven K Smith (CENSUS/DEPDIR FED) <steven.k.smith@census.gov>; Michael John Sprung (CENSUS/DEPDIR FED) <michael.j.sprung@census.gov>; Christa D Jones (CENSUS/DEPDIR FED) <Christa.D.Jones@census.gov>
Subject: Re: Urgent request for age data by state and territory

Tori, I think state level will work for an immediate response. But if option exists for identifying lower-level data, can we describe time / effort needed? Many thanks!

From: Victoria Velkoff (CENSUS/ADDP FED) <Victoria.A.Velkoff@census.gov>
Sent: Wednesday, January 6, 2021 8:02 AM
To: Steven Dillingham (CENSUS/DEPDIR FED) <steven.dillingham@census.gov>
Cc: Ron S Jarmin (CENSUS/DEPDIR FED) <Ron.S.Jarmin@census.gov>; Steven K Smith (CENSUS/DEPDIR FED) <steven.k.smith@census.gov>; Michael John Sprung (CENSUS/DEPDIR FED) <michael.j.sprung@census.gov>; Christa D Jones (CENSUS/DEPDIR FED) <Christa.D.Jones@census.gov>
Subject: Re: Urgent request for age data by state and territory

Do you need just at the state level? Or geographies below that?

Victoria (Tori) Velkoff, PhD

Associate Director and Chief Demographer

Demographic Programs Directorate

U.S. Census Bureau

O: 301-763-1372 | (b) (5)

[census.gov](https://www.census.gov) | [@uscensusbureau](https://twitter.com/uscensusbureau) | [2020census.gov](https://www.2020census.gov)

From: Steven Dillingham (CENSUS/DEPDIR FED) <steven.dillingham@census.gov>
Sent: Tuesday, January 5, 2021 10:15 PM
To: Victoria Velkoff (CENSUS/ADDP FED) <Victoria.A.Velkoff@census.gov>
Cc: Ron S Jarmin (CENSUS/DEPDIR FED) <Ron.S.Jarmin@census.gov>; Steven K Smith (CENSUS/DEPDIR FED) <steven.k.smith@census.gov>; Michael John Sprung (CENSUS/DEPDIR FED)

<michael.j.sprung@census.gov>; Christa D Jones (CENSUS/DEPDIR FED)
<Christa.D.Jones@census.gov>

Subject: Re: Urgent request for age data by state and territory

Tori,

Can you recommend the best way to obtain a quick review and assessment of this data early tomorrow? Also, any thoughts on how to estimate the territories?

Many thanks,

Steve

From: Michael John Sprung (CENSUS/DEPDIR FED) <michael.j.sprung@census.gov>

Sent: Tuesday, January 5, 2021 9:13 PM

To: Christa D Jones (CENSUS/DEPDIR FED) <Christa.D.Jones@census.gov>

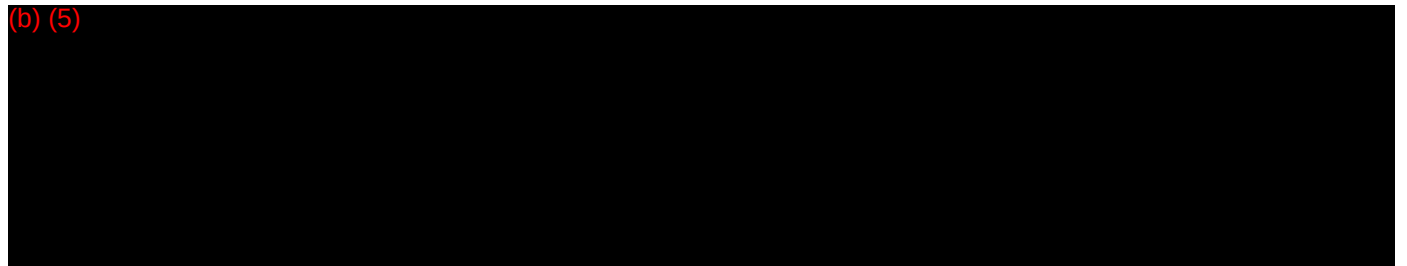
Cc: Steven Dillingham (CENSUS/DEPDIR FED) <steven.dillingham@census.gov>; Ron S Jarmin (CENSUS/DEPDIR FED) <Ron.S.Jarmin@census.gov>; Steven K Smith (CENSUS/DEPDIR FED) <steven.k.smith@census.gov>

Subject: Re: Urgent request for age data by state and territory

Thanks Christa,

Have you already reached out to Tori, Barbara, and/or Jason?

(b) (5)



Best,
Mike.

On Jan 5, 2021, at 7:24 PM, Christa D Jones (CENSUS/DEPDIR FED)
<Christa.D.Jones@census.gov> wrote:

Yes from Tori's area. This is from the Population division, Karen Battle is the Division Chief and Jason Devine is the ADC.

Christa D Jones
Sent from my iPhone

On Jan 5, 2021, at 7:18 PM, Steven Dillingham (CENSUS/DEPDIR FED) <steven.dillingham@census.gov> wrote:

Ron and Christa,

We need to expedite the following request for publicly available data pertinent to vaccine distribution needs. Can you provide the correct Census contacts for compiling the data? Is it Tori's group? Steve and Mike can help package and send data once available. Please keep me updated on progress or any issues.

"The most accurate or at least the best estimate of the population totals for each state and territory for people over 65 years old."

Many thanks!

Steve

Steven D. Dillingham, Ph.D., Director

U.S. Census Bureau

o: 301-763-2135 | (b) (5)

[census.gov](https://www.census.gov) | [@uscensusbureau](https://twitter.com/uscensusbureau)

United States	328,239,523
Alabama	4,903,185
Alaska	731,545
Arizona	7,278,717
Arkansas	3,017,804
California	39,512,223
Colorado	5,758,736
Connecticut	3,565,287
Delaware	973,764
District of Columbia	705,749
Florida	21,477,737
Georgia	10,617,423
Hawaii	1,415,872
Idaho	1,787,065
Illinois	12,671,821
Indiana	6,732,219
Iowa	3,155,070
Kansas	2,913,314
Kentucky	4,467,673
Louisiana	4,648,794
Maine	1,344,212
Maryland	6,045,680
Massachusetts	6,892,503
Michigan	9,986,857
Minnesota	5,639,632
Mississippi	2,976,149
Missouri	6,137,428
Montana	1,068,778
Nebraska	1,934,408
Nevada	3,080,156
New Hampshire	1,359,711
New Jersey	8,882,190
New Mexico	2,096,829
New York	19,453,561
North Carolina	10,488,084
North Dakota	762,062
Ohio	11,689,100
Oklahoma	3,956,971
Oregon	4,217,737
Pennsylvania	12,801,989
Rhode Island	1,059,361
South Carolina	5,148,714

Territory	Year	Total Population	65 years and over	65 and over share of total
American Samoa	2020	47,392	3,278	6.9%
Guam	2020	168,489	16,061	9.5%
Northern Mariana Islands	2020	51,851	3,754	7.2%
Virgin Islands, U.S.	2020	106,290	20,478	19.3%

Source: U.S. Census Bureau, International Data Base. Accessed January 6, 2021.

<https://www.census.gov/programs-surveys/international-programs/about/idb.html>

Territory	Year	Total Population	65 years and over	65 and over share of total
American Samoa	2021	46,366	3,391	7.3%
Guam	2021	168,801	16,628	9.9%
Northern Mariana Islands	2021	51,659	4,103	7.9%
Virgin Islands, U.S.	2021	105,870	20,986	19.8%

Source: U.S. Census Bureau, International Data Base. Accessed January 6, 2021.

<https://www.census.gov/programs-surveys/international-programs/about/idb.html>

From: [Kevin Quinley \(CENSUS/ADCOM FED\)](#)
To: (b)(6)
Subject: Fw: White House Tour – REQUEST SUBMITTED
Date: Monday, November 30, 2020 4:04:28 PM

Hey Jim, please click the registration link below and fill in all you & Gail's info. It is for a group of 4, but (b)(6), so you can just click submit once you've put in your information. They need your information in by 7AM tomorrow so don't delay!

Kevin

From: White House Tours - No Reply <noreplytours@who.eop.gov>
Sent: Monday, November 30, 2020 3:22 PM
To: mazzie.m.boyd@who.eop.gov <mazzie.m.boyd@who.eop.gov>; Kevin Quinley (CENSUS/ADCOM FED) <kevin.quinley@census.gov>
Subject: White House Tour – REQUEST SUBMITTED



Hello, a tour of the White House has been reserved for the **Kevin McRee Quinley** group.

Kevin McRee Quinley | 4 Guests
12/3/2020 | 03:00 PM | CS-2948078

Every guest planning to attend must register [HERE](#) by
12/1/2020 7:00 AM.





[VIEW GUEST LIST](#) [REVIEW + PRINT BOARDING PASS](#)

Sincerely,
White House Visitors Office

THE WHITE HOUSE | 1600 PENNSYLVANIA AVENUE, N.W. | WASHINGTON, D.C. 20500

From: [Earl N Mayfield \(CENSUS/DEPDIR FED\)](#)
To: [Benjamin A Overholt \(CENSUS/DEPDIR FED\)](#)
Subject: Fwd: Census Meeting Request - Friday morning
Date: Tuesday, November 3, 2020 1:59:54 PM

Ben,
Pat Philbin wants the joint meeting to occur this Friday 10-1 between the DHS data folks/lawyers and us to ensure that the right questions are being asked and answered concerning legal presence. Can you add the relevant people to this chain to see if they're available? Probably better to err on the side of being over-inclusive.
Thanks,

Trey Mayfield
Counsel to the Director of the United States Census
Office [\(301\) 763-0707](#)
[REDACTED]

Begin forwarded message:

From: "DeBacker, Devin A. (OLC)" <Devin.A.DeBacker@usdoj.gov>
Date: November 3, 2020 at 1:31:35 PM EST
To: (b)(6), (b)(7)(C) [REDACTED],
(b)(6) [REDACTED], "Earl N Mayfield
(CENSUS/DEPDIR FED)" <earl.n.mayfield@census.gov>, "Benjamin A
Overholt (CENSUS/DEPDIR FED)" <benjamin.a.overholt@census.gov>,
"Hamilton, Eric J. EOP/WHO" <Eric.J.Hamilton@who.eop.gov>, "Cannon,
Michael (Federal)" <MCannon@doc.gov>, "Risko, Daniel (Federal)"
<DRisko@doc.gov>, "Kostiuk, Damian D" (b)(6) [REDACTED],
(b)(6) [REDACTED], "Busch, Philip
B" (b)(6) [REDACTED], (b)(6) [REDACTED],
(b)(6) [REDACTED], "GORMAN, MICHAEL"
(b)(6) [REDACTED], (b)(6) [REDACTED],
<TIMOTHY.A.TYLER@cbp.dhs.gov>, (b)(6), (b)(7)(C) [REDACTED],
[REDACTED],
[REDACTED] "Hamilton, Gene (OAG)"
<Gene.Hamilton@usdoj.gov>
Cc: "BHIRUD, KETAN" (b)(6) [REDACTED], (b)(6) [REDACTED],
(b)(6) [REDACTED]
Subject: RE: Census Meeting Request - Friday morning

10 to 1 on Friday works for me. Also adding Gene Hamilton from DOJ.

Devin A. DeBacker
Deputy Assistant Attorney General
Office of Legal Counsel
U.S. Department of Justice

Office: (202) 514-4038

(b)(6)

devin.a.debacker@usdoj.gov

From: (b)(6), (b)(7)(C)

Sent: Tuesday, November 3, 2020 1:17 PM

To: (b)(6)

earl.n.mayfield@census.gov; Benjamin A Overholt (CENSUS/DEPDIR FED)
<benjamin.a.overholt@census.gov>; DeBacker, Devin A. (OLC)
<dadebacker@jmd.usdoj.gov>; Hamilton, Eric J. EOP/WHO
<Eric.J.Hamilton@who.eop.gov>; Cannon, Michael (Federal) <MCannon@doc.gov>;
Risko, Daniel (Federal) <DRisko@doc.gov>; Kostiuk, Damian D

(b)(6)

(b)(6)

(b)(6)

(b)(6)

(b)(6), (b)(7)(C)

Cc: BHIRUD, KETAN (b)(6)

(b)(6)

Subject: RE: Census Meeting Request - Friday morning

Adding (b)(6).

Thank you,

(b)(6)

From: (b)(6)

Sent: Tuesday, November 3, 2020 1:00 PM

To: earl.n.mayfield@census.gov; Benjamin A Overholt (CENSUS/DEPDIR FED)
<benjamin.a.overholt@census.gov>; DeBacker, Devin A. (OLC)
<Devin.A.DeBacker@usdoj.gov>; Hamilton, Eric J. EOP/WHO
<Eric.J.Hamilton@who.eop.gov>; Cannon, Michael (Federal) <MCannon@doc.gov>;
Risko, Daniel (Federal) <DRisko@doc.gov>; Kostiuk, Damian D

(b)(6)

(b)(6)

Gaffin, Elizabeth S (b)(6)

(b)(6)

(b)(6)

(b)(6)

(b)(6)

(b)(6)

Cc: BHIRUD, KETAN (b)(6)

(b)(6)

Subject: Census Meeting Request - Friday morning

Good afternoon,

I am emailing to ask about your availability this Friday morning, November 6, from 10:00 – 1:00. Ketan and I are looking to bring you all together to discuss the questions remaining regarding DHS data.

We will be talking through the document Ketan has been working on that we have shared with you. We appreciate your timely responses on it so far and are looking to this meeting on Friday morning to close out as many of the remaining questions as possible.

If you are unavailable on November 6, from 10:00 – 1:00, please let me and Ketan know when you are available. I would like to send out the invite for this meeting later today.

Thank you,

(b)(6)

[REDACTED]

Director, Immigration Data Integration Initiative

(b)(6)

[REDACTED]

[REDACTED]

From: [Steven Dillingham \(CENSUS/DEPDIR FED\)](#)
To: [Nathaniel Cogley \(CENSUS/DEPDIR FED\)](#); [Benjamin A Overholt \(CENSUS/DEPDIR FED\)](#); [Earl N Mayfield \(CENSUS/DEPDIR FED\)](#)
Subject: Fwd: Census Updates Meeting
Date: Monday, January 11, 2021 8:51:23 AM

Sent from my iPhone

Begin forwarded message:

From: "Risko, Daniel (Federal)" <DRisko@doc.gov>
Date: January 11, 2021 at 8:05:26 AM EST
To: "Dillingham, Steven" <steven.dillingham@census.gov>, "Mayfield, Earl N" <earl.n.mayfield@census.gov>, "Cogley, Nathaniel" <nathaniel.cogley@census.gov>, "Overholt, Benjamin A" <benjamin.a.overholt@census.gov>
Cc: "Martin, Nicole (Federal)" <NMartin1@doc.gov>
Subject: Re: Census Updates Meeting

All - the White House has flagged that none of you have completed WAVES for today's meeting at 2:30 pm. Please submit ASAP.

Thanks!

Dan Risko
Chief of Staff
Office of the Deputy Secretary
United States Department of Commerce
[202-482-6010](tel:202-482-6010) (o) | (b)(6)
drisko@doc.gov

On Jan 8, 2021, at 4:04 PM, Risko, Daniel (Federal) <DRisko@doc.gov> wrote:

From: Kline, Katherine E. EOP/WHO <Katherine.E.Kline@who.eop.gov>
Sent: Friday, January 8, 2021 4:00 PM
To: Risko, Daniel (Federal) <DRisko@doc.gov>; Martin, Nicole (Federal) <NMartin1@doc.gov>

Cc: Goudarzi, Talat (Federal) <TGoudarzi@doc.gov>

Subject: RE: Census Updates Meeting

Apologies on the delay, guys. It's been a busy day. See waves link below for **Monday, January 11th** at **2:30 p.m.** in EEOB, **Cordell Hull, Room 208**.

<https://events.whitehouse.gov/AppointmentRsvpForm?rid=PTYQXRW2QE>

Hope you all have a great weekend!

Best,

Katherine Kline
Office of the Chief of Staff
O: 202-456-1208

From: Kline, Katherine E. EOP/WHO

Sent: Friday, January 8, 2021 3:02 PM

To: 'Risko, Daniel (Federal)' <DRisko@doc.gov>; Martin, Nicole (Federal) <NMartin1@doc.gov>

Cc: Goudarzi, Talat (Federal) <TGoudarzi@doc.gov>

Subject: RE: Census Updates Meeting

Yes, still working on a room res now and then will send link.

From: Risko, Daniel (Federal) <DRisko@doc.gov>

Sent: Friday, January 8, 2021 2:58 PM

To: Kline, Katherine E. EOP/WHO <Katherine.E.Kline@who.eop.gov>; Martin, Nicole (Federal) <NMartin1@doc.gov>

Cc: Goudarzi, Talat (Federal) <TGoudarzi@doc.gov>

Subject: RE: Census Updates Meeting

Works for us. Can you send a WAVES link?

From: Kline, Katherine E. EOP/WHO <Katherine.E.Kline@who.eop.gov>

Sent: Friday, January 8, 2021 12:01 PM

To: Martin, Nicole (Federal) <NMartin1@doc.gov>; Risko, Daniel (Federal) <DRisko@doc.gov>

Cc: Goudarzi, Talat (Federal) <TGoudarzi@doc.gov>

Subject: RE: Census Updates Meeting

Sure. Of course! 2:30 work ok?

From: Martin, Nicole (Federal) <NMartin1@doc.gov>
Sent: Friday, January 8, 2021 11:59 AM
To: Kline, Katherine E. EOP/WHO <Katherine.E.Kline@who.eop.gov>;
Risko, Daniel (Federal) <DRisko@doc.gov>
Cc: Goudarzi, Talat (Federal) <TGoudarzi@doc.gov>
Subject: RE: Census Updates Meeting

Hi Katherine,

Monday morning is a little tricky on our end. Does Dr. Fleming have availability in the afternoon? Maybe 2 or 3 pm?

Please let us know,
Nicole

From: Kline, Katherine E. EOP/WHO <Katherine.E.Kline@who.eop.gov>
Sent: Thursday, January 7, 2021 12:13 PM
To: Risko, Daniel (Federal) <DRisko@doc.gov>; Martin, Nicole (Federal) <NMartin1@doc.gov>
Cc: Goudarzi, Talat (Federal) <TGoudarzi@doc.gov>
Subject: Census Updates Meeting

Hi friends,

Per Dr. Fleming, we need to have another meeting on **Monday, January 11th**. Would 10:00 a.m. work on y'all's end?

Best,

Katherine Kline
Office of the Chief of Staff
O: 202-456-1208

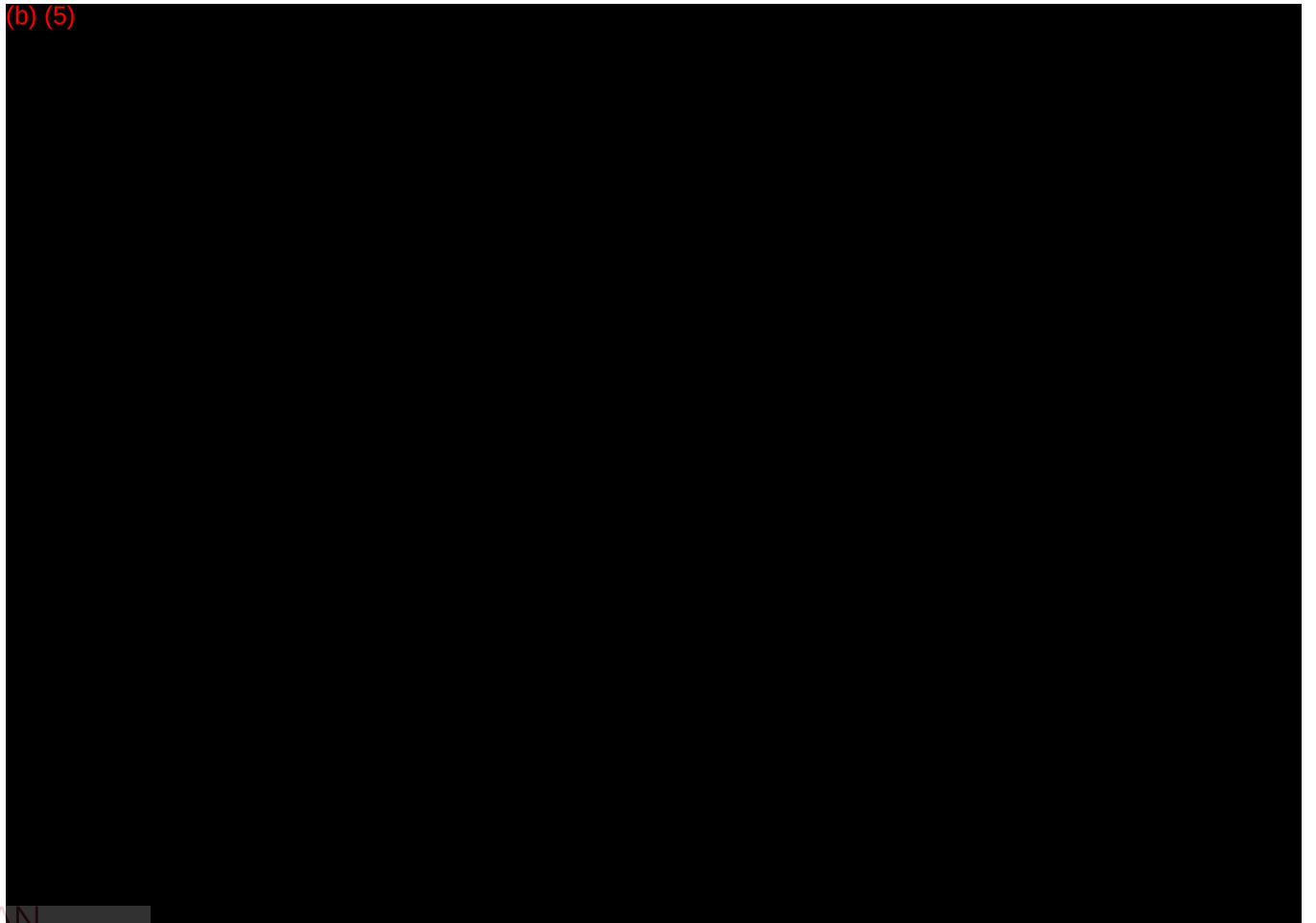
From: [Earl N Mayfield \(CENSUS/DEPDIR FED\)](#)
To: [Benjamin A Overholt \(CENSUS/DEPDIR FED\)](#)
Subject: Fwd: Determining Lawfulness of Immigration Status from DHS Data
Date: Sunday, November 1, 2020 12:11:35 PM

Trey Mayfield
Counsel to the Director of the United States Census
Office [\(301\) 763-0707](#)
(b)(6)

Begin forwarded message:

From: "Bhirud, Ketan" (b)(6)
Date: October 31, 2020 at 4:46:52 PM EDT
To: "Philbin, Patrick F. EOP/WHO" <Patrick.F.Philbin@who.eop.gov>,
"Hamilton, Eric J. EOP/WHO" <Eric.J.Hamilton@who.eop.gov>,
Devin.A.DeBacker@usdoj.gov, "Earl N Mayfield (CENSUS/DEPDIR FED)"
<earl.n.mayfield@census.gov> (b)(6)
(b)(6)
Subject: Determining Lawfulness of Immigration Status from DHS Data

(b) (5)



(b) (5)

From: [Earl N Mayfield \(CENSUS/DEPDIR FED\)](#)
To: [Benjamin A Overholt \(CENSUS/DEPDIR FED\)](#)
Subject: Fwd: Determining Lawfulness of Immigration Status from DHS Data
Date: Monday, November 2, 2020 3:31:13 PM
Attachments: [Determining Lawfulness of Immigration Statuses from DHS Data 2020.10.31.docx](#)

Trey Mayfield
Counsel to the Director of the United States Census
Office [\(301\) 763-0707](#)
(b)(6)

Begin forwarded message:

From: "Bhirud, Ketan" (b)(6)
Date: October 31, 2020 at 4:46:52 PM EDT
To: "Philbin, Patrick F. EOP/WHO" <Patrick.F.Philbin@who.eop.gov>,
"Hamilton, Eric J. EOP/WHO" <Eric.J.Hamilton@who.eop.gov>,
Devin.A.DeBacker@usdoj.gov, "Earl N Mayfield (CENSUS/DEPDIR FED)"
<earl.n.mayfield@census.gov>, (b)(6)
(b)(6)
Subject: Determining Lawfulness of Immigration Status from DHS Data

(b) (5)



From: [Steven Dillingham \(CENSUS/DEPDIR FED\)](#)
To: [Ali Mohammad Ahmad \(CENSUS/ADCOM FED\)](#); [Christopher J Stanley \(CENSUS/OCIA FED\)](#)
Cc: [Nathaniel Cogley \(CENSUS/DEPDIR FED\)](#); [James T Christy \(CENSUS/LA FED\)](#)
Bcc: [Steven K Smith \(CENSUS/DEPDIR FED\)](#); [Michael John Sprung \(CENSUS/DEPDIR FED\)](#)
Subject: Fwd: Question from Sen. Daines
Date: Friday, September 11, 2020 6:19:22 PM
Attachments: [Daines and Census.pdf](#)
[ATT00001.htm](#)

Note: Nathaniel has talked with Jamey Christy who provided great information regarding plans to help. Ali, We agree with you and Chris that a prompt response to staff and Senator (assuming available) with Jamey and myself by phone as appropriate is way to proceed. Also, spelling out in detail in a letter for potential posting by senator and maybe coordinating a WH letter of support if DOC PA agrees. Many thanks!

Sent from my iPhone

Begin forwarded message:

From: "Nathaniel Cogley (CENSUS/DEPDIR FED)"
<nathaniel.cogley@census.gov>
Date: September 11, 2020 at 4:34:20 PM EDT
To: "Steven Dillingham (CENSUS/DEPDIR FED)"
<steven.dillingham@census.gov>
Subject: Fw: Question from Sen. Daines

Forwarded.

From: Fleming, John C. Jr. EOP/WHO <John.C.Fleming@who.eop.gov>
Sent: Friday, September 11, 2020 4:07 PM
To: Nathaniel Cogley (CENSUS/DEPDIR FED) <nathaniel.cogley@census.gov>
Subject: Question from Sen. Daines

Nathaniel,

Please review this letter. Can you respond to the senator's question here?

Regards,

John C. Fleming, MD

Assistant to the President for Planning and Implementation
Office of the Chief of Staff
White House West Wing Rm. 121
Office 202-456-1208

(b)(6)

John.C.Fleming@who.eop.gov

From: [Earl N Mayfield \(CENSUS/DEPDIR FED\)](#)
To: daniel.huff@who.eop.gov
Subject: Imputation Summary
Date: Monday, January 4, 2021 5:30:07 PM
Attachments: [ImputationSummary 1-4-20.docx](#)

Trey Mayfield
Counsel to the Director of the United States Census
Office (301) 763-0707

(b)(6)

Imputation Summary

In prior censuses, imputation was used to fill in only missing data, never to replace actual responses, and without any mathematical adjustment or statistical inference. The Bureau has used imputation in the past for three kinds of missing data:

- *Household Size Imputation* - When records indicated that the housing unit was occupied, but had insufficient information as to the number of individuals residing in the unit, the number of individuals was imputed from a neighboring unit.
- *Occupancy Imputation* - When records indicated that a housing unit existed but without sufficient information to definitively classify it as either occupied or vacant, occupancy status was imputed, as well as household size imputed to units imputed as occupied.
- *Status Imputation* – When records had insufficient information about whether an address represented a valid, non-duplicated housing unit, the Bureau imputed the status of the unit (occupied, vacant, or delete). For units imputed as occupied, household size was also imputed.

Imputation was challenged in *Utah v. Evans*, 536 U.S. 452 (2002), with plaintiffs asserting that it (1) violated the statutory ban on sampling; and (2) violated the Constitution’s requirement that the Census be an “actual Enumeration.” See U.S. Const. Art. I, 1, § 2, cl. 3. Justice Breyer, writing for a five justice majority, held that the use of “hot-deck imputation” in the 2000 Census, which resulted in an uneven nationwide population increase of 0.4% (1.2 million people) was an acceptable exercise of the Secretary of Commerce’s discretion, because: (1) all efforts had been made to reach every household; (2) the methods used consisted not of statistical sampling but of inference; (3) such inference involved a tiny percent of the population; (4) the alternative was to make a far less accurate assessment of the population; and (5) manipulation of the method was highly unlikely.

Justice Thomas (with J. Kennedy) dissented, opining that the original understanding of an “actual Enumeration” precluded estimations like imputation. The Founders, he wrote, had knowingly sacrificed some degree of accuracy--that that would likely result in population undercounts--by requiring an actual counting be conducted in order to prevent the political manipulation that could accompany estimates. (Justice O’Connor dissented separately, opining that imputation was a form of statutorily-prohibited sampling, while Justice Scalia dissented on jurisdictional grounds). Only Justices Breyer and Thomas remain on the Court from *Evans*, and if the Secretary prohibited the use of imputation in 2020, several of the Court’s current members might well find Justice Thomas’s originalist analysis persuasive.

For the 2020 Census, which achieved a 99.98% estimated response rate, the Bureau plans to impute 0.02% of the population (approximately 70,000 people). Every state had a 99.9% completion rate except Louisiana, which had a rate of 99.0%. Based on current estimates, the Bureau’s intended imputation will not affect congressional apportionment.

Due to Covid’s depopulating effect on group quarters (dormitories, nursing homes, barracks, jails/prisons), which occurred proximate to Census Day (April 1, 2020), the Bureau estimates that it has failed to obtain responses for approximately 4% of them nationwide. In addition to using records to impute residence numbers, the Bureau is also in some instances using mathematical adjustment/statistical inference to estimate the number of people “expected” in a facility, when the reported number is missing, unknown, or insufficient based on what was expected. The Bureau is referring to this qualitatively different procedure as “imputation.”

From: [Nathaniel Cogley \(CENSUS/DEPDIR FED\)](#)
To: [Philbin, Patrick F. EOP/WHO](#)
Subject: Interesting pdf concerning an ongoing deliberative legal issue
Date: Thursday, December 3, 2020 3:13:15 PM
Attachments: [4518_001 \(1\).pdf](#)

Dear Pat,

Greetings. Concerning an ongoing deliberative legal issue, please find an interesting pdf attached. I first saw this 3 days ago. Thanks in advance for your attention. Talk later.

—Nathaniel

Nathaniel Cogley, Ph.D.
Deputy Director for Policy
U.S. Census Bureau

From: [Nathaniel Cogley \(CENSUS/DEPDIR FED\)](#)
To: [Fleming, John C. Jr. EOP/WHO](#)
Subject: New Southern District of New York Order
Date: Thursday, September 10, 2020 7:52:05 PM
Attachments: [State-of-New-York-Sept-10-2020-Opinion-and-Order.pdf](#)

Attached. Talk soon.

—Nathaniel

Nathaniel Cogley, Ph.D.
Deputy Director for Policy
U.S. Census Bureau

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

STATE OF NEW YORK, et al.,

Plaintiffs,

-v-

DONALD J. TRUMP, *in his official capacity as
President of the United States*, et al.,

Defendants.

X

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X

20-CV-5770 (RCW) (PWH) (JMF)

OPINION AND ORDER

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

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PER CURIAM.

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

report “[t]he tabulation of total population by States” to the President. 13 U.S.C. § 141(a)-(b).

The President, in turn, is required to transmit to Congress “a statement showing the whole number of persons in each State . . . as ascertained under the . . . decennial census of the population, and the number of Representatives to which each State would be entitled” using a mathematical formula “known as the method of equal proportions.” 2 U.S.C. § 2a(a).

Throughout the Nation’s history, the figures used to determine the apportionment of Congress — in the language of the current statutes, the “total population” and the “whole number of persons” in each State — have included every person residing in the United States at the time of the census, whether citizen or non-citizen and whether living here with legal status or without.

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

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

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

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

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

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

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

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

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

BACKGROUND

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

A. The Constitutional and Statutory Scheme

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

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

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

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

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

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

B. The Use of Census Data

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

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

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

- The federal government relies on census data to allocate vast sums of money among and within States. In fiscal year 2016, for example, at least 320 such programs allocated about \$900 billion using census-derived data. *See id.* at 596.
- State governments — including those among the Governmental Plaintiffs here — mandate the use of census data to draw intrastate political districts. *See id.* at 594-95, 612; *House of Representatives*, 525 U.S. at 333 n.4, 334; *see also, e.g.*, ECF No. 76-11 (“Brower Decl.”), ¶ 16-18 (Minnesota); ECF No. 76-37 (“Rapoza Decl.”), ¶ 5 (Rhode Island).
- State law requires the use of census data for various purposes, ranging from the allocation of governmental resources and imposition of expenses among local governments to the setting of utility fees and official salaries. *See New York v. Dep’t of Commerce*, 351 F. Supp. 3d at 612-13 (citing various state statutes).
- State and local governments — including those among the Governmental Plaintiffs here — rely on census data, including granular local-level “characteristic data,” to perform essential government functions. New York City, for example, makes important decisions about how to allocate public services in reliance on demographic data derived from the census, as when its Department of Education redraws school zone boundary lines, ECF No. 76-21, (“Salvo Decl.”), ¶ 15; when its Department of Health deploys resources based on its best understanding of the age, race, and Hispanic origin characteristics within particular communities, *id.* ¶ 14; and when its Population Division uses age data to target services for aged individuals, *id.* ¶ 16.

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

C. The Citizenship Question Litigation and Its Aftermath

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

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

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

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

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

D. The 2020 Census

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

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

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

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

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

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

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

E. The Presidential Memorandum

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

immigration laws passed by the Congress should not be rewarded with greater representation in the House of Representatives.” *Id.* Referring to one State with “more than 2.2 million illegal aliens” — apparently California, *see* ECF No. 75 (“Pls.’ Rule 56.1 Statement”), ¶ 4 — the Presidential Memorandum noted that “[i]ncluding these illegal aliens in the population of the State for the purpose of apportionment could result in the allocation of two or three more congressional seats than would otherwise be allocated.” Presidential Memorandum, 85 Fed. Reg. at 44,680.

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

F. This Litigation

On July 24, 2020 — only three days after the Presidential Memorandum — both the Governmental Plaintiffs and the NGO Plaintiffs filed their initial complaints. *See* ECF No. 1; 20-CV-5781, ECF No. 1.⁶ In their now-amended Complaints, Plaintiffs contend that the Presidential Memorandum violates the Constitution’s Enumeration Clause, as modified by the Fourteenth Amendment; is motivated by discriminatory animus toward Hispanics and immigrant communities of color, in violation of the equal protection component of the Fifth Amendment’s Due Process Clause; coerces state and local governments and denigrates the equal sovereignty of the States in violation of the Tenth Amendment; violates the constitutional separation of powers by usurping the authority Congress delegated to the Secretary; constitutes an *ultra vires* violation of 2 U.S.C. § 2a and 13 U.S.C. § 141; violates the APA; and violates the Census Act’s prohibition on the use of statistical sampling for purposes of congressional apportionment, *see* 13 U.S.C. §§ 141, 195. They seek a declaration that the Presidential Memorandum is unlawful, an injunction prohibiting Defendants from taking any action to implement or further the Memorandum, and writs of mandamus compelling the Secretary and the President to transmit figures that do not exclude illegal aliens based on immigration status.

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

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

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

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

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

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

SUMMARY JUDGMENT STANDARD

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

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

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

STANDING AND RIPENESS

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

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

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

A. The Law of Standing

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

judicial process.” *Steel Co.*, 523 U.S. at 102. One way courts implement that requirement is by ensuring that “at least one plaintiff” in any federal case has “standing.” *Dep’t of Commerce v. New York*, 139 S. Ct. at 2565; *see also Rumsfeld v. Forum for Acad. & Institutional Rights, Inc.*, 547 U.S. 47, 52 n.2 (2006) (noting that, in a case with multiple plaintiffs, “the presence of one party with standing is sufficient to satisfy Article III’s case-or-controversy requirement”).

Standing, in turn, is measured by a “familiar three-part test,” which requires a plaintiff to show (1) “an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision.” *Gill v. Whitford*, 138 S. Ct. 1916 (2018) (quoting *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547 (2016)). The plaintiff must make this showing “in the same way as any other matter on which the plaintiff bears the burden of proof, *i.e.*, with the manner and degree of evidence required at the successive stages of the litigation.” *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561 (1992). To prevail on a motion for summary judgment, therefore, “mere allegations of injury are insufficient. Rather, a plaintiff must establish that there exists no genuine issue of material fact as to justiciability” *House of Representatives*, 525 U.S. at 329; *see Lujan*, 504 U.S. at 561 (stating that, on summary judgment, a plaintiff “can no longer rest on such ‘mere allegations,’” as at the pleading stage, “but must ‘set forth’ by affidavit or other evidence ‘specific facts’” that demonstrate standing. (quoting Fed. R. Civ. P. 56(e)).

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

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

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

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

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

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

B. Facts Relevant to Standing

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

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

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

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

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

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

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

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

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

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

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

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

⁸ Defendants fault Dr. Barreto for failing to consider a 2019 study conducted by the Census Bureau, ELIZABETH A. POEHLER ET AL., U.S. CENSUS BUREAU, 2019 CENSUS TEST REPORT: A NEW DESIGN FOR THE 21ST CENTURY (Jan. 3, 2020), <https://www2.census.gov/programs-surveys/decennial/2020/program-management/census-tests/2019/2019-census-test-report.pdf> (“2019 Census Test Report”), which found “no statistically significant difference in overall self-response rates” resulting from the inclusion of a citizenship question on the census questionnaire. *Id.* at ix; *see* Defs.’ Mem. 13. But that study, which is not directly relevant to the issues before us, is less useful for Defendants than their arguments suggest, as there are findings that both sides can and do point to in support of their positions. In fact, the same study did find statistically significant drops in response rates “in some areas and for some subgroups,” including “[t]racts with greater than 4.9 percent noncitizens,” “[t]racts with greater than 49.1 percent Hispanic residents,” “[t]racts with between 5.0-20.0 percent Asian residents,” and “[h]ousing units within the Los Angeles Regional Census Center and New York Regional Census Center boundaries.” *Id.* at ix-x. Furthermore, “the results of this [study] [we]re limited to the self-response timeframe prior to the start of” Non-Response Follow-Up operations, *id.* at 12, and there is reason to believe that each of Non-Response Follow-Up’s steps would replicate or exacerbate the effects of the net differential decline in self-response rates among noncitizen households, *see New York v. Dep’t of Commerce*, 351 F. Supp. 3d at 583.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

C. Standing Analysis

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

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

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

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

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

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

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

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

1. Injury in Fact

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

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

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

a. Degradation of Census Data

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

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

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

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

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

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

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

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

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

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

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

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

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

b. Diversion of Resources

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

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

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

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

Second, Plaintiffs’ uncontested declarations demonstrate that the NGO Plaintiffs have diverted resources in response to the Presidential Memorandum’s chilling effects on participation in the census and the risks that poses for their members and their core activities. *See* Choi Decl. ¶¶ 14-27; Espinosa Decl. ¶¶ 14-17; Khalaf Decl. ¶¶ 8-16; Oshiro Decl. ¶¶ 15-17; Seon Decl. ¶¶ 17-19; Torres Decl. ¶¶ 2, 21-23; ECF No. 149-1 (“Awadeh Decl.”), ¶¶ 4-5; Espinosa Supp. Decl. ¶¶ 7-8; Oshiro Supp. Decl. ¶¶ 2, 4; Seon Supp. Decl. ¶ 4.¹⁰ For example, Steven Choi, the

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

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

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

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

2. Traceability

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

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

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

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

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

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

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

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

3. Redressability

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

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

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

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

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

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

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

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

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

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

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

4. Conclusion

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

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

D. Prudential Ripeness

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

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

Ass’n, Inc. v. Sierra Club, 523 U.S. 726, 732-33 (1998) (quoting *Abbott Labs. v. Gardner*, 387 U.S. 136, 148-49 (1967)); see *Nat’l Org. for Marriage*, 714 F.3d at 691.¹²

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

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

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

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

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

THE MERITS

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

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

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

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

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

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

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

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

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

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

Similarly, its position in this litigation notwithstanding, the Department of Justice (the “Justice Department” or “DOJ”) has long adhered to the view that the President’s statement to Congress regarding apportionment has to be based solely on the tabulation of total population produced by the census. As the Justice Department explained more than forty years ago in *Federation for American Immigration Reform (FAIR) v. Klutznick*, “every inhabitant of a state the Census counts is included in the apportionment base. . . . The total resident population of the states is the apportionment base.” Defs.’ Reply Mem. & Opp’n at 11, 486 F. Supp. 564 (D.D.C. 1980) (No. 79-CV-3269), 1980 WL 683642, at *7 (citing H.R. Rep. No. 91-1314 (1970)).¹⁴

Along similar lines, the Government acknowledged during oral argument in *Franklin v. Massachusetts* that “[t]he law directs [the President] to apply, of course, a particular mathematical formula to the population figures he receives” and that “[i]t would be unlawful . . . just to say, these are the figures, they are right, but I am going to submit a different statement.” Oral Arg. Tr. at 12, *Franklin v. Massachusetts*, 505 U.S. 788 (No. 91-1502). “I think under the law he is supposed to base his calculation on the figures submitted by the Secretary.” *Id.* at 13; *see also*, Reply Br. Appellants, *Franklin*, 505 U.S. 788 (No. 91-1502), 1992 WL 672612, at *15 (Apr. 20, 1992) (“[T]he method of equal proportions calls for application of a set mathematical formula to the state population totals *produced by the census*.” (emphasis added)).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

C. Conclusion

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

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

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

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

REMEDIES

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

A. Injunctive Relief

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

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

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

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

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

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

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

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

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

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

Accordingly, the Court enjoins all Defendants other than the President from including in the Secretary’s report to the President pursuant to Section 141(b) any “information permitting the President . . . to exercise the President’s discretion to carry out the policy set forth in section 2” of the Presidential Memorandum — that is, any information concerning the number of aliens in each State “who are not in a lawful immigration status under the Immigration and Nationality Act.” Presidential Memorandum, 85 Fed. Reg. at 44,680. Instead, consistent with the Census Act, the Secretary’s Section 141(b) report shall include only “[t]he tabulation of total population by States under” Section 141(a) “as required for the apportionment of Representatives in Congress among the several States,” 13 U.S.C. § 141(b) — that is, “information tabulated according to the methodology set forth in [the Residence Rule],” Presidential Memorandum, 85 Fed. Reg. at 44,680.²⁰ To be clear, as an exercise of its discretion, the Court does *not* enjoin Defendants from continuing to study whether and how it would be feasible to calculate the number of illegal aliens in each State. That ensures that in the event that a higher court disagrees

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

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

B. Declaratory Relief

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

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

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

CONCLUSION

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

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

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

SO ORDERED.

Dated: September 10, 2020
New York, New York

_____/s/_____
RICHARD C. WESLEY
United States Circuit Judge

_____/s/_____
PETER W. HALL
United States Circuit Judge

_____/s/_____
JESSE M. FURMAN
United States District Judge

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

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WHITE HOUSE BOARDING PASS

TOUR DATE: Thursday, December 3, 2020

TOUR TIME: 03:00 PM

CS #: 2930630

GROUP NAME: Benjamin Overholt

POINT OF CONTACT: Mazzie Boyd

EMAIL ADDRESS: mazzie.m.boyd@who.eop.gov



IDENTIFICATION REQUIREMENTS

All U.S. citizens ages 18 and older, and foreign nationals of all ages (including children), must present a valid, government-issued photo ID upon arrival for their tour. Acceptable forms of identification are below.

U.S. CITIZENS: U.S. Driver's License, Valid U.S. Passport, U.S. Military ID
FOREIGN NATIONALS: Valid Passport, Alien Registration Card, Permanent Resident Card, U.S. State Department Issued Diplomatic ID Card

A U.S. driver's license is not an acceptable form of identification for foreign nationals. No foreign-issued state IDs, foreign-issued driver's licenses, expired passports, photocopies, other transmissions of these documents, or other forms of identification will be accepted. Individuals without acceptable identification, or whose identification does not exactly match the information previously registered, may be denied entry.

KNOW BEFORE YOU GO

- Tours are self-guided and last approximately 45 minutes.
- Eat a snack and stay hydrated prior to arrival.
- Dress for the weather, knowing you will be standing outside before your tour.
- Arrive 15 minutes before your scheduled tour time. No late arrivals are accepted.
- All guests must be registered prior to arrival via the RSVP link provided by the White House.
- Please silence your cell phone and refrain from phone calls during the tour.
- No flash photography or video recording is permitted during your tour.
- Restrooms are located at the White House Visitors Center, located at 1450 Pennsylvania Avenue NW, Washington, D.C. 20230. There are no restrooms available once you arrive for your tour.
- No parking is available on the White House complex.

HEALTH & SAFETY PRECAUTIONS

- **Please stay home** if you have tested positive or you have had **any** of the following symptoms of COVID-19 **within 10 days** prior to your tour date: fever or chills, cough, shortness of breath or difficulty breathing, fatigue, muscle or body aches, headache, new loss of taste or smell, sore throat, congestion or runny nose, nausea or vomiting, and/or diarrhea.
- **Please stay home** if you have been in close contact with someone with confirmed or suspected COVID-19 within 14 days prior to your tour date.
- Please bring your own face covering as face coverings are required to be worn by all attendees 2 years of age and older for the duration of the tour.
- Please practice social distancing while on the White House grounds and utilize the provided hand sanitizer stations.

PERMITTED ITEMS

- Baby carriers worn on the body, baby wipes, breast pumps, cell phones, compact cameras with lenses less than 3 inches long, diapers, umbrellas without metal tips, wallets, and all items needed for medical purposes (i.e. wheelchairs, EpiPens, medication, etc.).

PROHIBITED ITEMS

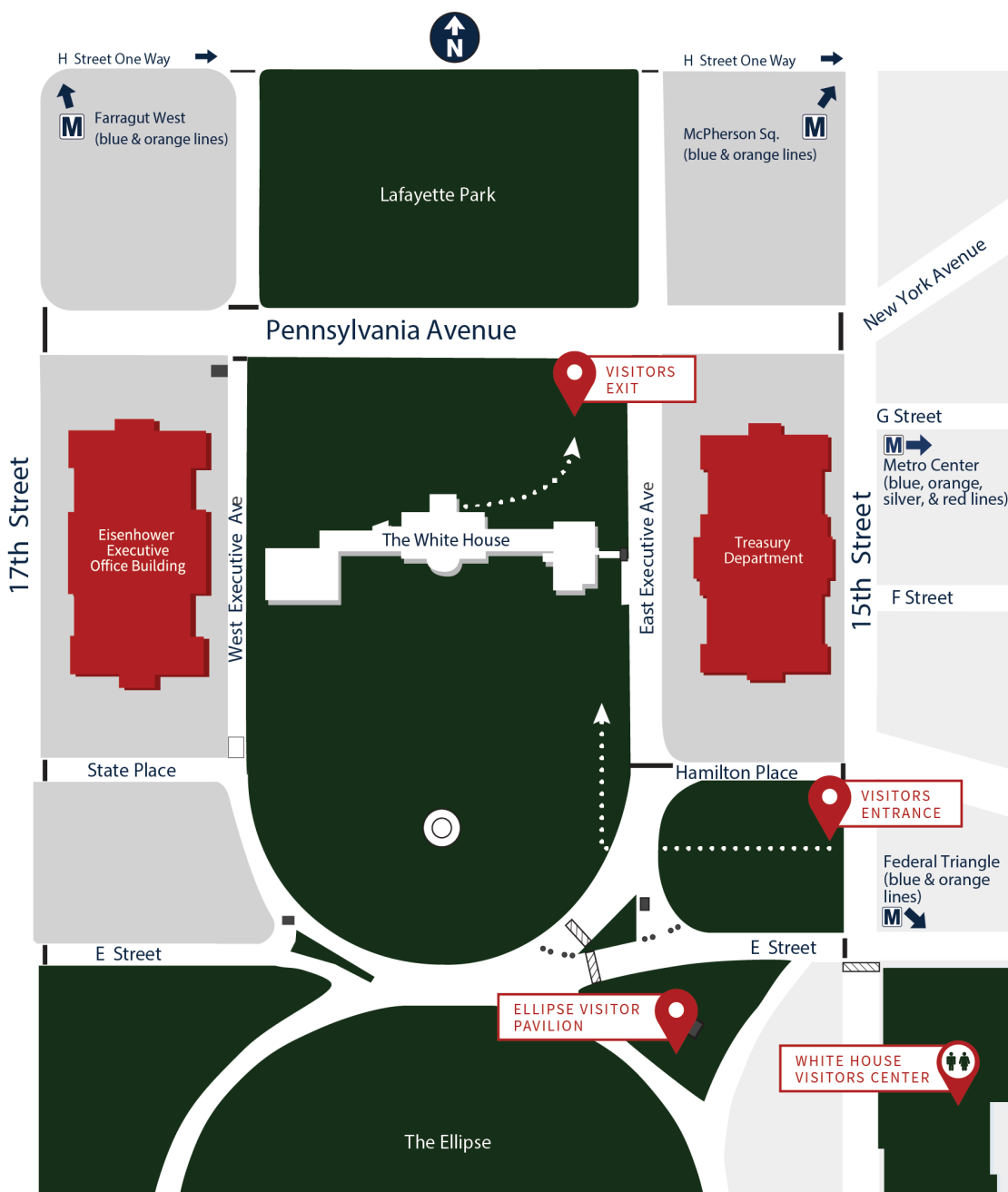
- **Bags of any kind (including fanny packs and clutches).**
- Aerosols, ammunition, cameras with detachable lenses, electric stun guns, e-cigarettes, fireworks, flags, food, guns, knives of any kind, lighters, liquids, mace, martial arts weapons, monopods, signs, strollers, tablets, tripods, tobacco products, toy weapons, video cameras, weapons/devices, any pointed object, and any other item determined to be a potential safety hazard.
- Please note that storage facilities are not provided during your visit. Individuals who arrive with bags or prohibited items will not be permitted to enter the White House.

WHITE HOUSE VISITORS CENTER

Visitors of all ages will enjoy the interactive experience provided at the White House Visitors Center, located at 1450 Pennsylvania Avenue NW. Here, you can explore a variety of exhibits featuring approximately 100 historical artifacts, view a 3D model of the People's House, and read about the history of the Executive Residence. The Visitors Center includes an array of photos, archival footage, and showcases a short film, "White House: Reflections From Within". Stop by the information desk to inquire about special ranger programs and events at President's Park.

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Before you begin your tour, we encourage you to download the WHExperience app via the QR code provided and select "Tour the White House". This free educational resource is provided by the White House Historical Association and invites guests to learn the fascinating history behind each room and pieces in the renowned White House collection.



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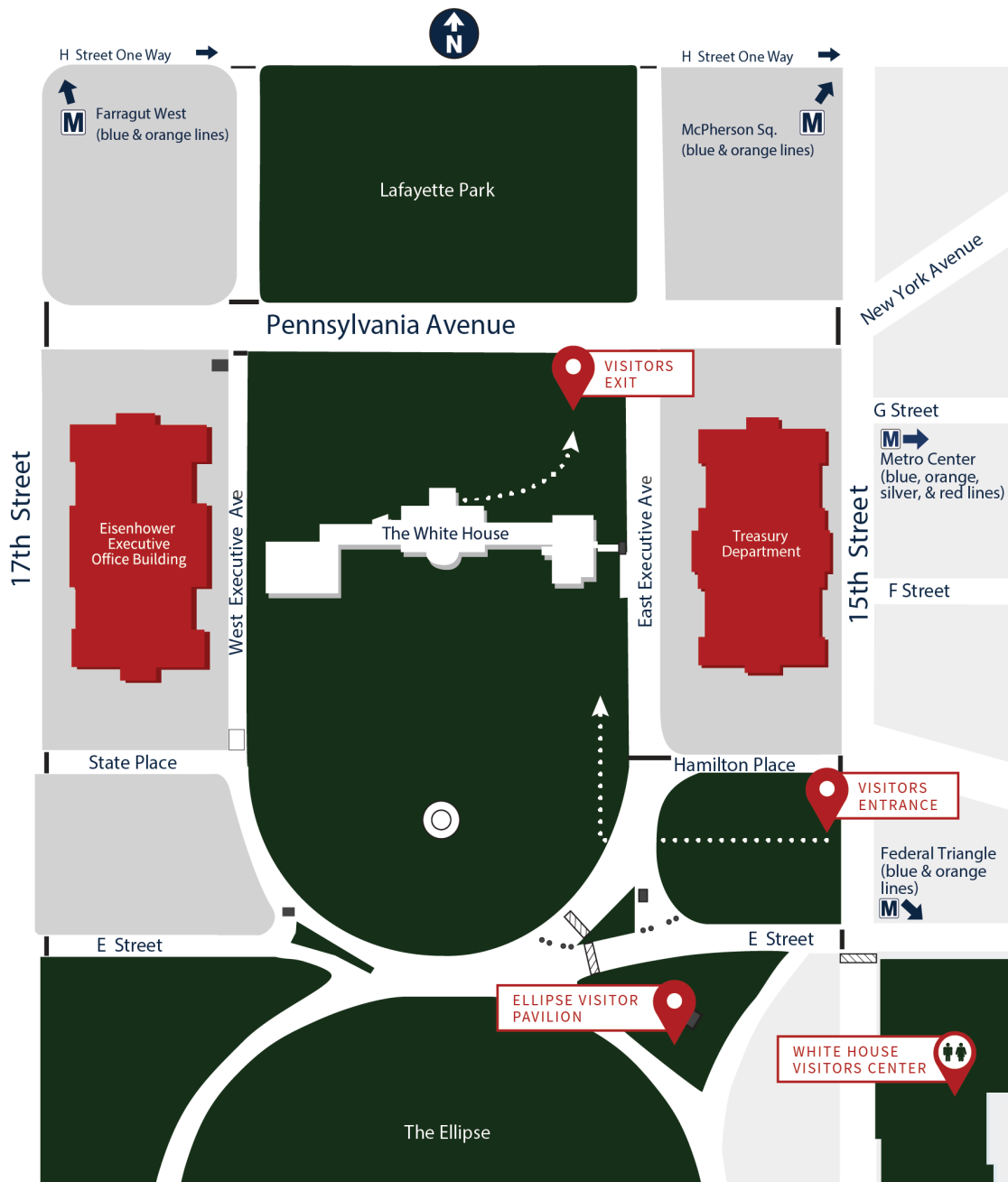
- **Bags of any kind (including fanny packs and clutches).**
- Aerosols, ammunition, cameras with detachable lenses, electric stun guns, e-cigarettes, fireworks, flags, food, guns, knives of any kind, lighters, liquids, mace, martial arts weapons, monopods, signs, strollers, tablets, tripods, tobacco products, toy weapons, video cameras, weapons/devices, any pointed object, and any other item determined to be a potential safety hazard.
- Please note that storage facilities are not provided during your visit. Individuals who arrive with bags or prohibited items will not be permitted to enter the White House.

WHITE HOUSE VISITORS CENTER

Visitors of all ages will enjoy the interactive experience provided at the White House Visitors Center, located at 1450 Pennsylvania Avenue NW. Here, you can explore a variety of exhibits featuring approximately 100 historical artifacts, view a 3D model of the People's House, and read about the history of the Executive Residence. The Visitors Center includes an array of photos, archival footage, and showcases a short film, "White House: Reflections From Within". Stop by the information desk to inquire about special ranger programs and events at President's Park.

WHITE HOUSE EXPERIENCE MOBILE APP

Before you begin your tour, we encourage you to download the WHExperience app via the QR code provided and select "Tour the White House". This free educational resource is provided by the White House Historical Association and invites guests to learn the fascinating history behind each room and pieces in the renowned White House collection.



From: [Earl N Mayfield \(CENSUS/DEPDIR FED\)](#)
To: [Kepto, Abbie E. EOP/WHO](#)
Cc: [Devin.A.DeBacker@usdoj.gov](#); [Ketan Bhirud](#); (b)(6); [Hamilton, Eric J. EOP/WHO](#)
Subject: Re: Call
Date: Monday, November 2, 2020 11:00:29 PM

Works for me.

Trey Mayfield
Counsel to the Director of the United States Census
Office [\(301\) 763-0707](#)
(b)(6)

On Nov 2, 2020, at 9:46 PM, Kepto, Abbie E. EOP/WHO
<Abigail.E.Kepto2@who.eop.gov> wrote:

Hi all,

Pat Philbin mentioned another call tomorrow. Please let me know if 10:00am will not work for you.

Best,
Abbie

Abbie Kepto
Office of White House Counsel
O: [\(202\) 456-4669](#)
(b)(6)

From: [Earl N Mayfield \(CENSUS/DEPDIR FED\)](#)
To: [Kepto, Abbie E. EOP/WHO](#)
Subject: Re: Call on Thursday
Date: Tuesday, October 27, 2020 5:03:48 PM

Hi Abbie,
That works fine (and you can call me “Trey”).

Trey Mayfield
Counsel to the Director of the United States Census
Office [\(301\) 763-0707](#)
(b)(6)

On Oct 27, 2020, at 4:58 PM, Kepto, Abbie E. EOP/WHO
<Abigail.E.Kepto2@who.eop.gov> wrote:

Hi Earl,

Pat Philbin asks that you participate in a call with WHCO, DHS, and OLC this Thursday at 2pm. Please let me know if that time does not work for you.

Best,
Abbie

Abbie Kepto
Office of White House Counsel
O: (202) 456-4669
(b)(6)

From: [Earl N Mayfield \(CENSUS/DEPDIR FED\)](#)
To: [Bhirud, Ketan](#)
Subject: Re: Categories of Aliens Who May Need to Be Removed from the Census Count
Date: Friday, November 27, 2020 2:49:32 PM

Thanks, Ketan-great work!

Trey Mayfield
Counsel to the Director of the United States Census
Office (301) 763-0707

(b)(6)

From: Bhirud, Ketan (b)(6)
Sent: Wednesday, November 25, 2020 8:57 PM
To: Philbin, Patrick F. EOP/WHO <Patrick.F.Philbin@who.eop.gov>; Devin.A.DeBacker@usdoj.gov <Devin.A.DeBacker@usdoj.gov>; Hamilton, Eric J. EOP/WHO <Eric.J.Hamilton@who.eop.gov>; Earl N Mayfield (CENSUS/DEPDIR FED) <earl.n.mayfield@census.gov>; MWalsh@doc.gov <MWalsh@doc.gov>; Mizelle, Chad (b)(6)
Cc: (b)(6)

Subject: RE: Categories of Aliens Who May Need to Be Removed from the Census Count

Here is the newest version, which is adjusted for the fact that Commerce now has all the information from DHS that it needs.

Ketan Bhirud
Deputy General Counsel
U.S. Department of Homeland Security
(b)(6)

From: Bhirud, Ketan
Sent: Thursday, November 19, 2020 12:08 AM
To: Philbin, Patrick F. EOP/WHO <Patrick.F.Philbin@who.eop.gov>; Devin.A.DeBacker@usdoj.gov; Hamilton, Eric J. EOP/WHO <Eric.J.Hamilton@who.eop.gov>; earl.n.mayfield@census.gov; MWalsh@doc.gov; Mizelle, Chad (b)(6)
Cc: (b)(6)

Subject: Categories of Aliens Who May Need to Be Removed from the Census Count

Chad, please see below for my request to you.

All,

(b) (5)

(b) (5) [REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

Best,

Ketan Bhirud
Deputy General Counsel
U.S. Department of Homeland Security

(b)(6) [REDACTED]

From: [Earl N Mayfield \(CENSUS/DEPDIR FED\)](#)
To: [Lair, Kate E. EOP/WHO](#); [Bhirud, Ketan](#); [DeBacker, Devin A. \(OLC\)](#); [Gene Hamilton](#); [Benjamin A Overholt \(CENSUS/DEPDIR FED\)](#); (b)(6)
Cc: [Hamilton, Eric J. EOP/WHO](#); [Philbin, Patrick F. EOP/WHO](#)
Subject: Re: Census call
Date: Tuesday, December 8, 2020 9:07:27 AM

Either is fine.

Trey Mayfield
Counsel to the Director of the United States Census
Office (301) 763-0707
(b)(6)

From: Lair, Kate E. EOP/WHO <Kathryn.E.Lair@who.eop.gov>
Sent: Tuesday, December 8, 2020 9:01 AM
To: Bhirud, Ketan (b)(6); Earl N Mayfield (CENSUS/DEPDIR FED) <earl.n.mayfield@census.gov>; DeBacker, Devin A. (OLC <Devin.A.DeBacker@usdoj.gov>; Gene Hamilton <gene.hamilton@usdoj.gov>; Benjamin A Overholt (CENSUS/DEPDIR FED) <benjamin.a.overholt@census.gov>; (b)(6)
Cc: Hamilton, Eric J. EOP/WHO <Eric.J.Hamilton@who.eop.gov>; Philbin, Patrick F. EOP/WHO <Patrick.F.Philbin@who.eop.gov>
Subject: RE: Census call

Good morning,

Would you all be available for another call today at 12 pm or 1 pm? Let me know and once we set a time I will circulate an updated bridge.

Thanks,
Kate

From: Lair, Kate E. EOP/WHO
Sent: Monday, December 7, 2020 11:42 AM
To: Bhirud, Ketan (b)(6); Earl N Mayfield (CENSUS/DEPDIR FED) <earl.n.mayfield@census.gov>; DeBacker, Devin A. (OLC <Devin.A.DeBacker@usdoj.gov>; Gene Hamilton <gene.hamilton@usdoj.gov>; benjamin.a.overholt@census.gov; (b)(6)
(b)(6)
Cc: Hamilton, Eric J. EOP/WHO <Eric.J.Hamilton@who.eop.gov>; Philbin, Patrick F. EOP/WHO <pfp2dcp@who.eop.gov>
Subject: Census call

Hello – would you all be available for a call today at 1:15 pm or 3:30 pm? Let me know and then I will circulate a dial-in.

Kate

From: [Earl N Mayfield \(CENSUS/DEPDIR FED\)](#)
To: [Lair, Kate E. EOP/WHO](#)
Subject: Re: Census call
Date: Monday, December 7, 2020 12:01:56 PM

330 much better

Trey Mayfield
Counsel to the Director of the United States Census
Office [\(301\) 763-0707](#)
(b)(6)

On Dec 7, 2020, at 11:42 AM, Lair, Kate E. EOP/WHO
<Kathryn.E.Lair@who.eop.gov> wrote:

Hello – would you all be available for a call today at 1:15 pm or 3:30 pm? Let me know and then I will circulate a dial-in.

Kate

From: [Earl N Mayfield \(CENSUS/DEPDIR FED\)](#)
To: [Lair, Kate E. EOP/WHO](#)
Cc: [Bhirud, Ketan](#); [DeBacker, Devin A. \(OLC\)](#); [Hamilton, Gene \(OAG\)](#); [Benjamin A Overholt \(CENSUS/DEPDIR FED\)](#); [\(b\)\(6\)](#) [Hamilton, Eric J. EOP/WHO](#); [Philbin, Patrick F. EOP/WHO](#); [Hamilton, Gene \(OAG\)](#)
Subject: Re: Census Call
Date: Thursday, December 10, 2020 3:53:28 PM

Either fine

Trey Mayfield
Counsel to the Director of the United States Census
Office [\(301\) 763-0707](#)
[\(b\)\(6\)](#)

On Dec 10, 2020, at 2:26 PM, Lair, Kate E. EOP/WHO
<Kathryn.E.Lair@who.eop.gov> wrote:

Writing to schedule another call on this topic for next Tuesday, 12/15. Does 10:00 or 10:30 am work ok for everybody? Let me know then I will circulate a new dial-in.

Kate

From: Lair, Kate E. EOP/WHO
Sent: Thursday, December 10, 2020 11:39 AM
To: 'Bhirud, Ketan' [\(b\)\(6\)](#) 'Earl N Mayfield (CENSUS/DEPDIR FED)' <earl.n.mayfield@census.gov>; DeBacker, Devin A. (OLC) <Devin.A.DeBacker@usdoj.gov>; 'Hamilton, Gene (OAG)' <ghamilton@jmd.usdoj.gov>; 'benjamin.a.overholt@census.gov' <benjamin.a.overholt@census.gov>; [\(b\)\(6\)](#) [\(b\)\(6\)](#) Hamilton, Eric J. EOP/WHO <Eric.J.Hamilton@who.eop.gov>; 'Philbin, Patrick F. EOP/WHO' <Patrick.F.Philbin@who.eop.gov>; 'Hamilton, Gene (OAG)' <Gene.Hamilton@usdoj.gov>
Subject: Census Call
Importance: High

We are running behind on our end. Needing to move this call to 12:30 pm now. Same dial-in.

Thanks,
Kate

From: [Earl N Mayfield \(CENSUS/DEPDIR FED\)](#)
To: [Benjamin A Overholt \(CENSUS/DEPDIR FED\)](#); [Steven Dillingham \(CENSUS/DEPDIR FED\)](#); [Nathaniel Cogley \(CENSUS/DEPDIR FED\)](#)
Subject: Re: Census Information
Date: Thursday, October 29, 2020 4:10:32 PM

Great, much appreciated.

Trey Mayfield
Counsel to the Director of the United States Census
Office (301) 763-0707

(b)(6)

From: Benjamin A Overholt (CENSUS/DEPDIR FED) <benjamin.a.overholt@census.gov>
Sent: Thursday, October 29, 2020 4:09 PM
To: Earl N Mayfield (CENSUS/DEPDIR FED) <earl.n.mayfield@census.gov>; Steven Dillingham (CENSUS/DEPDIR FED) <steven.dillingham@census.gov>; Nathaniel Cogley (CENSUS/DEPDIR FED) <nathaniel.cogley@census.gov>
Subject: Re: Census Information

I working on this now. I likely wont have a final answer tomorrow, but should have more information soon.

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Sent: Thursday, October 29, 2020 4:08 PM
To: Benjamin A Overholt (CENSUS/DEPDIR FED) <benjamin.a.overholt@census.gov>; Steven Dillingham (CENSUS/DEPDIR FED) <steven.dillingham@census.gov>; Nathaniel Cogley (CENSUS/DEPDIR FED) <nathaniel.cogley@census.gov>
Subject: Re: Census Information

All,
Philbin asked for a very quick turnaround on this. Per Ben's note below, from whom should be get it, and how?
Thanks,
Trey

Trey Mayfield
Counsel to the Director of the United States Census
Office (301) 763-0707

(b)(6)

From: Benjamin A Overholt (CENSUS/DEPDIR FED) <benjamin.a.overholt@census.gov>

Sent: Thursday, October 29, 2020 3:19 PM

To: Earl N Mayfield (CENSUS/DEPDIR FED) <earl.n.mayfield@census.gov>; Steven Dillingham (CENSUS/DEPDIR FED) <steven.dillingham@census.gov>; Nathaniel Cogley (CENSUS/DEPDIR FED) <nathaniel.cogley@census.gov>

Subject: Re: Census Information

I'm adding the director and Nathaniel to this as I have never seen a step by step breakdown of the process, only the general descriptions from our meetings. This may be a question for Abowd. Thoughts on the best way to go about asking?

Ben

On Oct 29, 2020, at 3:02 PM, Earl N Mayfield (CENSUS/DEPDIR FED) <earl.n.mayfield@census.gov> wrote:

Just got off the call. This is what DHS provided just prior to the call.
Philbin has asked that you and I produce by mid-day tomorrow an outline of how Census intends to ascertain unlawful status from the data we have.
You definitely need to be in these calls going forward.

Trey Mayfield
Counsel to the Director of the United States Census
Office (301) 763-0707
(b)(6)

From: Bhirud, Ketan (b)(6)
Sent: Thursday, October 29, 2020 1:57 PM
To: Philbin, Patrick F. EOP/WHO <Patrick.F.Philbin@who.eop.gov>; Hamilton, Eric J. EOP/WHO <Eric.J.Hamilton@who.eop.gov>; Devin.A.DeBacker@usdoj.gov <Devin.A.DeBacker@usdoj.gov>; Earl N Mayfield (CENSUS/DEPDIR FED) <earl.n.mayfield@census.gov>; (b)(6)
Subject: Census Information

Team,

I write to provide some additional information that I have learned since our last conversation. I do not intend for this information to be determinative or final, but I am writing to provide what I know as of now. Please let me know if you have any questions or concerns.

Information regarding data already provided:

(b) (5)

(b) (5)

(b) (5)



From: [Benjamin A Overholt \(CENSUS/DEPDIR FED\)](#)
To: [Earl N Mayfield \(CENSUS/DEPDIR FED\)](#); [Steven Dillingham \(CENSUS/DEPDIR FED\)](#); [Nathaniel Cogley \(CENSUS/DEPDIR FED\)](#)
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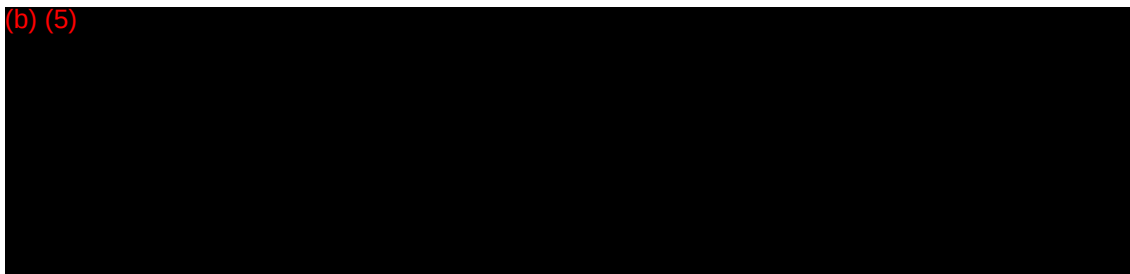
Trey Mayfield
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(b) (5)



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To: [Benjamin A Overholt \(CENSUS/DEPDIR FED\)](#); [Steven Dillingham \(CENSUS/DEPDIR FED\)](#); [Nathaniel Cogley \(CENSUS/DEPDIR FED\)](#)
Subject: Re: Census Information
Date: Thursday, October 29, 2020 4:08:39 PM

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Thanks,
Trey

Trey Mayfield
Counsel to the Director of the United States Census
Office (301) 763-0707

(b)(6)

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Sent: Thursday, October 29, 2020 3:19 PM
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Trey Mayfield
Counsel to the Director of the United States Census
Office (301) 763-0707

(b)(6)

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Sent: Thursday, October 29, 2020 1:57 PM

To: Philbin, Patrick F. EOP/WHO <Patrick.F.Philbin@who.eop.gov>; Hamilton, Eric J. EOP/WHO <Eric.J.Hamilton@who.eop.gov>; Devin.A.DeBacker@usdoj.gov <Devin.A.DeBacker@usdoj.gov>; Earl N Mayfield (CENSUS/DEPDIR FED) <earl.n.mayfield@census.gov>; (b)(6)

Subject: Census Information

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(b) (5)



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Subject: Re: Census Information
Date: Thursday, October 29, 2020 4:09:33 PM

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Sent: Thursday, October 29, 2020 4:08 PM
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Trey Mayfield
Counsel to the Director of the United States Census
Office (301) 763-0707

(b)(6)

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Trey Mayfield

Counsel to the Director of the United States Census

Office (301) 763-0707

(b)(6)

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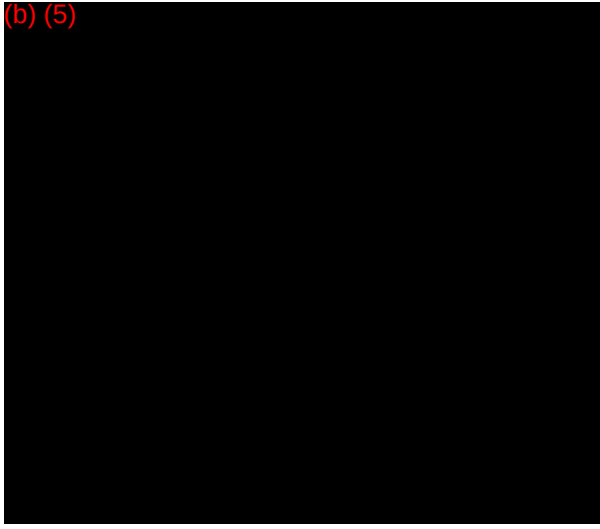
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Team,

I write to provide some additional information that I have learned since our last conversation. I do not intend for this information to be determinative or final, but I am writing to provide what I know as of now. Please let me know if you have any questions or concerns.

(b) (5)

(b) (5)



From: [Benjamin A Overholt \(CENSUS/DEPDIR FED\)](#)
To: [Earl N Mayfield \(CENSUS/DEPDIR FED\)](#)
Subject: Re: Census Information
Date: Thursday, October 29, 2020 4:46:16 PM

I can get the needed information on Monday. Lets talk about options: (b)(6)

From: Earl N Mayfield (CENSUS/DEPDIR FED) <earl.n.mayfield@census.gov>
Sent: Thursday, October 29, 2020 4:10 PM
To: Benjamin A Overholt (CENSUS/DEPDIR FED) <benjamin.a.overholt@census.gov>; Steven Dillingham (CENSUS/DEPDIR FED) <steven.dillingham@census.gov>; Nathaniel Cogley (CENSUS/DEPDIR FED) <nathaniel.cogley@census.gov>
Subject: Re: Census Information

Great, much appreciated.

Trey Mayfield
Counsel to the Director of the United States Census
Office (301) 763-0707

(b)(6)

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Counsel to the Director of the United States Census
Office (301) 763-0707
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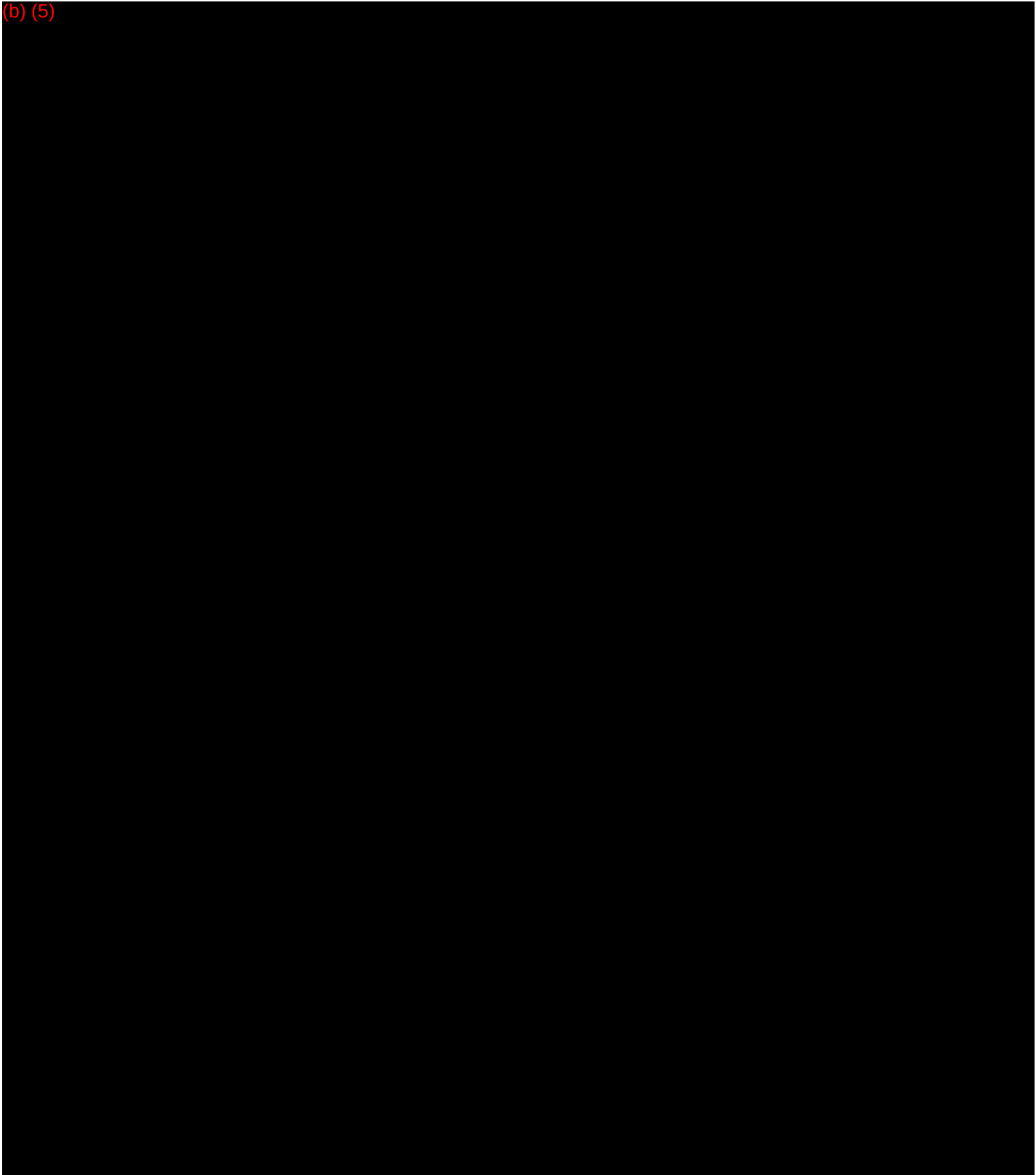
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(b) (5)



From: [Benjamin A Overholt \(CENSUS/DEPDIR FED\)](#)
To: [Earl N Mayfield \(CENSUS/DEPDIR FED\)](#)
Subject: Re: Census Meeting Request - Friday morning
Date: Tuesday, November 3, 2020 2:19:12 PM

Yesterday we spoke with Victoria Velkoff (Victoria.a.vellkoff@census.gov) and Matthew Spence (Matthew.Spence@census.gov). They are probably the best folks for the subject.

From: Earl N Mayfield (CENSUS/DEPDIR FED) <earl.n.mayfield@census.gov>
Sent: Tuesday, November 3, 2020 2:14 PM
To: Benjamin A Overholt (CENSUS/DEPDIR FED) <benjamin.a.overholt@census.gov>
Subject: Re: Census Meeting Request - Friday morning

Definitely the career folks. Nathaniel if he's interested.

Trey Mayfield
Counsel to the Director of the United States Census
Office [\(301\) 763-0707](#)
(b)(6)

On Nov 3, 2020, at 2:02 PM, Benjamin A Overholt (CENSUS/DEPDIR FED) <benjamin.a.overholt@census.gov> wrote:

Who else are you thinking to add? Nathaniel? or career census folk?

From: Earl N Mayfield (CENSUS/DEPDIR FED) <earl.n.mayfield@census.gov>
Sent: Tuesday, November 3, 2020 1:59 PM
To: Benjamin A Overholt (CENSUS/DEPDIR FED) <benjamin.a.overholt@census.gov>
Subject: Fwd: Census Meeting Request - Friday morning

Ben,
Pat Philbin wants the joint meeting to occur this Friday 10-1 between the DHS data folks/lawyers and us to ensure that the right questions are being asked and answered concerning legal presence. Can you add the relevant people to this chain to see if they're available? Probably better to err on the side of being over-inclusive.
Thanks,

Trey Mayfield
Counsel to the Director of the United States Census
Office [\(301\) 763-0707](#)
(b)(6)

Begin forwarded message:

From: "DeBacker, Devin A. (OLC)"
<Devin.A.DeBacker@usdoj.gov>
Date: November 3, 2020 at 1:31:35 PM EST
To: (b)(6), (b)(7)(C)
(b)(6)
"Earl N Mayfield
(CENSUS/DEPDIR FED)" <earl.n.mayfield@census.gov>,
"Benjamin A Overholt (CENSUS/DEPDIR FED)"
<benjamin.a.overholt@census.gov>, "Hamilton, Eric J. EOP/WHO"
<Eric.J.Hamilton@who.eop.gov>, "Cannon, Michael (Federal)"
<MCannon@doc.gov>, "Risko, Daniel (Federal)"
<DRisko@doc.gov>, "Kostiuk, Damian D"
(b)(6)
(b)(6)
(b)(6), "Busch, Philip B"
(b)(6), "Gaffin, Elizabeth S"
(b)(6), "GORMAN, MICHAEL"
(b)(6)
(b)(6), (b)(7)(C)
(b)(6)
(b)(6)
(b)(6), "Hamilton, Gene (OAG)"
<Gene.Hamilton@usdoj.gov>
Cc: "BHIRUD, KETAN" (b)(6),
(b)(6)
Subject: RE: Census Meeting Request - Friday morning

10 to 1 on Friday works for me. Also adding Gene Hamilton from DOJ.

Devin A. DeBacker

Deputy Assistant Attorney General

Office of Legal Counsel

U.S. Department of Justice

Office: (202) 514-4038

(b)(6)

devin.a.debacker@usdoj.gov

From: (b)(6)
Sent: Tuesday, November 3, 2020 1:17 PM
To: (b)(6)
earl.n.mayfield@census.gov; Benjamin A Overholt (CENSUS/DEPDIR FED)
<benjamin.a.overholt@census.gov>; DeBacker, Devin A. (OLC)
<dadebacker@jmd.usdoj.gov>; Hamilton, Eric J. EOP/WHO
<Eric.J.Hamilton@who.eop.gov>; Cannon, Michael (Federal)

<MCannon@doc.gov>; Risko, Daniel (Federal) <DRisko@doc.gov>;

Kostiuk, Damian D (b)(6)

(b)(6)

Busch, Philip B

(b)(6)

; Gaffin, Elizabeth S

(b)(6)

; GORMAN, MICHAEL

(b)(6)

(b)(6)

(b)(6), (b)(7)(C)

Cc: BHIRUD, KETAN (b)(6)

chele

(b)(6)

Subject: RE: Census Meeting Request - Friday morning

Adding (b)(6)

Thank you,

(b)(6)

From: (b)(6)

(b)(6)

Sent: Tuesday, November 3, 2020 1:00 PM

To: earl.n.mayfield@census.gov; Benjamin A Overholt (CENSUS/DEPDIR

FED) <benjamin.a.overholt@census.gov>; DeBacker, Devin A. (OLC)

<Devin.A.DeBacker@usdoj.gov>; Hamilton, Eric J. EOP/WHO

<Eric.J.Hamilton@who.eop.gov>; Cannon, Michael (Federal)

<MCannon@doc.gov>; Risko, Daniel (Federal) <DRisko@doc.gov>;

Kostiuk, Damian D (b)(6)

(b)(6)

Busch, Philip B

<(b)(6)

; Gaffin, Elizabeth S

(b)(6)

; GORMAN, MICHAEL

(b)(6)

; Tyler, Timothy A

(b)(6)

; (b)(6)

(b)(6), (b)(7)(C)

Cc: BHIRUD, KETAN (b)(6)

(b)(6)

Subject: Census Meeting Request - Friday morning

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If you are unavailable on November 6, from 10:00 – 1:00, please let me and Ketan know when you are available. I would like to send out the invite for this meeting later today.

Thank you,

(b)(6)

[REDACTED]

Director, Immigration Data Integration Initiative

(b)(6)

[REDACTED]

[REDACTED]

From: [Benjamin A Overholt \(CENSUS/DEPDIR FED\)](#)
To: [Earl N Mayfield \(CENSUS/DEPDIR FED\)](#)
Subject: Re: Census Meeting Request - Friday morning
Date: Tuesday, November 3, 2020 2:02:03 PM

Who else are you thinking to add? Nathaniel? or career census folk?

From: Earl N Mayfield (CENSUS/DEPDIR FED) <earl.n.mayfield@census.gov>
Sent: Tuesday, November 3, 2020 1:59 PM
To: Benjamin A Overholt (CENSUS/DEPDIR FED) <benjamin.a.overholt@census.gov>
Subject: Fwd: Census Meeting Request - Friday morning

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Trey Mayfield
Counsel to the Director of the United States Census
Office [\(301\) 763-0707](#)
(b)(6)

Begin forwarded message:

From: "DeBacker, Devin A. (OLC)" <Devin.A.DeBacker@usdoj.gov>
Date: November 3, 2020 at 1:31:35 PM EST
To: (b)(6)
(b)(6), "Earl N Mayfield (CENSUS/DEPDIR FED)" <earl.n.mayfield@census.gov>, "Benjamin A Overholt (CENSUS/DEPDIR FED)" <benjamin.a.overholt@census.gov>, "Hamilton, Eric J. EOP/WHO" <Eric.J.Hamilton@who.eop.gov>, "Cannon, Michael (Federal)" <MCannon@doc.gov>, "Risko, Daniel (Federal)" <DRisko@doc.gov>, "Kostiuk, Damian D" (b)(6)
(b)(6), "Busch, Philip B" (b)(6)
(b)(6), "Gaffin, Elizabeth S"
(b)(6), "GORMAN, MICHAEL"
(b)(6), (b)(6), (b)(7)(C)
(b)(6)
(b)(6)
Cc: "BHIRUD, KETAN" (b)(6), (b)(6)
Subject: RE: Census Meeting Request - Friday morning

10 to 1 on Friday works for me. Also adding Gene Hamilton from DOJ.

Devin A. DeBacker

Deputy Assistant Attorney General

Office of Legal Counsel

U.S. Department of Justice

Office: (202) 514-4038

(b)(6)

devin.a.debacker@usdoj.gov

From: (b)(6)

Sent: Tuesday, November 3, 2020 1:17 PM

To: (b)(6)

earl.n.mayfield@census.gov; Benjamin A Overholt (CENSUS/DEPDIR FED)
<benjamin.a.overholt@census.gov>; DeBacker, Devin A. (OLC)
<dadebacker@jmd.usdoj.gov>; Hamilton, Eric J. EOP/WHO
<Eric.J.Hamilton@who.eop.gov>; Cannon, Michael (Federal) <MCannon@doc.gov>;
Risko, Daniel (Federal) <DRisko@doc.gov>; Kostiuk, Damian D

(b)(6)

(b)(6)

; Busch, Philip B (b)(6)

Gaffin, Elizabeth S (b)(6); GORMAN, MICHAEL

(b)(6)

; (b)(6), (b)(7)(C)

Cc: BHIRUD, KETAN (b)(6)

(b)(6)

Subject: RE: Census Meeting Request - Friday morning

Adding (b)(6)

Thank you,

(b)(6)

From: (b)(6)

Sent: Tuesday, November 3, 2020 1:00 PM

To: earl.n.mayfield@census.gov; Benjamin A Overholt (CENSUS/DEPDIR FED)
<benjamin.a.overholt@census.gov>; DeBacker, Devin A. (OLC)
<Devin.A.DeBacker@usdoj.gov>; Hamilton, Eric J. EOP/WHO
<Eric.J.Hamilton@who.eop.gov>; Cannon, Michael (Federal) <MCannon@doc.gov>;
Risko, Daniel (Federal) <DRisko@doc.gov>; Kostiuk, Damian D

(b)(6)

(b)(6)

; Busch, Philip B (b)(6)

Gaffin, Elizabeth S <(b)(6)>; GORMAN, MICHAEL

(b)(6); (b)(6), (b)(7)(C)

(b)(6)

(b)(6)

(b)(6)

(b)(6)

Cc: BHIRUD, KETAN (b)(6)

(b)(6)

Subject: Census Meeting Request - Friday morning

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I am emailing to ask about your availability this Friday morning, November 6, from 10:00 – 1:00. Ketan and I are looking to bring you all together to discuss the questions remaining regarding DHS data.

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If you are unavailable on November 6, from 10:00 – 1:00, please let me and Ketan know when you are available. I would like to send out the invite for this meeting later today.

Thank you,

(b)(6)

Director, Immigration Data Integration Initiative

(b)(6)

Desk: 202-447-3685

(b)(6)

From: [Earl N Mayfield \(CENSUS/DEPDIR FED\)](#)
To: [Benjamin A Overholt \(CENSUS/DEPDIR FED\)](#)
Subject: Re: Census Meeting Request - Friday morning
Date: Tuesday, November 3, 2020 2:14:29 PM

Definitely the career folks. Nathaniel if he's interested.

Trey Mayfield
Counsel to the Director of the United States Census
Office [\(301\) 763-0707](#)
(b)(6)

On Nov 3, 2020, at 2:02 PM, Benjamin A Overholt (CENSUS/DEPDIR FED) <benjamin.a.overholt@census.gov> wrote:

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Subject: Fwd: Census Meeting Request - Friday morning

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Thanks,

Trey Mayfield
Counsel to the Director of the United States Census
Office [\(301\) 763-\(b\)\(6\)](#)
Cell [\(202\) 868-1157](#)

Begin forwarded message:

From: "DeBacker, Devin A. (OLC)" <Devin.A.DeBacker@usdoj.gov>
Date: November 3, 2020 at 1:31:35 PM EST
To: (b)(6)
(b)(6) >, "Earl N Mayfield (CENSUS/DEPDIR FED)" <earl.n.mayfield@census.gov>, "Benjamin A Overholt (CENSUS/DEPDIR FED)"

<benjamin.a.overholt@census.gov>, "Hamilton, Eric J. EOP/WHO"
<Eric.J.Hamilton@who.eop.gov>, "Cannon, Michael (Federal)"
<MCannon@doc.gov>, "Risko, Daniel (Federal)"
<DRisko@doc.gov>, "Kostiuk, Damian D"

(b)(6) J"
(b)(6) , "Busch, Philip B"
(b)(6) , "Gaffin, Elizabeth S"
(b)(6) "GORMAN, MICHAEL"
(b)(6) , "(b)(6)"
(b)(6), (b)(7)(C)

(b)(6)
<Gene.Hamilton@usdoj.gov>

Cc: "BHIRUD, KETAN" (b)(6)

Subject: RE: Census Meeting Request - Friday morning

10 to 1 on Friday works for me. Also adding Gene Hamilton from DOJ.

Devin A. DeBacker

Deputy Assistant Attorney General
Office of Legal Counsel
U.S. Department of Justice
Office: (202) 514-4038

(b)(6)

devin.a.debacker@usdoj.gov

From: (b)(6)

Sent: Tuesday, November 3, 2020 1:17 PM

To: (b)(6)

earl.n.mayfield@census.gov; Benjamin A Overholt (CENSUS/DEPDIR FED)
<benjamin.a.overholt@census.gov>; DeBacker, Devin A. (OLC)
<dadebacker@jmd.usdoj.gov>; Hamilton, Eric J. EOP/WHO
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Kostiuk, Damian D (b)(6)

(b)(6) Busch, Philip B

(b)(6) Gaffin, Elizabeth S

(b)(6); GORMAN, MICHAEL

(b)(6) (b)(6), (b)(7)(C)

(b)(6)
(b)(6)
(b)(6)

(b)(6), (b)(7)(C)

Cc: BHIRUD, KETAN (b)(6)

Subject: RE: Census Meeting Request - Friday morning

Adding (b)(6)

Thank you,

(b)(6)

From: (b)(6)

Sent: Tuesday, November 3, 2020 1:00 PM

To: earl.n.mayfield@census.gov; Benjamin A Overholt (CENSUS/DEPDIR FED) <benjamin.a.overholt@census.gov>; DeBacker, Devin A. (OLC) <Devin.A.DeBacker@usdoj.gov>; Hamilton, Eric J. EOP/WHO <Eric.J.Hamilton@who.eop.gov>; Cannon, Michael (Federal) <MCannon@doc.gov>; Risko, Daniel (Federal) <DRisko@doc.gov>; Kostiuk, Damian D (b)(6),

(b)(6) Busch, Philip B

(b)(6) Gaffin, Elizabeth S

(b)(6); GORMAN, MICHAEL

(b)(6); Tyler, Timothy A

(b)(6) (b)(6), (b)(7)(C)

Cc: BHIRUD, KETAN (b)(6) (b)(6)

(b)(6)

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(b)(6)

[REDACTED]

Director, Immigration Data Integration Initiative

(b)(6)

[REDACTED]

[REDACTED]

From: [Earl N Mayfield \(CENSUS/DEPDIR FED\)](#)
To: [Benjamin A Overholt \(CENSUS/DEPDIR FED\)](#)
Subject: Re: Census Meeting Request - Friday morning
Date: Tuesday, November 3, 2020 2:44:56 PM

Danke.

Trey Mayfield
Counsel to the Director of the United States Census
Office [\(301\) 763-0707](#)
(b)(6)

On Nov 3, 2020, at 2:19 PM, Benjamin A Overholt (CENSUS/DEPDIR FED) <benjamin.a.overholt@census.gov> wrote:

Yesterday we spoke with Victoria Velkoff (Victoria.a.vellkoff@census.gov) and Matthew Spence (Matthew.Spence@census.gov). They are probably the best folks for the subject.

From: Earl N Mayfield (CENSUS/DEPDIR FED) <earl.n.mayfield@census.gov>
Sent: Tuesday, November 3, 2020 2:14 PM
To: Benjamin A Overholt (CENSUS/DEPDIR FED) <benjamin.a.overholt@census.gov>
Subject: Re: Census Meeting Request - Friday morning

Definitely the career folks. Nathaniel if he's interested.

Trey Mayfield
Counsel to the Director of the United States Census
Office [\(301\) 763-0707](#)
(b)(6)

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To: Benjamin A Overholt (CENSUS/DEPDIR FED)

<benjamin.a.overholt@census.gov>

Subject: Fwd: Census Meeting Request - Friday morning

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Trey Mayfield

Counsel to the Director of the United States Census

Office [\(301\) 763-0707](tel:3017630707)

(b)(6)

Begin forwarded message:

From: "DeBacker, Devin A. (OLC)"

<Devin.A.DeBacker@usdoj.gov>

Date: November 3, 2020 at 1:31:35 PM EST

To: (b)(6)

(b)(6)

(b)(6)

, "Earl N Mayfield
(CENSUS/DEPDIR FED)"

<earl.n.mayfield@census.gov>, "Benjamin A Overholt
(CENSUS/DEPDIR FED)"

<benjamin.a.overholt@census.gov>, "Hamilton, Eric J.
EOP/WHO" <Eric.J.Hamilton@who.eop.gov>,

"Cannon, Michael (Federal)" <MCannon@doc.gov>,

"Risko, Daniel (Federal)" <DRisko@doc.gov>,

"Kostiuk, Damian D"

(b)(6)

(b)(6)

"Busch, Philip B" (b)(6)

"Gaffin, Elizabeth S"

(b)(6)

, "GORMAN,

MICHAEL" (b)(6)

(b)(6),

(b)(7)

(C)

"Hamilton, Gene (OAG)" <Gene.Hamilton@usdoj.gov>

Cc: "BHIRUD, KETAN"

(b)(6)

(b)(6)

Subject: RE: Census Meeting Request - Friday
morning

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Devin A. DeBacker

Deputy Assistant Attorney General
Office of Legal Counsel
U.S. Department of Justice
Office: (202) 514-4038

(b)(6)

devin.a.debacker@usdoj.gov

From: (b)(6)

(b)(6)

Sent: Tuesday, November 3, 2020 1:17 PM

To: (b)(6)

earl.n.mayfield@census.gov; Benjamin A Overholt (CENSUS/DEPDIR FED) <benjamin.a.overholt@census.gov>; DeBacker, Devin A. (OLC) <dadebacker@jmd.usdoj.gov>; Hamilton, Eric J. EOP/WHO <Eric.J.Hamilton@who.eop.gov>; Cannon, Michael (Federal) <MCannon@doc.gov>; Risko, Daniel (Federal) <DRisko@doc.gov>; Kostiuk, Damian D

(b)(6)

(b)(6); Busch, Philip B

(b)(6); Gaffin, Elizabeth S

(b)(6); GORMAN, MICHAEL

(b)(6) (b)(6), (b)(7)(C)

(b)(6)

(b)(6)

(b)(6)

(b)(6)

(b)(6)

Cc: BHIRUD, KETAN (b)(6)

(b)(6)

Subject: RE: Census Meeting Request - Friday morning

Adding (b)(6)

Thank you,

(b)(6)

From: (b)(6)

Sent: Tuesday, November 3, 2020 1:00 PM

To: earl.n.mayfield@census.gov; Benjamin A Overholt

(CENSUS/DEPDIR FED) <benjamin.a.overholt@census.gov>;
DeBacker, Devin A. (OLC) <Devin.A.DeBacker@usdoj.gov>;
Hamilton, Eric J. EOP/WHO <Eric.J.Hamilton@who.eop.gov>;
Cannon, Michael (Federal) <MCannon@doc.gov>; Risko,
Daniel (Federal) <DRisko@doc.gov>; Kostiuk, Damian D

(b)(6)

(b)(6)

Busch, Philip B

(b)(6)

Gaffin, Elizabeth S

(b)(6)

ORMAN, MICHAEL

(b)(6)

; (b)(6), (b)(7)(C)

Cc: BHIRUD, KETAN (b)(6)

(b)(6)

Subject: Census Meeting Request - Friday morning

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Thank you,

(b)(6)

Director, Immigration Data Integration Initiative

(b)(6)

From: [Nathaniel Cogley \(CENSUS/DEPDIR FED\)](#)
To: [Kline, Katherine E. EOP/WHO](#)
Cc: [Goudarzi, Talat \(Federal\)](#); [Martin, Nicole \(Federal\)](#); [Risko, Daniel \(Federal\)](#)
Subject: Re: Census Meeting
Date: Wednesday, October 14, 2020 10:40:22 AM

Hi Katherine,

Greetings. In terms of who is invited from the Census Bureau, I believe that the meeting would benefit from the presence of both Dr. Dillingham and Dr. Overholt. Thanks in advance for your attention and efforts.

Sincerely,
Nathaniel

Sent from my iPhone

On Oct 14, 2020, at 10:02 AM, Kline, Katherine E. EOP/WHO
<Katherine.E.Kline@who.eop.gov> wrote:

Great!

Confirming tomorrow, **October 15th at 4:30 p.m.** with the group. Please let me know who all from Commerce/Census team will be joining other than the DepSec and Mike. I am working on a meeting space and will circle back soon.

Best,

Katherine Kline
Office of the Chief of Staff
O: 202-456-1208

From: Goudarzi, Talat (Federal) <TGoudarzi@doc.gov>
Sent: Wednesday, October 14, 2020 8:35 AM
To: Kline, Katherine E. EOP/WHO <Katherine.E.Kline@who.eop.gov>; Martin, Nicole (Federal) <NMartin1@doc.gov>; Cogley, Nathaniel <nathaniel.cogley@census.gov>; Risko, Daniel (Federal) <DRisko@doc.gov>
Subject: Re: Census Meeting

Thanks Nicole and Katherine! 4:30pm tomorrow works for Mike!

Get [Outlook for iOS](#)

From: Kline, Katherine E. EOP/WHO <Katherine.E.Kline@who.eop.gov>
Sent: Tuesday, October 13, 2020 8:43:44 PM
To: Martin, Nicole (Federal) <NMartin1@doc.gov>; Cogley, Nathaniel <nathaniel.cogley@census.gov>; Risko, Daniel (Federal) <DRisko@doc.gov>
Cc: Goudarzi, Talat (Federal) <TGoudarzi@doc.gov>
Subject: RE: Census Meeting

Thanks, Nicole! I just got two of the afternoon DC invites, so Dr. Fleming will also be in those. 4:30 works on our end, I believe. I will confirm first thing in the morning.

Best,

Katherine Kline
Office of the Chief of Staff
O: 202-456-1208

From: Martin, Nicole (Federal) <NMartin1@doc.gov>
Sent: Tuesday, October 13, 2020 6:25 PM
To: Kline, Katherine E. EOP/WHO <Katherine.E.Kline@who.eop.gov>; Cogley, Nathaniel <nathaniel.cogley@census.gov>; Risko, Daniel (Federal) <DRisko@doc.gov>
Cc: Goudarzi, Talat (Federal) <TGoudarzi@doc.gov>
Subject: RE: Census Meeting

Hi Katherine,

DS Kelley has three Deputy Committee meetings on Thursday (1-4), but is available at 4:30pm if that works well for Dr. Fleming.

I am adding Tala who can assist with Mike's availability.

Best,
Nicole

Nicole Martin
Office of the Deputy Secretary
U.S. Department of Commerce
NMartin1@doc.gov
(b)(6)

From: Kline, Katherine E. EOP/WHO <Katherine.E.Kline@who.eop.gov>
Sent: Tuesday, October 13, 2020 5:27 PM
To: Cogley, Nathaniel <nathaniel.cogley@census.gov>; Martin, Nicole (Federal)

<NMartin1@doc.gov>; Risko, Daniel (Federal) <DRisko@doc.gov>

Subject: RE: Census Meeting

I appreciate that, Nathaniel.

Dan/Nicole, let me know what works best for the DepSec and Mike.

Best,

Katherine Kline
Office of the Chief of Staff
O: 202-456-1208

From: Nathaniel Cogley (CENSUS/DEPDIR FED) <nathaniel.cogley@census.gov>

Sent: Tuesday, October 13, 2020 5:20 PM

To: Kline, Katherine E. EOP/WHO <Katherine.E.Kline@who.eop.gov>; Martin, Nicole (Federal) <NMartin1@doc.gov>; Risko, Daniel (Federal) <DRisko@doc.gov>

Subject: Re: Census Meeting

Hi Katherine,

Given the importance of the meeting, I can accommodate whatever time the meeting is set for. Looking forward to it.

Sincerely,
Nathaniel

Nathaniel Cogley, Ph.D.

Deputy Director for Policy

U.S. Census Bureau

From: Kline, Katherine E. EOP/WHO <Katherine.E.Kline@who.eop.gov>

Sent: Tuesday, October 13, 2020 5:15 PM

To: Martin, Nicole (Federal) <NMartin1@doc.gov>; Risko, Daniel (Federal) <DRisko@doc.gov>

Cc: Nathaniel Cogley (CENSUS/DEPDIR FED) <nathaniel.cogley@census.gov>

Subject: Census Meeting

Good afternoon friends,

Given the SCOTUS announcement today, we would like to have the group meet on Thursday. Dr. Fleming has availability any time after 2:00 p.m. Please let me know what time works best for the Commerce/Census Team.

Best,

Katherine Kline
Office of the Chief of Staff
O: 202-456-1208

From: [Nathaniel Cogley \(CENSUS/DEPDIR FED\)](#)
To: [Kline, Katherine E. EOP/WHO](#); [Martin, Nicole \(Federal\)](#); [Risko, Daniel \(Federal\)](#)
Subject: Re: Census Meeting
Date: Tuesday, October 13, 2020 5:20:26 PM

Hi Katherine,

Given the importance of the meeting, I can accommodate whatever time the meeting is set for. Looking forward to it.

Sincerely,
Nathaniel

Nathaniel Cogley, Ph.D.
Deputy Director for Policy
U.S. Census Bureau

From: Kline, Katherine E. EOP/WHO <Katherine.E.Kline@who.eop.gov>
Sent: Tuesday, October 13, 2020 5:15 PM
To: Martin, Nicole (Federal) <NMartin1@doc.gov>; Risko, Daniel (Federal) <DRisko@doc.gov>
Cc: Nathaniel Cogley (CENSUS/DEPDIR FED) <nathaniel.cogley@census.gov>
Subject: Census Meeting

Good afternoon friends,

Given the SCOTUS announcement today, we would like to have the group meet on Thursday. Dr. Fleming has availability any time after 2:00 p.m. Please let me know what time works best for the Commerce/Census Team.

Best,

Katherine Kline
Office of the Chief of Staff
O: 202-456-1208

From: [Nathaniel Cogley \(CENSUS/DEPDIR FED\)](#)
To: [Kline, Katherine E. EOP/WHO](#)
Subject: Re: Census Meeting
Date: Wednesday, October 14, 2020 5:52:34 PM

Done! Thanks for all your efforts!

—Nathaniel

Nathaniel Cogley, Ph.D.
Deputy Director for Policy
U.S. Census Bureau

From: Kline, Katherine E. EOP/WHO <Katherine.E.Kline@who.eop.gov>
Sent: Wednesday, October 14, 2020 5:12 PM
To: Nathaniel Cogley (CENSUS/DEPDIR FED) <nathaniel.cogley@census.gov>
Subject: FW: Census Meeting

[Please complete the link for tomorrow.](#)

From: Kline, Katherine E. EOP/WHO
Sent: Wednesday, October 14, 2020 10:43 AM
To: 'Nathaniel Cogley (CENSUS/DEPDIR FED)' <nathaniel.cogley@census.gov>
Cc: Goudarzi, Talat (Federal) <TGoudarzi@doc.gov>; Martin, Nicole (Federal) <NMartin1@doc.gov>; Risko, Daniel (Federal) <DRisko@doc.gov>
Subject: RE: Census Meeting

[Waves link for tomorrow.](#)
<https://events.whitehouse.gov/AppointmentRsvpForm?rid=RT47MCTKEF>

From: Nathaniel Cogley (CENSUS/DEPDIR FED) <nathaniel.cogley@census.gov>
Sent: Wednesday, October 14, 2020 10:40 AM
To: Kline, Katherine E. EOP/WHO <Katherine.E.Kline@who.eop.gov>
Cc: Goudarzi, Talat (Federal) <TGoudarzi@doc.gov>; Martin, Nicole (Federal) <NMartin1@doc.gov>; Risko, Daniel (Federal) <DRisko@doc.gov>
Subject: Re: Census Meeting

Hi Katherine,

Greetings. In terms of who is invited from the Census Bureau, I believe that the meeting would benefit from the presence of both Dr. Dillingham and Dr. Overholt. Thanks in advance for your attention and efforts.

Sincerely,
Nathaniel

Sent from my iPhone

On Oct 14, 2020, at 10:02 AM, Kline, Katherine E. EOP/WHO <Katherine.E.Kline@who.eop.gov> wrote:

Great!

Confirming tomorrow, **October 15th at 4:30 p.m.** with the group. Please let me know who all from Commerce/Census team will be joining other than the DepSec and Mike. I am working on a meeting space and will circle back soon.

Best,

Katherine Kline
Office of the Chief of Staff
O: 202-456-1208

From: Goudarzi, Talat (Federal) <TGoudarzi@doc.gov>
Sent: Wednesday, October 14, 2020 8:35 AM
To: Kline, Katherine E. EOP/WHO <Katherine.E.Kline@who.eop.gov>; Martin, Nicole (Federal) <NMartin1@doc.gov>; Cogley, Nathaniel <nathaniel.cogley@census.gov>; Risko, Daniel (Federal) <DRisko@doc.gov>
Subject: Re: Census Meeting

Thanks Nicole and Katherine! 4:30pm tomorrow works for Mike!

Get [Outlook for iOS](#)

From: Kline, Katherine E. EOP/WHO <Katherine.E.Kline@who.eop.gov>
Sent: Tuesday, October 13, 2020 8:43:44 PM
To: Martin, Nicole (Federal) <NMartin1@doc.gov>; Cogley, Nathaniel <nathaniel.cogley@census.gov>; Risko, Daniel (Federal) <DRisko@doc.gov>
Cc: Goudarzi, Talat (Federal) <TGoudarzi@doc.gov>
Subject: RE: Census Meeting

Thanks, Nicole! I just got two of the afternoon DC invites, so Dr. Fleming will also be in those. 4:30 works on our end, I believe. I will confirm first thing in the morning.

Best,

Katherine Kline
Office of the Chief of Staff
O: 202-456-1208

From: Martin, Nicole (Federal) <NMartin1@doc.gov>
Sent: Tuesday, October 13, 2020 6:25 PM
To: Kline, Katherine E. EOP/WHO <Katherine.E.Kline@who.eop.gov>; Cogley, Nathaniel <nathaniel.cogley@census.gov>; Risko, Daniel (Federal) <DRisko@doc.gov>
Cc: Goudarzi, Talat (Federal) <TGoudarzi@doc.gov>
Subject: RE: Census Meeting

Hi Katherine,

DS Kelley has three Deputy Committee meetings on Thursday (1-4), but is available at 4:30pm if that works well for Dr. Fleming.

I am adding Tala who can assist with Mike's availability.

Best,
Nicole

Nicole Martin
Office of the Deputy Secretary
U.S. Department of Commerce
NMartin1@doc.gov
(b)(6)

From: Kline, Katherine E. EOP/WHO <Katherine.E.Kline@who.eop.gov>
Sent: Tuesday, October 13, 2020 5:27 PM
To: Cogley, Nathaniel <nathaniel.cogley@census.gov>; Martin, Nicole (Federal) <NMartin1@doc.gov>; Risko, Daniel (Federal) <DRisko@doc.gov>
Subject: RE: Census Meeting

I appreciate that, Nathaniel.

Dan/Nicole, let me know what works best for the DepSec and Mike.

Best,

Katherine Kline
Office of the Chief of Staff
O: 202-456-1208

From: Nathaniel Cogley (CENSUS/DEPDIR FED) <nathaniel.cogley@census.gov>
Sent: Tuesday, October 13, 2020 5:20 PM

To: Kline, Katherine E. EOP/WHO <Katherine.E.Kline@who.eop.gov>; Martin, Nicole (Federal) <NMartin1@doc.gov>; Risko, Daniel (Federal) <DRisko@doc.gov>
Subject: Re: Census Meeting

Hi Katherine,

Given the importance of the meeting, I can accommodate whatever time the meeting is set for. Looking forward to it.

Sincerely,
Nathaniel

Nathaniel Cogley, Ph.D.
Deputy Director for Policy
U.S. Census Bureau

From: Kline, Katherine E. EOP/WHO <Katherine.E.Kline@who.eop.gov>
Sent: Tuesday, October 13, 2020 5:15 PM
To: Martin, Nicole (Federal) <NMartin1@doc.gov>; Risko, Daniel (Federal) <DRisko@doc.gov>
Cc: Nathaniel Cogley (CENSUS/DEPDIR FED) <nathaniel.cogley@census.gov>
Subject: Census Meeting

Good afternoon friends,

Given the SCOTUS announcement today, we would like to have the group meet on Thursday. Dr. Fleming has availability any time after 2:00 p.m. Please let me know what time works best for the Commerce/Census Team.

Best,

Katherine Kline
Office of the Chief of Staff
O: 202-456-1208

From: [Nathaniel Cogley \(CENSUS/DEPDIR FED\)](#)
To: [Goudarzi, Talat \(Federal\)](#); [Kline, Katherine E. EOP/WHO](#); [Risko, Daniel \(Federal\)](#); [Martin, Nicole \(Federal\)](#)
Subject: Re: Census Update Meeting - Next Week
Date: Friday, October 16, 2020 10:53:58 AM

Hi Katherine,

On the Bureau side, we are flexible for either day. Thanks for all of your efforts to set these up.

—Nathaniel

Nathaniel Cogley, Ph.D.
Deputy Director for Policy
U.S. Census Bureau

From: Goudarzi, Talat (Federal) <TGoudarzi@doc.gov>
Sent: Friday, October 16, 2020 10:37 AM
To: Kline, Katherine E. EOP/WHO <Katherine.E.Kline@who.eop.gov>; Risko, Daniel (Federal) <DRisko@doc.gov>; Martin, Nicole (Federal) <NMartin1@doc.gov>
Cc: Nathaniel Cogley (CENSUS/DEPDIR FED) <nathaniel.cogley@census.gov>
Subject: Re: Census Update Meeting - Next Week

Thanks Katherine! Is this with SWR? or just Mike and KDK?

From: Kline, Katherine E. EOP/WHO <Katherine.E.Kline@who.eop.gov>
Sent: Friday, October 16, 2020 10:05 AM
To: Risko, Daniel (Federal) <DRisko@doc.gov>; Goudarzi, Talat (Federal) <TGoudarzi@doc.gov>; Martin, Nicole (Federal) <NMartin1@doc.gov>
Cc: Cogley, Nathaniel <nathaniel.cogley@census.gov>
Subject: Census Update Meeting - Next Week

Hi Team,

Just checking to see if Tuesday or Wednesday works best for the next Census meeting. We are flexible either day as of now.

Best,

Katherine Kline
Office of the Chief of Staff
O: 202-456-1208

From: [Nathaniel Cogley \(CENSUS/DEPDIR FED\)](#)
To: [Kline, Katherine E. EOP/WHO](#)
Subject: Re: Census Update
Date: Tuesday, September 8, 2020 9:28:50 AM

Done!

From: Kline, Katherine E. EOP/WHO <Katherine.E.Kline@who.eop.gov>
Sent: Tuesday, September 8, 2020 9:26 AM
To: Nathaniel Cogley (CENSUS/DEPDIR FED) <nathaniel.cogley@census.gov>
Subject: FW: Census Update

Please complete the waves link.. Thank you!

From: Kline, Katherine E. EOP/WHO
Sent: Friday, September 4, 2020 8:31 AM
To: 'Martin, Nicole (Federal)' <NMartin1@doc.gov>; Risko, Daniel (Federal) <DRisko@doc.gov>
Cc: Nathaniel Cogley (nathaniel.cogley@census.gov) <nathaniel.cogley@census.gov>
Subject: RE: Census Update

Great! Thank you. Confirming **Wednesday, September 9th at 3:00 p.m.** in the Roosevelt Room.

Waves link below for those who need it...

<https://events.whitehouse.gov/AppointmentRsvpForm?rid=4V86PJCVRV>

Best,

Katherine Kline
Office of the Chief of Staff
O: 202-456-1208

From: Martin, Nicole (Federal) <NMartin1@doc.gov>
Sent: Thursday, September 3, 2020 5:11 PM
To: Kline, Katherine E. EOP/WHO <Katherine.E.Kline@who.eop.gov>
Cc: Risko, Daniel (Federal) <DRisko@doc.gov>
Subject: RE: Census Update

3:00 pm works well on our end.

Thanks so much Katherine!

Best,
Nicole

From: Kline, Katherine E. EOP/WHO <Katherine.E.Kline@who.eop.gov>
Sent: Thursday, September 3, 2020 5:08 PM
To: Martin, Nicole (Federal) <NMartin1@doc.gov>
Cc: Risko, Daniel (Federal) <DRisko@doc.gov>
Subject: RE: Census Update

Nicole,

We had something pop up in that window. Can we do 11:30 instead? Alternatively, we can do 3:00.

Best,

Katherine Kline
Office of the Chief of Staff
O: 202-456-1208

From: Kline, Katherine E. EOP/WHO
Sent: Thursday, September 3, 2020 12:57 PM
To: 'Martin, Nicole (Federal)' <NMartin1@doc.gov>
Cc: Risko, Daniel (Federal) <DRisko@doc.gov>
Subject: RE: Census Update

Hi Nicole,

Wednesday, September 9th works for us as well. Can we do 10:00 a.m.?

Best,

Katherine Kline
Office of the Chief of Staff
O: 202-456-1208

From: Martin, Nicole (Federal) <NMartin1@doc.gov>
Sent: Thursday, September 3, 2020 9:44 AM
To: Kline, Katherine E. EOP/WHO <Katherine.E.Kline@who.eop.gov>
Cc: Risko, Daniel (Federal) <DRisko@doc.gov>
Subject: RE: Census Update

Hi Katherine,

I wanted to confirm that the next Census Update will be on Wednesday, 9/9/2020. Do you have a time locked down yet on your end?

Thanks,

Nicole

From: Kline, Katherine E. EOP/WHO <Katherine.E.Kline@who.eop.gov>
Sent: Monday, August 31, 2020 3:43 PM
To: Martin, Nicole (Federal) <NMartin1@doc.gov>; Risko, Daniel (Federal) <DRisko@doc.gov>; Cogley, Nathaniel <nathaniel.cogley@census.gov>
Subject: RE: Census Update

Same group as previous meetings. Our group below:

Derek Kan
Dr. John Fleming
Jessica Reiner
Pat Philbin
Sean McLean

Best,

Katherine Kline
Office of the Chief of Staff
O: 202-456-1208

From: Martin, Nicole (Federal) <NMartin1@doc.gov>
Sent: Monday, August 31, 2020 3:42 PM
To: Kline, Katherine E. EOP/WHO <Katherine.E.Kline@who.eop.gov>; Risko, Daniel (Federal) <DRisko@doc.gov>; Cogley, Nathaniel <nathaniel.cogley@census.gov>
Subject: Re: Census Update

Thank you for the update Katherine. Do you know how many people will be in attendance?

Best,
Nicole

From: Kline, Katherine E. EOP/WHO <Katherine.E.Kline@who.eop.gov>
Sent: Monday, August 31, 2020 10:09 AM
To: Risko, Daniel (Federal) <DRisko@doc.gov>; Cogley, Nathaniel <nathaniel.cogley@census.gov>
Cc: Martin, Nicole (Federal) <NMartin1@doc.gov>
Subject: RE: Census Update

We have reserved (b)(6) for the meeting tomorrow.

Best,

Katherine Kline

Office of the Chief of Staff
O: 202-456-1208

From: Kline, Katherine E. EOP/WHO
Sent: Thursday, August 27, 2020 5:47 PM
To: 'Risko, Daniel (Federal)' <DRisko@doc.gov>; Nathaniel Cogley (nathaniel.cogley@census.gov) <nathaniel.cogley@census.gov>
Cc: Martin, Nicole (Federal) <NMartin1@doc.gov>
Subject: Census Update

Hi Team,

Confirming the next Census Meeting for **Tuesday, September 1st at 11:00 a.m.** Please have the team complete the below waves link. I will send an update once a room is secured.

<https://events.whitehouse.gov/AppointmentRsvpForm?rid=WTMM6XV62M>

Best,

Katherine Kline
Office of the Chief of Staff
O: 202-456-1208

From: [Earl N Mayfield \(CENSUS/DEPDIR FED\)](#)
To: [Kline, Katherine E. EOP/WHO](#)
Subject: Re: Census Updates Meeting - Next Week
Date: Tuesday, October 27, 2020 1:15:41 PM

Good for me.

Trey Mayfield
Counsel to the Director of the United States Census
Office [\(301\) 763-0707](#)
(b)(6)

On Oct 27, 2020, at 1:11 PM, Kline, Katherine E. EOP/WHO
<Katherine.E.Kline@who.eop.gov> wrote:

Hi Team,

Per Dr. Fleming, the next Census Updates Meeting will be on **Thursday, November 5th**.
I would like to have this meeting at **10:00 a.m.** Please let me know if that works for the
group.

Best,

Katherine Kline
Office of the Chief of Staff
O: 202-456-1208

From: [Nathaniel Cogley \(CENSUS/DEPDIR FED\)](#)
To: [Kline, Katherine E. EOP/WHO](#)
Cc: [Benjamin A Overholt \(CENSUS/DEPDIR FED\)](#)
Subject: Re: Census Updates Meeting - Next Week
Date: Monday, November 2, 2020 11:25:42 AM

Hi Katherine,

Thanks for sending the waves link. I am CCing Dr. Overholt because I was once told that forwarded waves links don't work, although I have absolutely no first hand experience if that is correct or not.

Thanks in advance for your attention and all your efforts.

—Nathaniel

Nathaniel Cogley, Ph.D.
Deputy Director for Policy
U.S. Census Bureau

From: Kline, Katherine E. EOP/WHO <Katherine.E.Kline@who.eop.gov>
Sent: Monday, November 2, 2020 11:10 AM
To: Martin, Nicole (Federal) <NMartin1@doc.gov>; Risko, Daniel (Federal) <DRisko@doc.gov>; Goudarzi, Talat (Federal) <TGoudarzi@doc.gov>; Steven Dillingham (CENSUS/DEPDIR FED) <steven.dillingham@census.gov>; Earl N Mayfield (CENSUS/DEPDIR FED) <earl.n.mayfield@census.gov>; Nathaniel Cogley (CENSUS/DEPDIR FED) <nathaniel.cogley@census.gov>
Subject: RE: Census Updates Meeting - Next Week

Good morning!

Please see below waves link for **Thursday, November 5th** at **10:30 a.m.** in the **Roosevelt Room**. Also, please forward to Ben as I do not have his email.

<https://events.whitehouse.gov/AppointmentRsvpForm?rid=YXV8YM6PK2>

Best,

Katherine Kline
Office of the Chief of Staff
O: 202-456-1208

From: Kline, Katherine E. EOP/WHO

Sent: Tuesday, October 27, 2020 1:11 PM

To: 'Martin, Nicole (Federal)' <NMartin1@doc.gov>; Risko, Daniel (Federal) <DRisko@doc.gov>; Goudarzi, Talat (Federal) <TGoudarzi@doc.gov>; 'steven.dillingham@census.gov' <steven.dillingham@census.gov>; 'Earl N Mayfield (CENSUS/DEPDIR FED)' <earl.n.mayfield@census.gov>; Nathaniel Cogley (nathaniel.cogley@census.gov) <nathaniel.cogley@census.gov>

Subject: Census Updates Meeting - Next Week

Hi Team,

Per Dr. Fleming, the next Census Updates Meeting will be on **Thursday, November 5th**. I would like to have this meeting at **10:00 a.m.** Please let me know if that works for the group.

Best,

Katherine Kline
Office of the Chief of Staff
O: 202-456-1208

From: [Nathaniel Cogley \(CENSUS/DEPDIR FED\)](#)
To: [Kline, Katherine E. EOP/WHO](#)
Subject: Re: Census Updates Meeting - Next Week
Date: Tuesday, October 27, 2020 3:10:28 PM

Hi Katherine,

That time works for me. Assuming Dr. Fleming agrees, please add Dr. Overholt to the list of invitees, since he is a regular attendee of those meetings now, and a valuable contributor. Thanks in advance for your attention and all your efforts.

—Nathaniel

Nathaniel Cogley, Ph.D.
Deputy Director for Policy
U.S. Census Bureau

From: Kline, Katherine E. EOP/WHO <Katherine.E.Kline@who.eop.gov>
Sent: Tuesday, October 27, 2020 1:10 PM
To: Martin, Nicole (Federal) <NMartin1@doc.gov>; Risko, Daniel (Federal) <DRisko@doc.gov>; Goudarzi, Talat (Federal) <TGoudarzi@doc.gov>; Steven Dillingham (CENSUS/DEPDIR FED) <steven.dillingham@census.gov>; Earl N Mayfield (CENSUS/DEPDIR FED) <earl.n.mayfield@census.gov>; Nathaniel Cogley (CENSUS/DEPDIR FED) <nathaniel.cogley@census.gov>
Subject: Census Updates Meeting - Next Week

Hi Team,

Per Dr. Fleming, the next Census Updates Meeting will be on **Thursday, November 5th**. I would like to have this meeting at **10:00 a.m.** Please let me know if that works for the group.

Best,

Katherine Kline
Office of the Chief of Staff
O: 202-456-1208

From: [Steven Dillingham \(CENSUS/DEPDIR FED\)](#)
To: [Fleming, John C. Jr. EOP/WHO](#)
Cc: [Nathaniel Cogley \(CENSUS/DEPDIR FED\)](#)
Bcc: [Steven K Smith \(CENSUS/DEPDIR FED\)](#); [Michael John Sprung \(CENSUS/DEPDIR FED\)](#)
Subject: Re: Coronavirus Task Force
Date: Wednesday, January 6, 2021 11:16:22 AM
Attachments: [65plus-US, States, and Territories-2019_010621.xlsx](#)

Dr. Fleming,

Attached is our data on this population. Please advise if more is needed.

Many thanks,

Steve

(b)(6)

From: Fleming, John C. Jr. EOP/WHO <John.C.Fleming@who.eop.gov>
Sent: Tuesday, January 5, 2021 4:11 PM
To: Steven Dillingham (CENSUS/DEPDIR FED) <steven.dillingham@census.gov>
Cc: Nathaniel Cogley (CENSUS/DEPDIR FED) <nathaniel.cogley@census.gov>
Subject: Coronavirus Task Force

Dr. Dillingham,

For the purposes of COVID-19 vaccine distribution, the Task Force would like to have the most accurate or at least the best estimate of the population totals for each state and territory for people over 65 years old.

Regards,

John C. Fleming, MD

Assistant to the President for Planning and Implementation
Office of the Chief of Staff

(b)(6)

Office 202-456-1208

(b)(6)

John.C.Fleming@who.eop.gov

United States	328,239,523
Alabama	4,903,185
Alaska	731,545
Arizona	7,278,717
Arkansas	3,017,804
California	39,512,223
Colorado	5,758,736
Connecticut	3,565,287
Delaware	973,764
District of Columbia	705,749
Florida	21,477,737
Georgia	10,617,423
Hawaii	1,415,872
Idaho	1,787,065
Illinois	12,671,821
Indiana	6,732,219
Iowa	3,155,070
Kansas	2,913,314
Kentucky	4,467,673
Louisiana	4,648,794
Maine	1,344,212
Maryland	6,045,680
Massachusetts	6,892,503
Michigan	9,986,857
Minnesota	5,639,632
Mississippi	2,976,149
Missouri	6,137,428
Montana	1,068,778
Nebraska	1,934,408
Nevada	3,080,156
New Hampshire	1,359,711
New Jersey	8,882,190
New Mexico	2,096,829
New York	19,453,561
North Carolina	10,488,084
North Dakota	762,062
Ohio	11,689,100
Oklahoma	3,956,971
Oregon	4,217,737
Pennsylvania	12,801,989
Rhode Island	1,059,361
South Carolina	5,148,714

South Dakota	884,659
Tennessee	6,829,174
Texas	28,995,881
Utah	3,205,958
Vermont	623,989
Virginia	8,535,519
Washington	7,614,893
West Virginia	1,792,147
Wisconsin	5,822,434
Wyoming	578,759
American Samoa	48,456
Guam	168,149
Northern Mariana Islands	52,048
Puerto Rico	3,193,694
Virgin Islands, U.S.	106,669

Note: The estimates for the United States include the fifty states and District of Columbia, and Puerto Rico were produced by component method. They are based on the 2010 Census and reflect changes from the 2000 Census. For more information on the component method, see <http://www.census.gov/programs-surveys/mortality/documentation/methodology.html>. Data for American Samoa, Guam, Northern Mariana Islands are the result of cohort-component population projections of the 2000 Census. For more information on the IDB, including the methodology, see <https://www.census.gov/programs-surveys/international-programs/>.

Source: U.S. Census Bureau, Population Division, Vintage 2019 Estimates (United States, Puerto Rico) and International Data Base (American Samoa, Guam, Northern Mariana Islands)

Territory	Year	Total Population	65 years and over	65 and over share of total
American Samoa	2020	47,392	3,278	6.9%
Guam	2020	168,489	16,061	9.5%
Northern Mariana Islands	2020	51,851	3,754	7.2%
Virgin Islands, U.S.	2020	106,290	20,478	19.3%

Source: U.S. Census Bureau, International Data Base. Accessed January 6, 2021.

<https://www.census.gov/programs-surveys/international-programs/about/idb.html>

Territory	Year	Total Population	65 years and over	65 and over share of total
American Samoa	2021	46,366	3,391	7.3%
Guam	2021	168,801	16,628	9.9%
Northern Mariana Islands	2021	51,659	4,103	7.9%
Virgin Islands, U.S.	2021	105,870	20,986	19.8%

Source: U.S. Census Bureau, International Data Base. Accessed January 6, 2021.

<https://www.census.gov/programs-surveys/international-programs/about/idb.html>

From: [Earl N Mayfield \(CENSUS/DEPDIR FED\)](#)
To: [Bhirud, Ketan](#); [Philbin, Patrick F. EOP/WHO](#); [Hamilton, Eric J. EOP/WHO](#); Devin.A.DeBacker@usdoj.gov; [Steinmetz, Michele](#)
Cc: [Benjamin A Overholt \(CENSUS/DEPDIR FED\)](#)
Subject: Re: Determining Lawfulness of Immigration Status from DHS Data
Date: Monday, November 2, 2020 3:46:23 PM

Team,

Our folks writing the business rules for determining legal status want to know how DACA recipients should be characterized.

Thanks,

Trey Mayfield

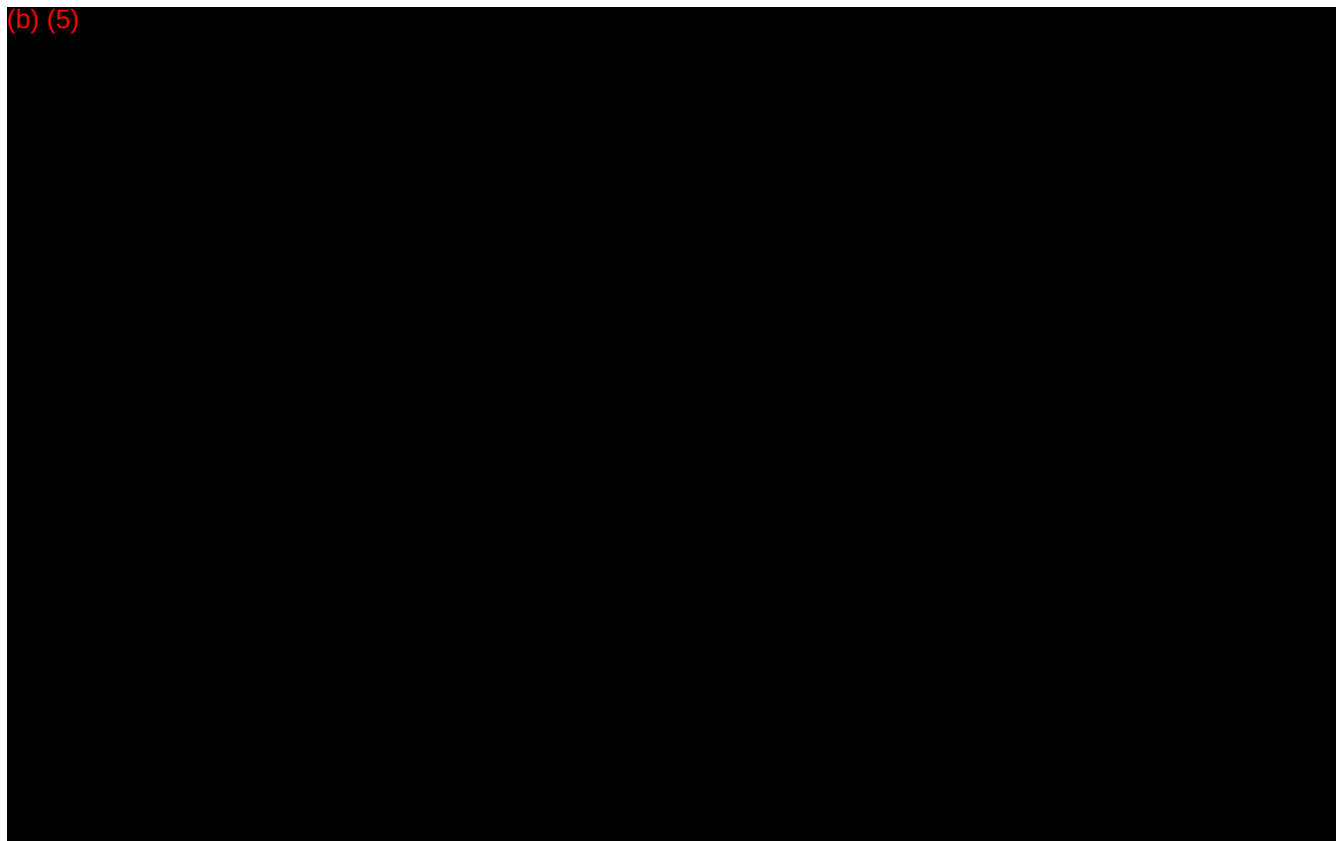
Counsel to the Director of the United States Census

Office (301) 763-0707

(b)(6)

From: Bhirud, Ketan (b)(6)
Sent: Saturday, October 31, 2020 4:44 PM
To: Philbin, Patrick F. EOP/WHO <Patrick.F.Philbin@who.eop.gov>; Hamilton, Eric J. EOP/WHO <Eric.J.Hamilton@who.eop.gov>; Devin.A.DeBacker@usdoj.gov <Devin.A.DeBacker@usdoj.gov>; Earl N Mayfield (CENSUS/DEPDIR FED) <earl.n.mayfield@census.gov>; (b)(6)
(b)(6)
Subject: Determining Lawfulness of Immigration Status from DHS Data

(b) (5)



From: [Adam Michael Korzeniewski \(CENSUS/DEPDIR FED\)](#)
To: [Fleming, John C. Jr. EOP/WHO](#)
Subject: Re: Dr Fleming - Korzeniewski meeting request
Date: Thursday, October 1, 2020 5:32:22 PM

Dr. Fleming,

Thank you sir for your genealogical information and the swift response.

I don't want to deluge your inbox with some of my speculations but I have reason to believe that Henry Clay had an even greater impact on the creation of the modern Republican Party, as well as late 19th Century European politics through many contemporaries who I have reason to believe attended his rallies and speeches. Also, without Clay and the *American System* the Civil War may have not been winnable. I am commissioning research through various historical associations to help with my own.

As much as Clay was the "Great Compromiser" he might be the greatest American political figure of the first half of the 19th Century with a level of foresight his contemporaries may not have appreciated. My hometown is named after Clay. If you don't mind I will follow up if there are specifics I may need your help with through your personal connection. I will keep them at the minimum out of respect for your time.

If you happen to know if there are unpublished documents of Clay's that would be appreciated. I have reason to suspect that he suspected that Calhoun and the Early Secessionist Leaders had an unusually great attachment to European Colonial interests.

Pendleton changed radically through my enlistment (2007-2012), it's probably very different even now.

Thank you very much for your time.

Adam Korzeniewski, Senior Advisor
Office of the Director
U.S. Census Bureau
O: 301.763.9590 | (b)(6)
adam.m.korzeniewski@census.gov
census.gov | 2020census.gov | @uscensusbureau

From: Fleming, John C. Jr. EOP/WHO <John.C.Fleming@who.eop.gov>
Sent: Thursday, October 1, 2020 5:02 PM
To: Adam Michael Korzeniewski (CENSUS/DEPDIR FED) <adam.m.korzeniewski@census.gov>
Subject: FW: Dr Fleming - Korzeniewski meeting request

Hey Adam,

Certainly the study of Henry Clay, the "Great Compromiser," is a worthy study. Indeed I am related to Henry Clay through my maternal grandmother, Mary Pauline (Clay) Giles. I am happy to share my genealogy information. Just follow the link below. In my Clay line I also descend from a soldier of the Revolutionary War (<https://www.wikitree.com/photo.php/3/3a/Clay-381.pdf>) and a settler from Jamestowne, Va. (<https://www.wikitree.com/wiki/Fleming-6101>). I descend from Henry Clay 1672-1760 through his son, Henry b. 1711. Sen. Henry Clay descended from him through his son, John Clay 1718. Study of my genealogy has given me a great appreciation for the decennial census. The unfortunate loss of the Georgia censuses from 1790-1810 has been a huge loss for me and many others.

(b)(6)

Thx,

John C. Fleming, MD

Assistant to the President for Planning and Implementation
Office of the Chief of Staff

(b)(6)

Office 202-456-1208

(b)(6)

John.C.Fleming@who.eop.gov

From: Kline, Katherine E. EOP/WHO <Katherine.E.Kline@who.eop.gov>

Sent: Thursday, October 1, 2020 4:15 PM

To: Fleming, John C. Jr. EOP/WHO <John.C.Fleming@who.eop.gov>

Subject: FW: Dr Fleming - Korzeniewski meeting request

See below..

From: Adam Michael Korzeniewski (CENSUS/DEPDIR FED) <adam.m.korzeniewski@census.gov>

Sent: Thursday, October 1, 2020 4:10 PM

To: Kline, Katherine E. EOP/WHO <Katherine.E.Kline@who.eop.gov>

Subject: Dr Fleming - Korzeniewski meeting request

Hi Katherine,

I'm a Senior Advisor at the Census Bureau, Dan Risko at Commerce DepSec's office just connected us. I'm currently working on writing books about Henry Clay (my project keeps expanding as I discover new things I believe historians completely missed). I understand that

Dr. Fleming is a relative of Senator Clay five generations removed and would like an opportunity to speak with him to see if he can provide insight, connection to the Clay family, knowledge of unpublished contemporary period records, etc.

(b)(6)

I am happy to provide further details as appropriate. I am able to meet in person or speak by phone, whatever is easiest for Dr. Fleming. Thank you for all of your assistance.

Best regards,

Adam Korzeniewski, Senior Advisor

Office of the Director

U.S. Census Bureau

O: 301.763.9590 | (b)(6)

adam.m.korzeniewski@census.gov

[census.gov](https://www.census.gov) | [2020census.gov](https://www.2020census.gov) | [@uscensusbureau](https://twitter.com/uscensusbureau)

From: [Adam Michael Korzeniewski \(CENSUS/DEPDIR FED\)](#)
To: [Fleming, John C. Jr. EOP/WHO](#)
Subject: Re: Dr Fleming - Korzeniewski meeting request
Date: Thursday, October 1, 2020 5:59:25 PM

Will do sir.

The Campaigns of '62 and '63 was as much about keeping Napoleon III and Lord Palmerston out of the US Civil War as they were about seizing land (WWI France's strategy of *Methodical Battle* to alleviate pressure on the Eastern Front may have been inspired by this but that's beyond the scope of my current research). The raw material and industrial ability of the United States largely forced the Confederacy into making a decisive action that European leaders were expecting in order to intervene, resulting in Gettysburg and the Emancipation Proclamation. The North German Confederacy had largely blocked British/French negotiated peace attempts because of their strong support of the Union and opposition to slavery and were moving toward military intervention. Without the multidecade of protectionism, the US wouldn't have had our smaller, but formidable Navy and economic independence. Lincoln's master diplomats pulled off actual masterstrokes of diplomatic art as well, much like the Treaty of Ghent managed to free up Westward expansion in Clay's time.

That generation of leaders who saw the War of 1812, including President Jefferson, saw that America was going to be largely alone and friendless in the subsequent decades. Clay's adoption of Hamilton's works, and then refinement brought the United States from a minor power to Great Power status by the end of that century.

Spectacular man, there's not enough statues of Clay.

Adam Korzeniewski, Senior Advisor
Office of the Director
U.S. Census Bureau
O: 301.763.9590 | (b)(6)
adam.m.korzeniewski@census.gov
[census.gov](https://www.census.gov) | 2020census.gov | [@uscensusbureau](https://uscensusbureau)

From: Fleming, John C. Jr. EOP/WHO <John.C.Fleming@who.eop.gov>
Sent: Thursday, October 1, 2020 5:44 PM
To: Adam Michael Korzeniewski (CENSUS/DEPDIR FED) <adam.m.korzeniewski@census.gov>
Subject: RE: Dr Fleming - Korzeniewski meeting request

Yes, though he never made the cut for POTUS, he was repeatedly pressed into service to solve many of the biggest issues of the day, not least of which was the question of slavery. Some would say that by delaying the Civil War more people died because war technology became more deadly, others would say that the North became industrial giving it the chance to win and preserve the union. Let me know if I can help.

John

From: Adam Michael Korzeniewski (CENSUS/DEPDIR FED) <adam.m.korzeniewski@census.gov>
Sent: Thursday, October 1, 2020 5:32 PM
To: Fleming, John C. Jr. EOP/WHO <John.C.Fleming@who.eop.gov>
Subject: Re: Dr Fleming - Korzeniewski meeting request

Dr. Fleming,

Thank you sir for your genealogical information and the swift response.

I don't want to deluge your inbox with some of my speculations but I have reason to believe that Henry Clay had an even greater impact on the creation of the modern Republican Party, as well as late 19th Century European politics through many contemporaries who I have reason to believe attended his rallies and speeches. Also, without Clay and the *American System* the Civil War may had not been winnable. I am commissioning research through various historical associations to help with my own.

As much as Clay was the "Great Compromiser" he might be the greatest American political figure of the first half of the 19th Century with a level of foresight his contemporaries may not have appreciated. My hometown is named after Clay. If you don't mind I will follow up if there are specifics I may need your help with through your personal connection. I will keep them at the minimum out of respect for your time.

If you happen to know if there are unpublished documents of Clay's that would be appreciated. I have reason to suspect that he suspected that Calhoun and the Early Secessionist Leaders had an unusually great attachment to European Colonial interests.

Pendleton changed radically through my enlistment (2007-2012), it's probably very different even now.

Thank you very much for your time.

Adam Korzeniewski, Senior Advisor
Office of the Director
U.S. Census Bureau
O: 301.763.9590 | (b)(6)
adam.m.korzeniewski@census.gov
[census.gov](https://www.census.gov) | 2020census.gov | [@uscensusbureau](https://twitter.com/uscensusbureau)

From: Fleming, John C. Jr. EOP/WHO <John.C.Fleming@who.eop.gov>
Sent: Thursday, October 1, 2020 5:02 PM

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Subject: FW: Dr Fleming - Korzeniewski meeting request

Hey Adam,

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(b)(6)

Thx,

John C. Fleming, MD

Assistant to the President for Planning and Implementation
Office of the Chief of Staff

(b)(6)

Office 202-456-1208

(b)(6)

John.C.Fleming@who.eop.gov

From: Kline, Katherine E. EOP/WHO <Katherine.E.Kline@who.eop.gov>
Sent: Thursday, October 1, 2020 4:15 PM
To: Fleming, John C. Jr. EOP/WHO <John.C.Fleming@who.eop.gov>
Subject: FW: Dr Fleming - Korzeniewski meeting request

[See below..](#)

From: Adam Michael Korzeniewski (CENSUS/DEPDIR FED) <adam.m.korzeniewski@census.gov>
Sent: Thursday, October 1, 2020 4:10 PM
To: Kline, Katherine E. EOP/WHO <Katherine.E.Kline@who.eop.gov>
Subject: Dr Fleming - Korzeniewski meeting request

Hi Katherine,

I'm a Senior Advisor at the Census Bureau, Dan Risko at Commerce DepSec's office just connected us. I'm currently working on writing books about Henry Clay (my project keeps expanding as I discover new things I believe historians completely missed). I understand that Dr. Fleming is a relative of Senator Clay five generations removed and would like an opportunity to speak with him to see if he can provide insight, connection to the Clay family, knowledge of unpublished contemporary period records, etc.

(b)(6)

I am happy to provide further details as appropriate. I am able to meet in person or speak by phone, whatever is easiest for Dr. Fleming. Thank you for all of your assistance.

Best regards,

Adam Korzeniewski, Senior Advisor

Office of the Director

U.S. Census Bureau

O: 301.763.9590 | (b)(6)

adam.m.korzeniewski@census.gov

[census.gov](https://www.census.gov) | 2020census.gov | [@uscensusbureau](https://twitter.com/uscensusbureau)

From: [Steven Dillingham \(CENSUS/DEPDIR FED\)](#)
To: [Kline, Katherine E. EOP/WHO](#); [Nathaniel Cogley \(CENSUS/DEPDIR FED\)](#)
Subject: Re: Follow Up Conf Call
Date: Friday, December 4, 2020 3:09:59 PM

I am available. thx

From: Kline, Katherine E. EOP/WHO <Katherine.E.Kline@who.eop.gov>
Sent: Friday, December 4, 2020 2:53 PM
To: Nathaniel Cogley (CENSUS/DEPDIR FED) <nathaniel.cogley@census.gov>; Steven Dillingham (CENSUS/DEPDIR FED) <steven.dillingham@census.gov>
Subject: Follow Up Conf Call

Hi,
Dr. Fleming asked for you both and Pat for a call. Let's aim for 3:30 if that's ok. Dial info below..

(b)(6)




Best,

Katherine Kline
Office of the Chief of Staff
O: 202-456-1208

From: [Steven Dillingham \(CENSUS/DEPDIR FED\)](#)
To: [Kline, Katherine E. EOP/WHO](#)
Subject: Re: Follow Up Conf Call
Date: Friday, December 11, 2020 10:14:38 AM

Information submitted. Many thanks!

From: Kline, Katherine E. EOP/WHO <Katherine.E.Kline@who.eop.gov>
Sent: Friday, December 11, 2020 9:55 AM
To: Steven Dillingham (CENSUS/DEPDIR FED) <steven.dillingham@census.gov>
Subject: RE: Follow Up Conf Call

1:00 will have to be it since we are so close to 11 now. Please complete the link asap:
<https://events.whitehouse.gov/AppointmentRsvpForm?rid=8232GGJ328>

From: Steven Dillingham (CENSUS/DEPDIR FED) <steven.dillingham@census.gov>
Sent: Friday, December 11, 2020 9:49 AM
To: Kline, Katherine E. EOP/WHO <Katherine.E.Kline@who.eop.gov>
Subject: Re: Follow Up Conf Call

I can make either. His preference. Please send appointment link. Many thanks.

From: Kline, Katherine E. EOP/WHO <Katherine.E.Kline@who.eop.gov>
Sent: Friday, December 11, 2020 9:09 AM
To: Steven Dillingham (CENSUS/DEPDIR FED) <steven.dillingham@census.gov>
Subject: FW: Follow Up Conf Call

John can also do 1:00. Just let me know which time works best and I will send a link for you to be cleared.

From: Kline, Katherine E. EOP/WHO
Sent: Friday, December 11, 2020 9:02 AM
To: 'Steven Dillingham (CENSUS/DEPDIR FED)' <steven.dillingham@census.gov>
Subject: RE: Follow Up Conf Call

Sure! How does 11 work today?

From: Steven Dillingham (CENSUS/DEPDIR FED) <steven.dillingham@census.gov>
Sent: Thursday, December 10, 2020 8:09 PM
To: Kline, Katherine E. EOP/WHO <Katherine.E.Kline@who.eop.gov>
Cc: McLean, Sean (Federal) <SMcLean@doc.gov>
Subject: Re: Follow Up Conf Call

Katherine,

Is there any chance I can see Dr. Fleming tomorrow for ten minutes? If not, what about on Monday? I may need to complete WH appointment paperwork.

Many thanks.

Steve

(b)(6)

From: Kline, Katherine E. EOP/WHO <Katherine.E.Kline@who.eop.gov>
Sent: Friday, December 4, 2020 3:09 PM
To: Nathaniel Cogley (CENSUS/DEPDIR FED) <nathaniel.cogley@census.gov>; Steven Dillingham (CENSUS/DEPDIR FED) <steven.dillingham@census.gov>
Subject: RE: Follow Up Conf Call

Dr. Fleming just called and said this call is no longer needed.

From: Nathaniel Cogley (CENSUS/DEPDIR FED) <nathaniel.cogley@census.gov>
Sent: Friday, December 4, 2020 3:05 PM
To: Kline, Katherine E. EOP/WHO <Katherine.E.Kline@who.eop.gov>; Steven Dillingham (CENSUS/DEPDIR FED) <steven.dillingham@census.gov>
Subject: Re: Follow Up Conf Call

Hi Katherine,

I am available, and will call in. Thanks for letting me know.

—Nathaniel

Nathaniel Cogley, Ph.D.
Deputy Director for Policy
U.S. Census Bureau

From: Kline, Katherine E. EOP/WHO <Katherine.E.Kline@who.eop.gov>
Sent: Friday, December 4, 2020 2:53 PM
To: Nathaniel Cogley (CENSUS/DEPDIR FED) <nathaniel.cogley@census.gov>; Steven Dillingham (CENSUS/DEPDIR FED) <steven.dillingham@census.gov>
Subject: Follow Up Conf Call

Hi,
Dr. Fleming asked for you both and Pat for a call. Let's aim for 3:30 if that's ok. Dial info below..

(b)(6)



Best,

Katherine Kline
Office of the Chief of Staff
O: 202-456-1208

From: [Nathaniel Cogley \(CENSUS/DEPDIR FED\)](#)
To: [Kline, Katherine E. EOP/WHO](#); [Steven Dillingham \(CENSUS/DEPDIR FED\)](#)
Subject: Re: Follow Up Conf Call
Date: Friday, December 4, 2020 3:04:53 PM

Hi Katherine,

I am available, and will call in. Thanks for letting me know.

—Nathaniel

Nathaniel Cogley, Ph.D.
Deputy Director for Policy
U.S. Census Bureau

From: Kline, Katherine E. EOP/WHO <Katherine.E.Kline@who.eop.gov>
Sent: Friday, December 4, 2020 2:53 PM
To: Nathaniel Cogley (CENSUS/DEPDIR FED) <nathaniel.cogley@census.gov>; Steven Dillingham (CENSUS/DEPDIR FED) <steven.dillingham@census.gov>
Subject: Follow Up Conf Call

Hi,
Dr. Fleming asked for you both and Pat for a call. Let's aim for 3:30 if that's ok. Dial info below..

(b)(6)
[REDACTED]
[REDACTED]

Best,

Katherine Kline
Office of the Chief of Staff
O: 202-456-1208

From: [Adam Michael Korzeniewski \(CENSUS/DEPDIR FED\)](#)
To: [Risko, Daniel \(Federal\)](#)
Cc: katherine.e.kline@who.eop.gov
Subject: Re: Introductions
Date: Thursday, October 1, 2020 3:56:56 PM

Thank you Dan!

Hi Katherine, I will email you directly in a minute.

Adam Korzeniewski, Senior Advisor
Office of the Director
U.S. Census Bureau
O: 301.763.9590 | (b)(6)
adam.m.korzeniewski@census.gov
census.gov | 2020census.gov | @uscensusbureau

From: Risko, Daniel (Federal) <DRisko@doc.gov>
Sent: Thursday, October 1, 2020 3:52 PM
To: Adam Michael Korzeniewski (CENSUS/DEPDIR FED) <adam.m.korzeniewski@census.gov>
Cc: katherine.e.kline@who.eop.gov <katherine.e.kline@who.eop.gov>
Subject: Introductions

Adam,
Introducing you to Katherine Kline from Dr. Fleming's team. She's kindly agreed to help with your request (she's the best).
Thanks to you both for your work!

Dan Risko
Chief of Staff
Office of the Deputy Secretary
United States Department of Commerce
[202-482-6010](tel:202-482-6010) (o) | (b)(6)
drisko@doc.gov

From: Benjamin A. Owechyt (CENSUS/DEPOIR.FED)
To: Oscarson, Alex K. EOP/WHO
Subject: Re: Invite to Marine One Takeoff Saturday
Date: Wednesday, October 28, 2020 2:16:51 PM
Attachments: jhsape001.png

I will absolutely attend this. Is there a chance (b)(6)

Ben

From: Oscarson, Alex K. EOP/WHO <Alexandra.K.Oscarson@who.eop.gov>
Sent: Wednesday, October 28, 2020 2:11 PM
Subject: Invite to Marine One Takeoff Saturday

Good afternoon,

The Visitors Office, in coordination with U.S. Secret Service, would like to offer the opportunity to attend a Marine One Viewing. Please let me know if you are unable to attend, and see below for the RSVP link and details. **You will not be able to attend if you have not RSVP'd.**

MARINE ONE DEPARTURE
Date: Saturday, October 31, 2020
Time: 10:55 AM

REGISTRATION INFORMATION

All guests attending the HMX viewing must register using the below RSVP link by Friday, October 30th at 11:00 PM. All information registered must exactly match their photo ID that they are bringing. **All guests attending must be registered, including badge holders.**

RSVP Link: <https://events.whitehouse.gov/AppointmentRsvpForm?rid=98MPTXXWWX>

ARRIVAL INFORMATION

Guests must check-in at the NE Appointment Gate between **10:00 AM - 10:20 AM**; no guests will be permitted entry after this time. The NE gate is located on Pennsylvania Avenue and East Executive Avenue NW between the White House and Treasury Department. If the individuals attending are badge holders, they must meet outside the East Wing Entrance by **10:35 AM** to be checked-in and gain access to the viewing pen. Please find attached a map for your convenience.

HEALTH AND SAFETY GUIDANCE

Please stay home if you have tested positive or you have had any of the following symptoms of COVID-19 within 10 days prior to your visit: fever or chills, cough, shortness of breath or difficulty breathing, fatigue, muscle or body aches, headache, new loss of taste or smell, sore throat, congestion or runny nose, nausea or vomiting, and/or diarrhea. Please stay home if you have been in close contact with someone with confirmed or suspected COVID-19 within 14 days prior to your tour date. Please bring your own face covering as face coverings are required to be worn by all attendees 2 years of age and older for the duration of your visit. Please practice social distancing while on the White House grounds and utilize the provided hand sanitizer stations.

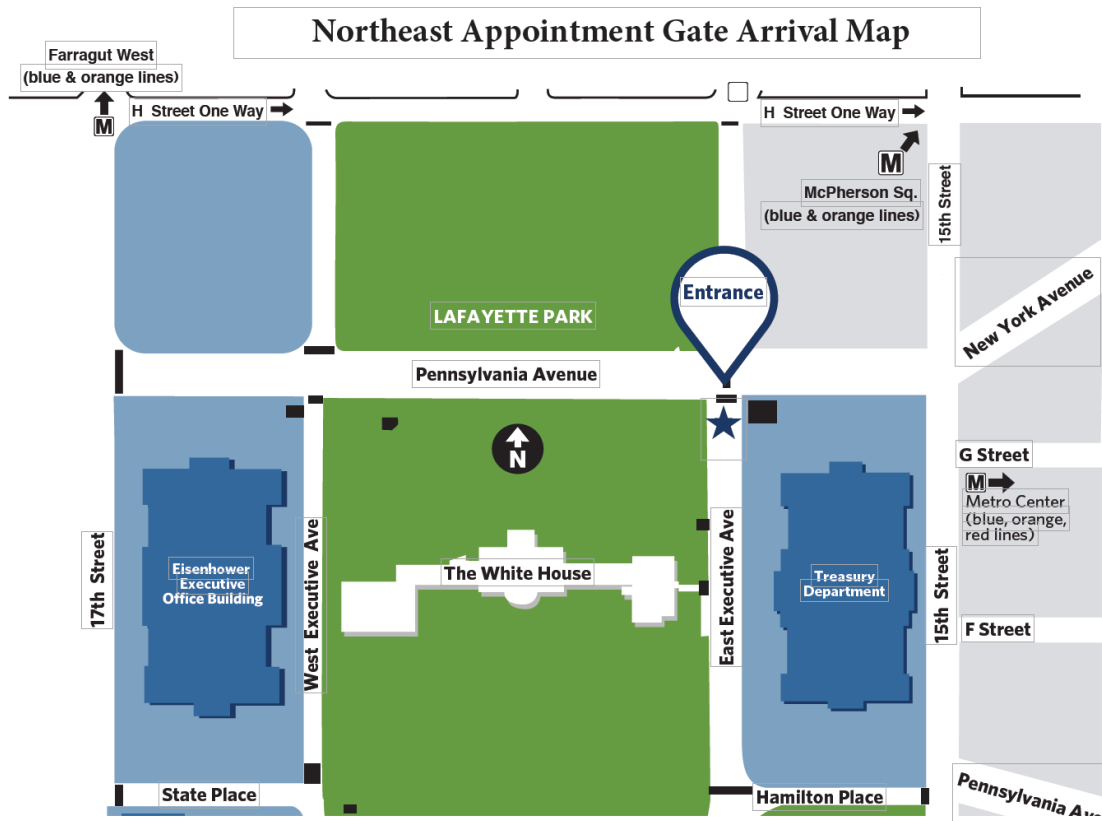
IDENTIFICATION REQUIREMENTS

All US citizens ages 18 and older must present a valid government-issued photo ID (passport or driver's license). Foreign Nationals of all ages must present a valid passport or green card.

If you have any questions or need any additional information, please let me know.

Alex Teis (Oscarson)
Deputy Associate Director
Presidential Personnel

(b)(6)



From: Nathaniel Cogley (CENSUS/DEPDIR FED)
To: Oscarson, Alex K. EOP/WHO
Subject: Re: Invite to Marine One Takeoff Saturday
Date: Wednesday, October 28, 2020 2:37:46 PM
Attachments: jnsape001.png

I understand and assumed that going into the question. (b)(6). And thanks so much for thinking of me!

—Nathaniel

From: Oscarson, Alex K. EOP/WHO <Alexandra.K.Oscarson@who.eop.gov>
Sent: Wednesday, October 28, 2020 2:36 PM
To: Nathaniel Cogley (CENSUS/DEPDIR FED) <nathaniel.cogley@census.gov>
Subject: RE: Invite to Marine One Takeoff Saturday

Hi Nathaniel,

As much as I wish that were possible, we unfortunately had an extremely limited amount tickets and thought of you!

We did extend the invite to Ben Overholt as well, so if you wanted to attend together, that could be done, but sadly, we do not have enough for families. So sorry!

Thanks so much,

Alex

From: Nathaniel Cogley (CENSUS/DEPDIR FED) <nathaniel.cogley@census.gov>
Sent: Wednesday, October 28, 2020 2:30 PM
To: Oscarson, Alex K. EOP/WHO <Alexandra.K.Oscarson@who.eop.gov>
Subject: Re: Invite to Marine One Takeoff Saturday

Hi Alex,

This sounds like a lot of fun. Since it is a great opportunity and on the weekend, I am wondering if we can bring our families (I have a wife and three young kids), or if this is only open to employees. Thanks in advance for the clarification. Hope you are well!

—Nathaniel

Nathaniel Cogley, Ph.D.
Deputy Director for Policy
U.S. Census Bureau

From: Oscarson, Alex K. EOP/WHO <Alexandra.K.Oscarson@who.eop.gov>
Sent: Wednesday, October 28, 2020 2:11 PM
Subject: Invite to Marine One Takeoff Saturday

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RSVP Link: <https://events.whitehouse.gov/AppointmentRsvpForm?rid=98BMPXXWWK>

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HEALTH AND SAFETY GUIDANCE

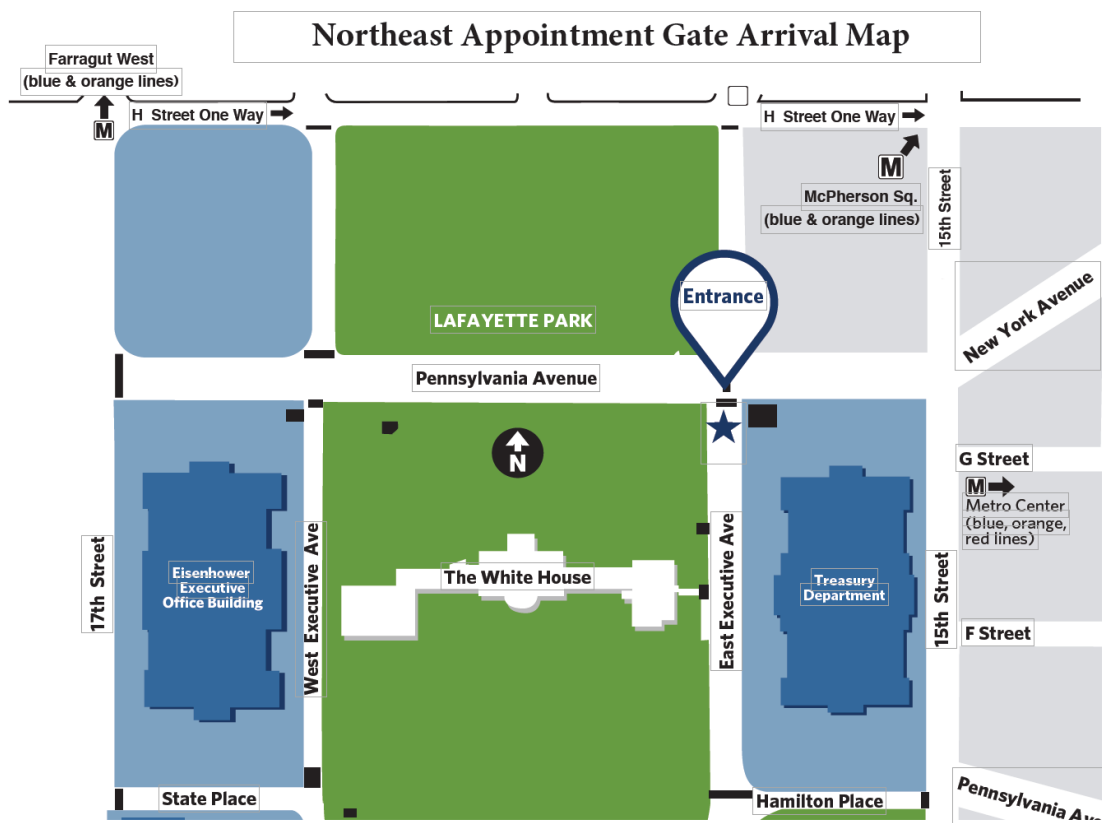
Please stay home if you have tested positive or you have had any of the following symptoms of COVID-19 within 10 days prior to your visit: fever or chills, cough, shortness of breath or difficulty breathing, fatigue, muscle or body aches, headache, new loss of taste or smell, sore throat, congestion or runny nose, nausea or vomiting, and/or diarrhea. Please stay home if you have been in close contact with someone with confirmed or suspected COVID-19 within 14 days prior to your tour date. Please bring your own face covering as face coverings are required to be worn by all attendees 2 years of age and older for the duration of your visit. Please practice social distancing while on the White House grounds and utilize the provided hand sanitizer stations.

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Alex Teis (Oscarson)
Deputy Associate Director
Presidential Personnel
(b)(6)



From: Benjamin A Overholt (CENSUS/DEPDIR FED)
To: Oscarson, Alex K. EOP/WHO
Subject: Re: Invite to Marine One Takeoff Saturday
Date: Thursday, October 29, 2020 10:43:24 AM
Attachments: jmsage001.png

Alex,

In reading through the email, it occurred to me to verify whether I am a "badge holder" (due to my Census/Commerce ID) or not. I suspect I am not, but I want to be sure that I show up at the correct entrance.

Thanks again,
Ben

From: Oscarson, Alex K. EOP/WHO <Alexandra.K.Oscarson@who.eop.gov>
Sent: Wednesday, October 28, 2020 2:35 PM
To: Benjamin A Overholt (CENSUS/DEPDIR FED) <benjamin.a.overholt@census.gov>
Subject: RE: Invite to Marine One Takeoff Saturday

Hi Ben,

As much as I wish that were possible, we unfortunately had an extremely limited amount tickets and thought of you!

We did extend the invite to Nathaniel Cogley as well, so if you wanted to attend together, that could be done, but sadly, we do not have enough for families.

Thanks so much,

Alex

From: Benjamin A Overholt (CENSUS/DEPDIR FED) <benjamin.a.overholt@census.gov>
Sent: Wednesday, October 28, 2020 2:17 PM
To: Oscarson, Alex K. EOP/WHO <Alexandra.K.Oscarson@who.eop.gov>
Subject: Re: Invite to Marine One Takeoff Saturday

I will absolutely attend this. Is there a chance my wife and or kids can attend as well?

Ben

From: Oscarson, Alex K. EOP/WHO <Alexandra.K.Oscarson@who.eop.gov>
Sent: Wednesday, October 28, 2020 2:11 PM
Subject: Invite to Marine One Takeoff Saturday

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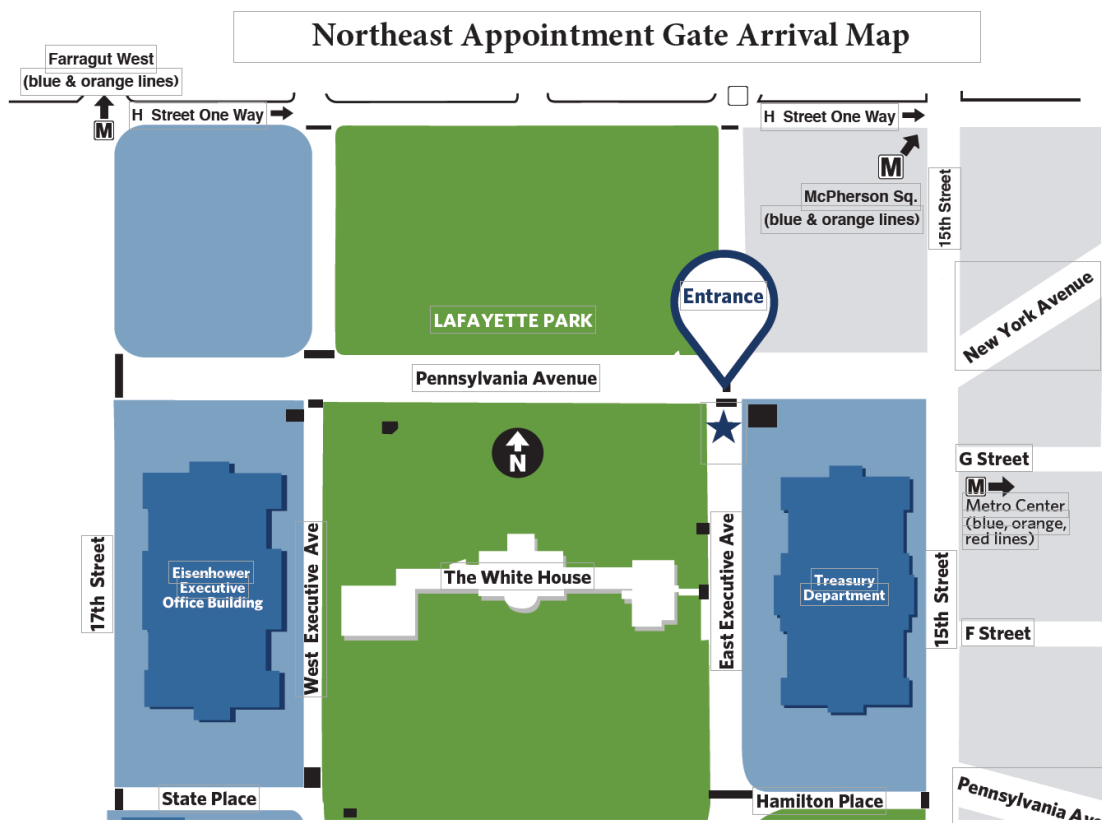
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If you have any questions or need any additional information, please let me know.

Alex Teis (Oscarson)
Deputy Associate Director
Presidential Personnel

(b)(6)



From: Nathaniel Cogley (CENSUS/DEPOIR FED)
To: Oscarson, Alex K. EOP/WHO
Subject: Re: Invite to Marine One Takeoff Saturday
Date: Wednesday, October 28, 2020 2:30:23 PM
Attachments: jnsape001.png

Hi Alex,

This sounds like a lot of fun. Since it is a great opportunity and on the weekend, I am wondering if we can bring our families (I have a wife and three young kids), or if this is only open to employees. Thanks in advance for the clarification. Hope you are well!

—Nathaniel

Nathaniel Cogley, Ph.D.
Deputy Director for Policy
U.S. Census Bureau

From: Oscarson, Alex K. EOP/WHO <Alexandra.K.Oscarson@who.eop.gov>
Sent: Wednesday, October 28, 2020 2:11 PM
Subject: Invite to Marine One Takeoff Saturday

Good afternoon,

The Visitors Office, in coordination with U.S. Secret Service, would like to offer the opportunity to attend a Marine One Viewing. Please let me know if you are unable to attend, and see below for the RSVP link and details. **You will not be able to attend if you have not RSVP'd.**

MARINE ONE DEPARTURE

Date: Saturday, October 31, 2020
Time: 10:55 AM

REGISTRATION INFORMATION

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RSVP Link: [https://events.whitehouse.gov/Appointment\\$vpForm?rid=98MPTXXWWK](https://events.whitehouse.gov/Appointment$vpForm?rid=98MPTXXWWK)

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HEALTH AND SAFETY GUIDANCE

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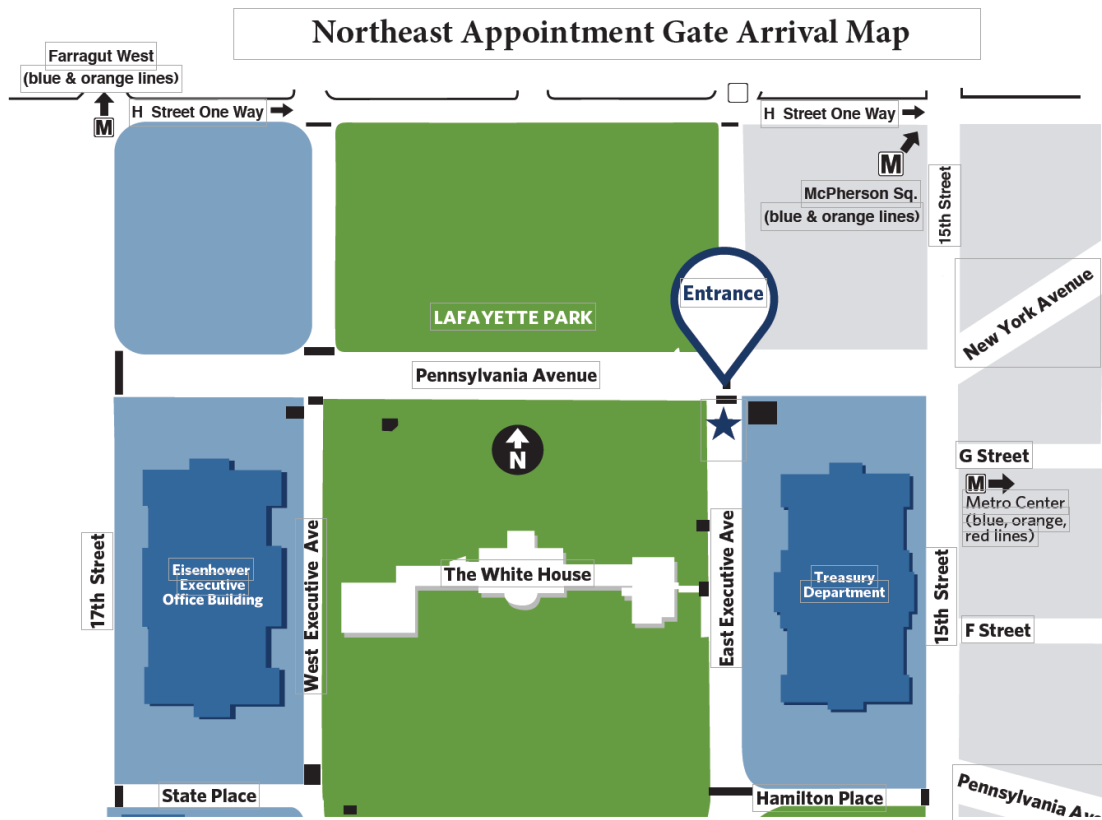
IDENTIFICATION REQUIREMENTS

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If you have any questions or need any additional information, please let me know.

Alex Teis (Oscarson)
Deputy Associate Director
Presidential Personnel

(b)(6)



From: Benjamin A Overholt (CENSUS/DEPDIR FED)
To: Oscarson, Alex K. EOP/WHO
Subject: Re: Invite to Marine One Takeoff Saturday
Date: Thursday, October 29, 2020 5:15:10 PM
Attachments: jmsape001.png

Perfect, thanks so much.

From: Oscarson, Alex K. EOP/WHO <Alexandra.K.Oscarson@who.eop.gov>
Sent: Thursday, October 29, 2020 5:13 PM
To: Benjamin A Overholt (CENSUS/DEPDIR FED) <benjamin.a.overholt@census.gov>
Subject: RE: Invite to Marine One Takeoff Saturday

Hi Ben,

Sorry for the late reply! You are correct, I believe you are not.

I think the badge they are referring to is a WH badge—so I would head to the entrance for those who do not have a badge!

Let me know if you have any questions, and enjoy!

Alex

From: Benjamin A Overholt (CENSUS/DEPDIR FED) <benjamin.a.overholt@census.gov>
Sent: Thursday, October 29, 2020 10:43 AM
To: Oscarson, Alex K. EOP/WHO <Alexandra.K.Oscarson@who.eop.gov>
Subject: Re: Invite to Marine One Takeoff Saturday

Alex,

In reading through the email, it occurred to me to verify whether I am a "badge holder" (due to my Census/Commerce ID) or not. I suspect I am not, but I want to be sure that I show up at the correct entrance.

Thanks again,
Ben

From: Oscarson, Alex K. EOP/WHO <Alexandra.K.Oscarson@who.eop.gov>
Sent: Wednesday, October 28, 2020 2:35 PM
To: Benjamin A Overholt (CENSUS/DEPDIR FED) <benjamin.a.overholt@census.gov>
Subject: RE: Invite to Marine One Takeoff Saturday

Hi Ben,

As much as I wish that were possible, we unfortunately had an extremely limited amount tickets and thought of you!

We did extend the invite to Nathaniel Cogley as well, so if you wanted to attend together, that could be done, but sadly, we do not have enough for families.

Thanks so much,

Alex

From: Benjamin A Overholt (CENSUS/DEPDIR FED) <benjamin.a.overholt@census.gov>
Sent: Wednesday, October 28, 2020 2:17 PM
To: Oscarson, Alex K. EOP/WHO <Alexandra.K.Oscarson@who.eop.gov>
Subject: Re: Invite to Marine One Takeoff Saturday

I will absolutely attend this. Is there a chance my wife and or kids can attend as well?

Ben

From: Oscarson, Alex K. EOP/WHO <Alexandra.K.Oscarson@who.eop.gov>
Sent: Wednesday, October 28, 2020 2:11 PM
Subject: Invite to Marine One Takeoff Saturday

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Date: Saturday, October 31, 2020
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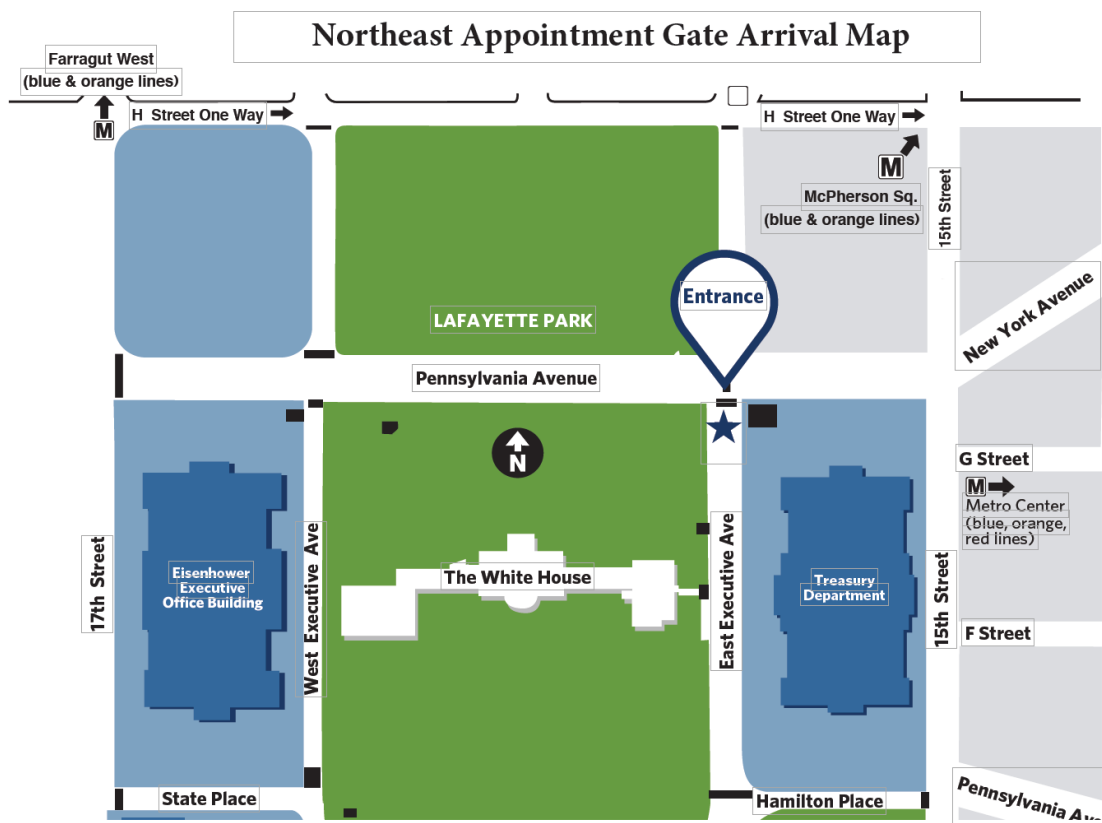
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If you have any questions or need any additional information, please let me know.

Alex Teis (Oscarson)
Deputy Associate Director
Presidential Personnel

(b)(6)



From: Benjamin A Overholt (CENSUS/DEPDIR FED)
To: Oscarson, Alex K. EOP/WHO
Subject: Re: Invite to Marine One Takeoff Saturday
Date: Wednesday, October 28, 2020 2:36:59 PM
Attachments: jmsape001.png

Alex,

I totally understand, but had to ask. Thankyou so much for thinking of me, I will have a great time.

Thanks much

Ben

From: Oscarson, Alex K. EOP/WHO <Alexandra.K.Oscarson@who.eop.gov>
Sent: Wednesday, October 28, 2020 2:35 PM
To: Benjamin A Overholt (CENSUS/DEPDIR FED) <benjamin.a.overholt@census.gov>
Subject: RE: Invite to Marine One Takeoff Saturday

Hi Ben,

As much as I wish that were possible, we unfortunately had an extremely limited amount tickets and thought of you!

We did extend the invite to Nathaniel Cogley as well, so if you wanted to attend together, that could be done, but sadly, we do not have enough for families.

Thanks so much,

Alex

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To: Oscarson, Alex K. EOP/WHO <Alexandra.K.Oscarson@who.eop.gov>
Subject: Re: Invite to Marine One Takeoff Saturday

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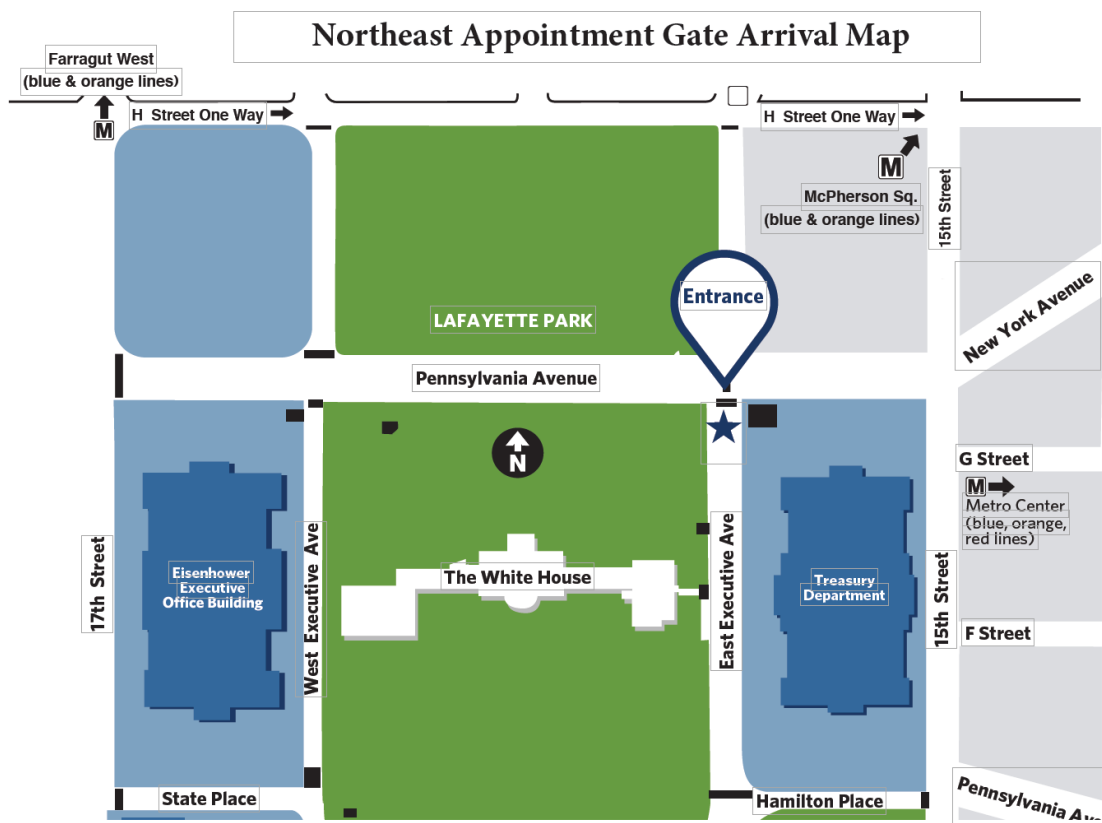
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Alex Teis (Oscarson)
Deputy Associate Director
Presidential Personnel

(b)(6)



From: Nathaniel Cogley (CENSUS/DEPDIR FED)
To: Oscarson, Alex K. EOP/WHO
Subject: Re: Invite to Marine One Takeoff Saturday
Date: Thursday, October 29, 2020 5:01:59 PM
Attachments: jmsage001.png

Hi again, Alex. FYI, I'll be meeting up with Ben and we'll be going together as you suggested. Thanks for everything!

—Nathaniel

Nathaniel Cogley, Ph.D.
Deputy Director for Policy
U.S. Census Bureau

From: Nathaniel Cogley (CENSUS/DEPDIR FED) <nathaniel.cogley@census.gov>
Sent: Wednesday, October 28, 2020 2:37 PM
To: Oscarson, Alex K. EOP/WHO <Alexandra.K.Oscarson@who.eop.gov>
Subject: Re: Invite to Marine One Takeoff Saturday

I understand and assumed that going into the question. I will talk to my wife and get back to you. And thanks so much for thinking of me!

—Nathaniel

From: Oscarson, Alex K. EOP/WHO <Alexandra.K.Oscarson@who.eop.gov>
Sent: Wednesday, October 28, 2020 2:36 PM
To: Nathaniel Cogley (CENSUS/DEPDIR FED) <nathaniel.cogley@census.gov>
Subject: RE: Invite to Marine One Takeoff Saturday

Hi Nathaniel,

As much as I wish that were possible, we unfortunately had an extremely limited amount tickets and thought of you!

We did extend the invite to Ben Overholt as well, so if you wanted to attend together, that could be done, but sadly, we do not have enough for families. So sorry!

Thanks so much,

Alex

From: Nathaniel Cogley (CENSUS/DEPDIR FED) <nathaniel.cogley@census.gov>
Sent: Wednesday, October 28, 2020 2:30 PM
To: Oscarson, Alex K. EOP/WHO <Alexandra.K.Oscarson@who.eop.gov>
Subject: Re: Invite to Marine One Takeoff Saturday

Hi Alex,

This sounds like a lot of fun. Since it is a great opportunity and on the weekend, I am wondering if we can bring our families (I have a wife and three young kids), or if this is only open to employees. Thanks in advance for the clarification. Hope you are well!

—Nathaniel

Nathaniel Cogley, Ph.D.
Deputy Director for Policy
U.S. Census Bureau

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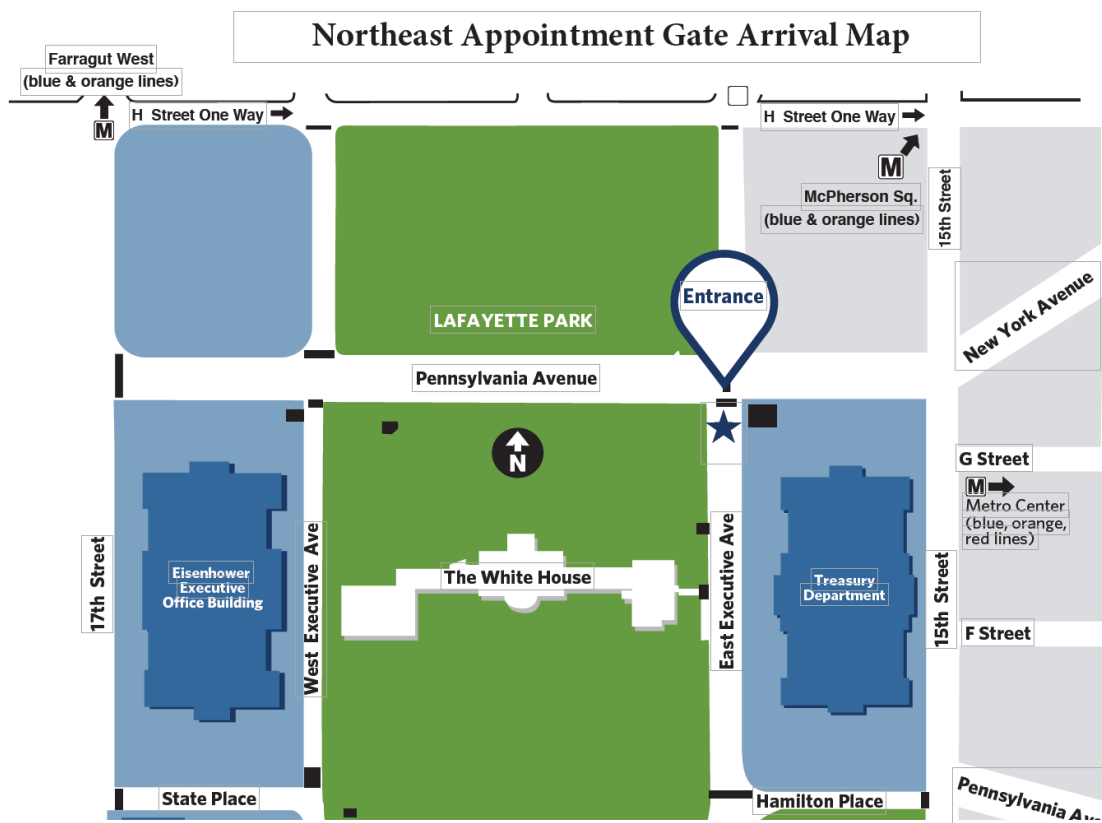
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Alex Teis (Oscarson)
Deputy Associate Director
Presidential Personnel

(b)(6)



From: [Nathaniel Cogley \(CENSUS/DEPDIR FED\)](#)
To: [Kline, Katherine E. EOP/WHO](#)
Subject: Re: Meeting
Date: Tuesday, October 13, 2020 9:42:29 AM

Hi Katherine,

Yes, tomorrow works. Afternoon is preferred, but I can make the morning work as well.
Thanks for your help arranging the meeting.

—Nathaniel

Nathaniel Cogley, Ph.D.
Deputy Director for Policy
U.S. Census Bureau

From: Kline, Katherine E. EOP/WHO <Katherine.E.Kline@who.eop.gov>
Sent: Tuesday, October 13, 2020 9:33 AM
To: Nathaniel Cogley (CENSUS/DEPDIR FED) <nathaniel.cogley@census.gov>
Subject: Meeting

Good morning,

Dr. Fleming requested to meet with you and Pat P. Does morning or afternoon work for you tomorrow?

Best,

Katherine Kline
Office of the Chief of Staff
O: 202-456-1208

From: [Nathaniel Cogley \(CENSUS/DEPDIR FED\)](#)
To: [Kline, Katherine E. EOP/WHO](#)
Subject: Re: Monday Meeting
Date: Friday, October 16, 2020 1:39:29 PM

Yes. Monday morning works fine.

From: Kline, Katherine E. EOP/WHO <Katherine.E.Kline@who.eop.gov>
Sent: Friday, October 16, 2020 1:35 PM
To: Nathaniel Cogley (CENSUS/DEPDIR FED) <nathaniel.cogley@census.gov>
Subject: RE: Monday Meeting

Of course!
Does morning work for you all?

From: Nathaniel Cogley (CENSUS/DEPDIR FED) <nathaniel.cogley@census.gov>
Sent: Friday, October 16, 2020 1:15 PM
To: Kline, Katherine E. EOP/WHO <Katherine.E.Kline@who.eop.gov>
Subject: Re: Monday Meeting

Hi Katherine,

The Monday meeting would include Dr. Ben Overholt and Mr. Earl "Trey" Mayfield. Thanks so much for all of your efforts.

—Nathaniel

Nathaniel Cogley, Ph.D.
Deputy Director for Policy
U.S. Census Bureau

From: Kline, Katherine E. EOP/WHO <Katherine.E.Kline@who.eop.gov>
Sent: Friday, October 16, 2020 1:09 PM
To: Nathaniel Cogley (CENSUS/DEPDIR FED) <nathaniel.cogley@census.gov>
Subject: Monday Meeting

Please let me know who might be attending the working meeting on Monday.

Morning is preferred on our end, please let me know if that works for you as well.

Best,

Katherine Kline
Office of the Chief of Staff
O: 202-456-1208

From: [Nathaniel Cogley \(CENSUS/DEPDIR FED\)](#)
To: [Kline, Katherine E. EOP/WHO](#)
Subject: Re: Monday Meeting
Date: Friday, October 16, 2020 1:15:14 PM

Hi Katherine,

The Monday meeting would include Dr. Ben Overholt and Mr. Earl "Trey" Mayfield. Thanks so much for all of your efforts.

—Nathaniel

Nathaniel Cogley, Ph.D.
Deputy Director for Policy
U.S. Census Bureau

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Katherine Kline
Office of the Chief of Staff
O: 202-456-1208

From: [Nathaniel Cogley \(CENSUS/DEPDIR FED\)](#)
To: [Kline, Katherine E. EOP/WHO](#)
Subject: Re: Monday Meeting
Date: Friday, October 16, 2020 1:45:44 PM

Sure thing. Thanks so much. See you soon.

—Nathaniel

Nathaniel Cogley, Ph.D.
Deputy Director for Policy
U.S. Census Bureau

From: Kline, Katherine E. EOP/WHO <Katherine.E.Kline@who.eop.gov>
Sent: Friday, October 16, 2020 1:45 PM
To: Nathaniel Cogley (CENSUS/DEPDIR FED) <nathaniel.cogley@census.gov>
Subject: FW: Monday Meeting

<https://events.whitehouse.gov/AppointmentRsvpForm?rid=TX6RMC4XBD> Here is the waves link.
Would you mind sharing with Ben and Trey?

From: Kline, Katherine E. EOP/WHO
Sent: Friday, October 16, 2020 1:40 PM
To: 'Nathaniel Cogley (CENSUS/DEPDIR FED)' <nathaniel.cogley@census.gov>
Subject: RE: Monday Meeting

Great! Pat just confirmed 10:30. Will send link momentarily.

From: Nathaniel Cogley (CENSUS/DEPDIR FED) <nathaniel.cogley@census.gov>
Sent: Friday, October 16, 2020 1:39 PM
To: Kline, Katherine E. EOP/WHO <Katherine.E.Kline@who.eop.gov>
Subject: Re: Monday Meeting

Yes. Monday morning works fine.

From: Kline, Katherine E. EOP/WHO <Katherine.E.Kline@who.eop.gov>
Sent: Friday, October 16, 2020 1:35 PM
To: Nathaniel Cogley (CENSUS/DEPDIR FED) <nathaniel.cogley@census.gov>
Subject: RE: Monday Meeting

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To: Kline, Katherine E. EOP/WHO <Katherine.E.Kline@who.eop.gov>

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Nathaniel Cogley, Ph.D.

Deputy Director for Policy

U.S. Census Bureau

From: Kline, Katherine E. EOP/WHO <Katherine.E.Kline@who.eop.gov>

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Best,

Katherine Kline

Office of the Chief of Staff

O: 202-456-1208

From: [Christa D Jones \(CENSUS/DEPDIR FED\)](#)
To: [Christopher J Stanley \(CENSUS/OCIA FED\)](#); [Ali Mohammad Ahmad \(CENSUS/ADCOM FED\)](#)
Subject: Re: Promoting Rural Prosperity in America (WH-IGA)
Date: Friday, September 11, 2020 1:16:30 PM

I would suggest the Community Resilience Estimates.

<https://www.census.gov/data/experimental-data-products/community-resilience-estimates.html>

Christa D Jones, Chief of Staff

Office of the Director

U.S. Census Bureau

O|M: (b)(6)

[census.gov](https://www.census.gov) | [@uscensusbureau](#)

Shape Your Future. START HERE> [2020Census.gov](https://2020census.gov)

From: Christopher J Stanley (CENSUS/OCIA FED) <christopher.j.stanley@census.gov>
Sent: Friday, September 11, 2020 1:13 PM
To: Ali Mohammad Ahmad (CENSUS/ADCOM FED) <ali.m.ahmad@census.gov>; Christa D Jones (CENSUS/DEPDIR FED) <Christa.D.Jones@census.gov>
Subject: Fw: Promoting Rural Prosperity in America (WH-IGA)

We have another data call through DOC. I thought we'd have nothing, but they are asking if there is something that might apply for "research" or something else. The example document is all about grants and direct assistance, which we don't have.

What do you think? Maybe cite the pulse surveys? Is there anything else?

See my answers below, and I would appreciate your thoughts.

From: Christopher J Stanley (CENSUS/OCIA FED) <christopher.j.stanley@census.gov>
Sent: Friday, September 11, 2020 1:08 PM
To: McGaan, Duncan (Federal) <DMcGaan@doc.gov>
Subject: Re: Promoting Rural Prosperity in America (WH-IGA)

I will doublecheck. I saw the theme as direct assistance type stuff. The Census Bureau does have data that can help decision makers, but it is really measuring things as they are at the time of collection and not research on things to do to promote prosperity going forward.

From: McGaan, Duncan (Federal) <DMcGaan@doc.gov>
Sent: Friday, September 11, 2020 12:31 PM

To: Christopher J Stanley (CENSUS/OCIA FED) <christopher.j.stanley@census.gov>
Subject: RE: Promoting Rural Prosperity in America (WH-IGA)

Chris, just double checking here. Does the Census conduct any studies or research concerning rural communities that might be relevant?

Duncan A. McGaan

(b)(6)

From: Christopher J Stanley (CENSUS/OCIA FED) <christopher.j.stanley@census.gov>
Sent: Friday, September 11, 2020 10:16 AM
To: McGaan, Duncan (Federal) <DMcGaan@doc.gov>
Subject: Re: Promoting Rural Prosperity in America (WH-IGA)

The Census Bureau doesn't have grant programs, community resources, COVID assistance, or anything like that, so I don't think we would have anything to report that fits the theme of promoting prosperity in rural areas.

From: McGaan, Duncan (Federal) <DMcGaan@doc.gov>
Sent: Friday, September 11, 2020 10:08 AM
To: Lewis, Wendy (Commissioned) <Wendy.Lewis@noaa.gov>; Dobrzynski, Tanya (Federal) <Tanya.Dobrzynski@noaa.gov>; Ewell-Madison, Angela (Federal) <AEwell-Madison@eda.gov>; Christopher J Stanley (CENSUS/OCIA FED) <christopher.j.stanley@census.gov>; Michael Cys <Michael.Cys@bis.doc.gov>; Zanowski, Paul <Paul.Zanowski@USPTO.GOV>; Sigmon, Andrew <Andrew.Sigmon@trade.gov>; Stoddard, Alexander <Alexander.Stoddard@trade.gov>; Hauk, Kandy <kandy.hauk@nist.gov>; Schufreider, James <jim.schufreider@nist.gov>; Shull, Thomas <thomas.shull@firstnet.gov>
Subject: RE: Promoting Rural Prosperity in America (WH-IGA)

EXTERNAL .GOV EMAIL: Do not click any links or open any attachments unless you trust the sender and know the content is safe.

Following up on yesterday's email. Please keep in mind the deadline of COB today. If your bureau has no equities here, please let me know and I will take you off the list.

Best,

Duncan A. McGaan

(b)(6)

Good morning,

Please see the below message from the White House Office of Intergovernmental Affairs. They have asked that our office compile an agency specific document highlighting our accomplishments in rural communities to share with stakeholders. The attached template gives you an idea of what the final

product from Commerce will look like. They have used USDA as an example. **If you have no equities here, please let me know.**

What I need from you:

Please submit a list of accomplishments your bureau is responsible for with respect to rural communities. These accomplishments should cover:

- Rural Community Resources
- COVID-19 Support
- Natural Disaster Assistance
- Rural Development Programs

Additionally, please include links to any online resources for rural communities found on your bureau's website.

When drafting these, do not feel that you need to recreate the attached template. OLIA will be drafting the final document. What would be most helpful is a clean, 12-point font, Times New Roman word document with a list of your bureau's accomplishments for us to add to the greater document.

Please submit this to my email no later than **COB Friday, September 11.**

The White House has asked us to turn this around quickly. To that end, turning this in sometime Monday morning is not an option. Please do your best to get this in by the deadline. Early submissions are greatly appreciated!

Best,

Duncan A. McGaan
Confidential Assistant
Office of Legislative and Intergovernmental Affairs
U.S. Department of Commerce
(b)(6)

From: "Uli, Gabriella M. EOP/WHO" <Gabriella.M.Uli2@who.eop.gov>

Date: September 9, 2020 at 3:38:51 PM EDT

To: "Foti, Anthony (Federal)" <AFoti@doc.gov>

Subject: Request to Complete Rural Prosperity Resource Document

Good afternoon Anthony,

In an effort to lift the Administration's accomplishments in rural communities, we have created an agency specific document (see template attached) to share with our stakeholders. You will notice

that USDA is being used as an example in the template. We ask that you complete your agency's document and that the template is appropriately followed around formatting.

As always, please don't hesitate to reach out with any questions!

Best,
Gabby

Gabriella M. Uli
Office of Intergovernmental Affairs
The White House
Gabriella.M.Uli2@who.eop.gov | 202-881-8552

From: [Christa D Jones \(CENSUS/DEPDIR FED\)](#)
To: [Christopher J Stanley \(CENSUS/OCIA FED\)](#)
Cc: [Ali Mohammad Ahmad \(CENSUS/ADCOM FED\)](#)
Subject: Re: Promoting Rural Prosperity in America (WH-IGA)
Date: Friday, September 11, 2020 2:42:45 PM

Looks good to me.

Christa D Jones
Sent from my iPhone

On Sep 11, 2020, at 2:21 PM, Christopher J Stanley (CENSUS/OCIA FED) <christopher.j.stanley@census.gov> wrote:

How does this read?

Census Bureau: The Census Bureau has resources to help rural communities and state and local leaders make data driven decisions to respond to the pandemic or other disasters and to guide economic recovery. The [Community Resilience Estimates](#) can aid communities and public health officials in modeling impacts and developing plans to reduce a disaster's potential effects. The [COVID-19 Data Hub](#) can help rural communities locate at-risk populations and businesses to focus COVID-19 response efforts and to allocate resources for recovery to areas with the greatest need.

From: Ali Mohammad Ahmad (CENSUS/ADCOM FED) <ali.m.ahmad@census.gov>
Sent: Friday, September 11, 2020 1:19 PM
To: Christopher J Stanley (CENSUS/OCIA FED) <christopher.j.stanley@census.gov>
Cc: Christa D Jones (CENSUS/DEPDIR FED) <Christa.D.Jones@census.gov>
Subject: Re: Promoting Rural Prosperity in America (WH-IGA)

I don't. I'd use the community resilience estimates and the covid hub. Tools for rural communities?

On Sep 11, 2020, at 1:17 PM, Christopher J Stanley (CENSUS/OCIA FED) <christopher.j.stanley@census.gov> wrote:

Do you agree with the two pulses, too?

Thank you.

On Sep 11, 2020, at 1:16 PM, Christa D Jones
(CENSUS/DEPDIR FED)
<Christa.D.Jones@census.gov> wrote:

I would suggest the Community Resilience Estimates.

<https://www.census.gov/data/experimental-data-products/community-resilience-estimates.html>

Christa D Jones, Chief of Staff

Office of the Director

U.S. Census Bureau

O|M: 301-763-7310

[census.gov](https://www.census.gov) | [@uscensusbureau](https://twitter.com/uscensusbureau)

Shape Your Future. START HERE> [2020Census.gov](https://2020census.gov)

From: Christopher J Stanley (CENSUS/OCIA FED)

<christopher.j.stanley@census.gov>

Sent: Friday, September 11, 2020 1:13 PM

To: Ali Mohammad Ahmad (CENSUS/ADCOM FED)

<ali.m.ahmad@census.gov>; Christa D Jones
(CENSUS/DEPDIR FED) <Christa.D.Jones@census.gov>

Subject: Fw: Promoting Rural Prosperity in America (WH-IGA)

We have another data call through DOC. I thought we'd have nothing, but they are asking if there is something that might apply for "research" or something else. The example document is all about grants and direct assistance, which we don't have.

What do you think? Maybe cite the pulse surveys? Is there anything else?

See my answers below, and I would appreciate your thoughts.

From: Christopher J Stanley (CENSUS/OCIA FED)

<christopher.j.stanley@census.gov>

Sent: Friday, September 11, 2020 1:08 PM

To: McGaan, Duncan (Federal) <DMcGaan@doc.gov>
Subject: Re: Promoting Rural Prosperity in America (WH-IGA)

I will doublecheck. I saw the theme as direct assistance type stuff. The Census Bureau does have data that can help decision makers, but it is really measuring things as they are at the time of collection and not research on things to do to promote prosperity going forward.

From: McGaan, Duncan (Federal) <DMcGaan@doc.gov>
Sent: Friday, September 11, 2020 12:31 PM
To: Christopher J Stanley (CENSUS/OCIA FED) <christopher.j.stanley@census.gov>
Subject: RE: Promoting Rural Prosperity in America (WH-IGA)

Chris, just double checking here. Does the Census conduct any studies or research concerning rural communities that might be relevant?

Duncan A. McGaan

(b)(6)

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Sent: Friday, September 11, 2020 10:08 AM
To: Lewis, Wendy (Commissioned) <Wendy.Lewis@noaa.gov>; Dobrzynski, Tanya (Federal) <Tanya.Dobrzynski@noaa.gov>; Ewell-Madison, Angela (Federal) <AEwell-Madison@eda.gov>; Christopher J Stanley (CENSUS/OCIA FED) <christopher.j.stanley@census.gov>; Michael Cys <Michael.Cys@bis.doc.gov>; Zanowski, Paul <Paul.Zanowski@USPTO.GOV>; Sigmon, Andrew <Andrew.Sigmon@trade.gov>; Stoddard, Alexander <Alexander.Stoddard@trade.gov>; Hauk, Kandy

<kandy.hauk@nist.gov>; Schufreider, James

<jim.schufreider@nist.gov>; Shull, Thomas

<thomas.shull@firstnet.gov>

Subject: RE: Promoting Rural Prosperity in America (WH-IGA)

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(b)(6)

Good morning,

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document. What would be most helpful is a clean, 12-point font, Times New Roman word document with a list of your bureau's accomplishments for us to add to the greater document.

Please submit this to my email no later than **COB Friday, September 11.**

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Subject: Re: Promoting Rural Prosperity in America (WH-IGA)
Date: Friday, September 11, 2020 1:19:17 PM

We only went to state and large MSA level, so probably not.

Though you could put the COVID site on it too, compiled key Census Bureau data from multiple sources to display for local communities.

<https://covid19.census.gov/>



Census COVID-19 Data Hub

This Demographic and Economic Interactive Data Hub helps guide decision-making related to the COVID-19 pandemic. The platform includes key demographic data from the American Community Survey and data on businesses from County Business Patterns.

covid19.census.gov

Christa D Jones, Chief of Staff

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O|M: 301-763-7310

census.gov | [@uscensusbureau](#)

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Cc: [Nathaniel Cogley \(CENSUS/DEPDIR FED\)](#); [Ali Mohammad Ahmad \(CENSUS/ADCOM FED\)](#)
Subject: Re: Question from Sen. Daines
Date: Monday, September 14, 2020 10:20:07 AM

Ask whether we can / should send written response for the Senator's possible use (or posting) also. WH thought that might be desired / helpful.

From: Christopher J Stanley (CENSUS/OCIA FED) <christopher.j.stanley@census.gov>
Sent: Monday, September 14, 2020 9:11 AM
To: Steven Dillingham (CENSUS/DEPDIR FED) <steven.dillingham@census.gov>; Ali Mohammad Ahmad (CENSUS/ADCOM FED) <ali.m.ahmad@census.gov>
Cc: Nathaniel Cogley (CENSUS/DEPDIR FED) <nathaniel.cogley@census.gov>; James T Christy (CENSUS/LA FED) <James.T.Christy@census.gov>
Subject: Re: Question from Sen. Daines

Senator Daines' staff replied to my offer for a briefing on Montana. It looks like they want a staff meeting, so we can probably cover this without you, Director. I can let you know if they change that.

I do not know when yet, but I will let you what times they suggest. Jamey, if you want me to suggest times today or tomorrow that work best for your schedule, please let me know and I will offer those times.

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Note: Nathaniel has talked with Jamey Christy who provided great information regarding plans to help. Ali, We agree with you and Chris that a prompt response to staff and Senator (assuming available) with Jamey and myself by phone as appropriate is way to proceed. Also, spelling out in detail in a letter for potential posting by senator and maybe coordinating a WH letter of support if DOC PA agrees. Many thanks!

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Subject: Fw: Question from Sen. Daines

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Nathaniel,

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Regards,

John C. Fleming, MD

Assistant to the President for Planning and Implementation
Office of the Chief of Staff

(b)(6)

Office 202-456-1208

(b)(6)

John.C.Fleming@who.eop.gov

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Cc: [Nathaniel Cogley \(CENSUS/DEPDIR FED\)](#); [James T Christy \(CENSUS/LA FED\)](#)
Subject: Re: Question from Sen. Daines
Date: Monday, September 14, 2020 10:18:06 AM

Sounds good. Let me know what works. thx

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To: Steven Dillingham (CENSUS/DEPDIR FED) <steven.dillingham@census.gov>; Ali Mohammad Ahmad (CENSUS/ADCOM FED) <ali.m.ahmad@census.gov>
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(b)(6)

Office 202-456-1208

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Cc: [James T Christy \(CENSUS/LA FED\)](#)
Subject: Re: Question from Sen. Daines
Date: Tuesday, September 15, 2020 7:33:06 PM

There is one typo in the last paragraph:

...and we would be pleased to brief you further on the progress in Montana, **and**.

Otherwise, it looks fine, and I thank everyone for all their efforts.

—Nathaniel

Nathaniel Cogley, Ph.D.
Deputy Director for Policy
U.S. Census Bureau

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The attached letter came back from the department with only minor edits. Jamey helped me update it after our call with Daines' staff.

Any final edits?

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To: [Fleming, John C. Jr. EOP/WHO](#)
Subject: Re: Question from Sen. Daines
Date: Monday, September 14, 2020 5:19:26 PM
Attachments: [DRAFT letter to Senator Daines re tribal areas and staffing for review \(1\).docx](#)

Hi John,

Please find a draft of a response letter attached. Talk soon.

—Nathaniel

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From: [Earl N Mayfield \(CENSUS/DEPDIR FED\)](#)
To: [Philbin, Patrick F. EOP/WHO](#)
Subject: Re: questions from yesterday
Date: Sunday, November 29, 2020 10:46:17 AM

Understand.

Trey Mayfield
Counsel to the Director of the United States Census
Office (301) 763-0707

(b)(6)

From: Philbin, Patrick F. EOP/WHO <Patrick.F.Philbin@who.eop.gov>
Sent: Sunday, November 29, 2020 10:44 AM
To: Earl N Mayfield (CENSUS/DEPDIR FED) <earl.n.mayfield@census.gov>
Subject: RE: questions from yesterday

(b) (5)

Patrick F. Philbin
Deputy Counsel to the President
Office of White House Counsel
Pfp2dcp@who.eop.gov
O: 202-456-1904 (b)(6)

From: Earl N Mayfield (CENSUS/DEPDIR FED) <earl.n.mayfield@census.gov>
Sent: Saturday, November 28, 2020 5:40 PM
To: Philbin, Patrick F. EOP/WHO <Patrick.F.Philbin@who.eop.gov>
Subject: Re: questions from yesterday

(b) (5)

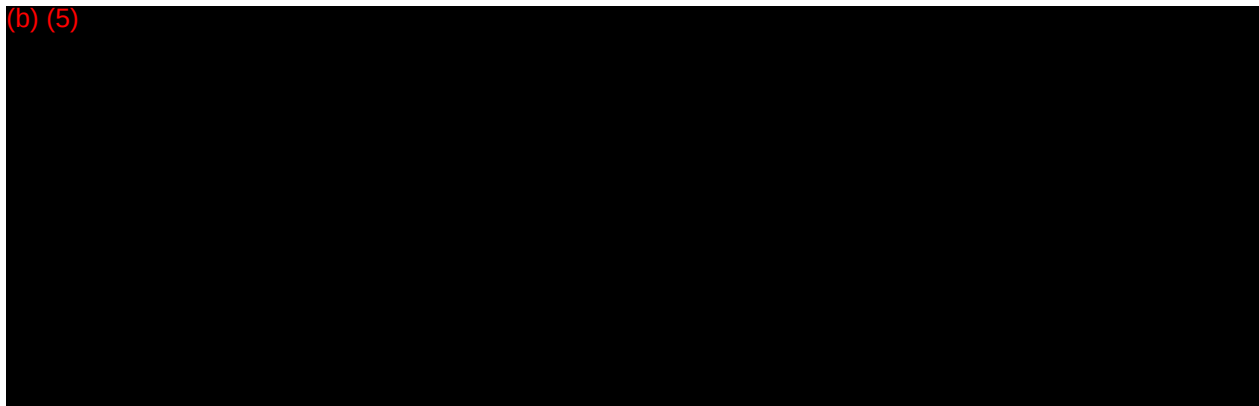
Trey Mayfield
Counsel to the Director of the United States Census
Office (301) 763-0707

(b)(6)

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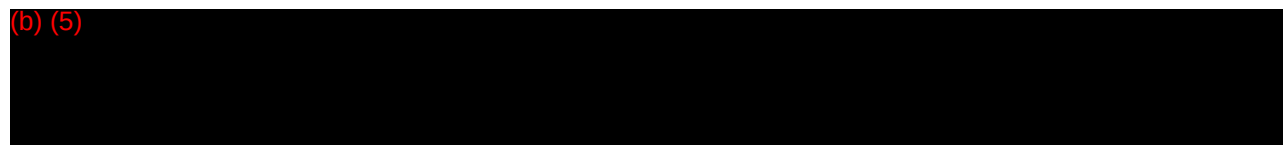
(b) (5)



Patrick F. Philbin
Deputy Counsel to the President
Office of White House Counsel
Pfp2dcp@who.eop.gov
O: 202-456-1904 C: (b)(6)

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Sent: Saturday, November 28, 2020 1:34 PM
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Subject: Re: questions from yesterday

(b) (5)



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Thanks,

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From: [Earl N Mayfield \(CENSUS/DEPDIR FED\)](#)
To: [Philbin, Patrick F. EOP/WHO](#)
Subject: Re: questions from yesterday
Date: Saturday, November 28, 2020 8:36:59 PM

Ketan was able to locate some SME #s. I'll try them tomorrow morn.

Trey Mayfield
Counsel to the Director of the United States Census
Office [\(301\) 763-0707](#)

■ (b)(6)

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From: [Earl N Mayfield \(CENSUS/DEPDIR FED\)](#)
To: [Philbin, Patrick F. EOP/WHO](#)
Subject: Re: questions from yesterday
Date: Saturday, November 28, 2020 7:46:17 PM

I've asked her for the cell #s of the appropriate SMEs.

Trey Mayfield
Counsel to the Director of the United States Census
Office [\(301\) 763-0707](tel:(301)763-0707)

(b)(6)

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Trey Mayfield
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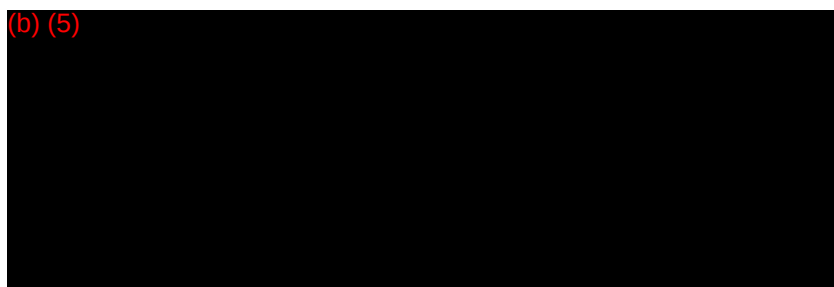
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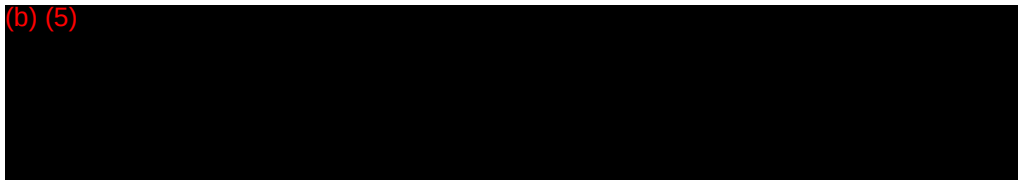
From: [Earl N Mayfield \(CENSUS/DEPDIR FED\)](#)
To: [Philbin, Patrick F. EOP/WHO](#)
Subject: Re: questions from yesterday
Date: Saturday, November 28, 2020 7:35:07 PM

Pat,
Michele reports that when she sent the queries to the SMEs yesterday, she mostly got out of office messages, and isn't sure who will be checking over the weekend.
Thanks,

Trey Mayfield
Counsel to the Director of the United States Census
Office [\(301\) 763-0707](#)
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To: [Philbin, Patrick F. EOP/WHO](#)
Subject: Re: questions from yesterday
Date: Saturday, November 28, 2020 5:40:11 PM

(b) (5)



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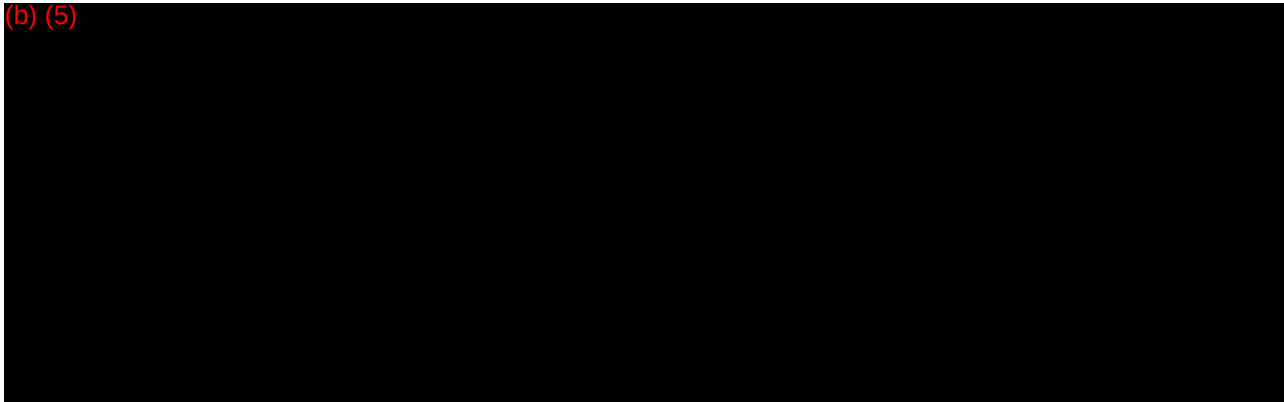
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know the precise data sets from ICE that census would be using to determine that number.

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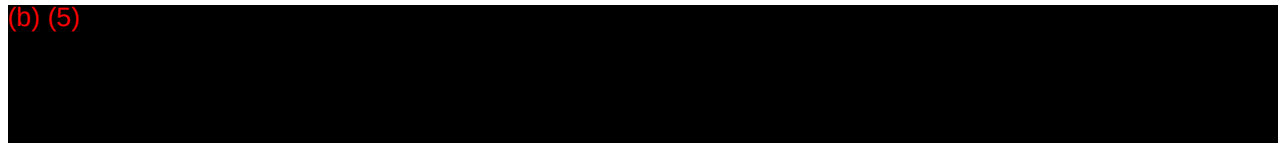
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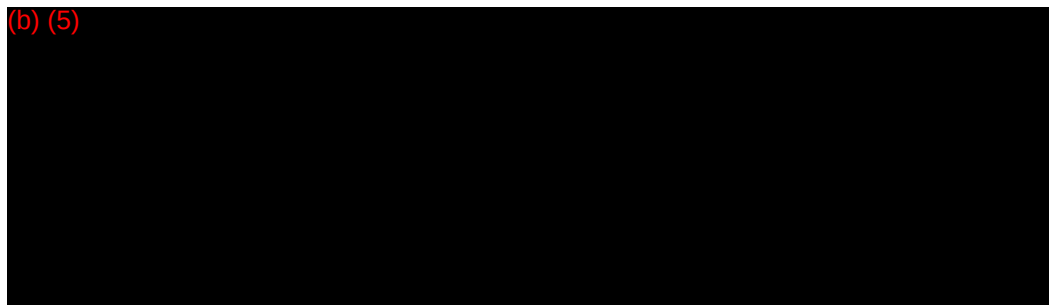
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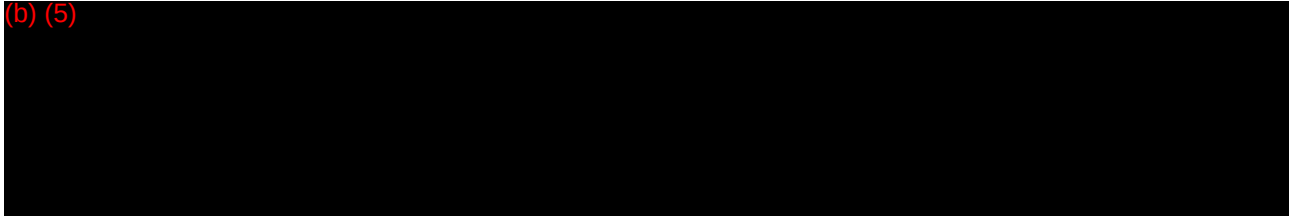
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To: [Philbin, Patrick F. EOP/WHO](#)
Subject: Re: questions from yesterday
Date: Saturday, November 28, 2020 12:23:58 PM

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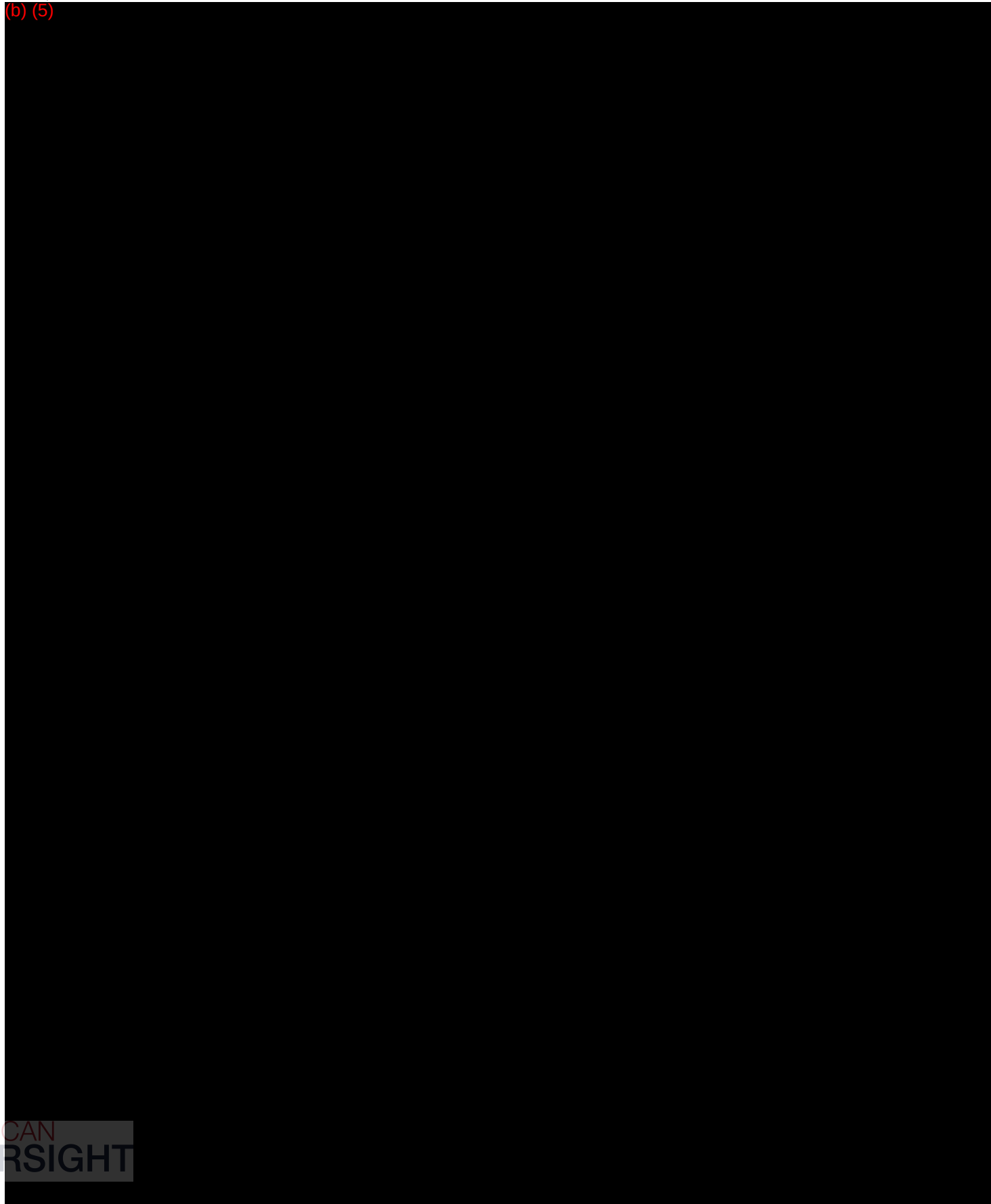
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From: [Earl N Mayfield \(CENSUS/DEPDIR FED\)](#)
To: [Philbin, Patrick F. EOP/WHO](#)
Cc: [Bhirud, Ketan](#)
Subject: Re: questions from yesterday
Date: Sunday, November 29, 2020 7:34:49 PM

Pat,

(b) (5)



Trey Mayfield
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From: Earl N Mayfield (CENSUS/DEPDIR FED) <earl.n.mayfield@census.gov>
Sent: Sunday, November 29, 2020 10:46 AM
To: Philbin, Patrick F. EOP/WHO <Patrick.F.Philbin@who.eop.gov>
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Understand.

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From: Philbin, Patrick F. EOP/WHO <Patrick.F.Philbin@who.eop.gov>
Sent: Sunday, November 29, 2020 10:44 AM
To: Earl N Mayfield (CENSUS/DEPDIR FED) <earl.n.mayfield@census.gov>
Subject: RE: questions from yesterday

(b) (5)

Patrick F. Philbin
Deputy Counsel to the President
Office of White House Counsel
Pfp2dcp@who.eop.gov
O: 202-456-1904 (b)(6)

From: Earl N Mayfield (CENSUS/DEPDIR FED) <earl.n.mayfield@census.gov>
Sent: Saturday, November 28, 2020 5:40 PM
To: Philbin, Patrick F. EOP/WHO <Patrick.F.Philbin@who.eop.gov>
Subject: Re: questions from yesterday

(b) (5)

Trey Mayfield
Counsel to the Director of the United States Census
Office (301) 763-0707
(b)(6)

From: Philbin, Patrick F. EOP/WHO <Patrick.F.Philbin@who.eop.gov>
Sent: Saturday, November 28, 2020 4:55 PM
To: Earl N Mayfield (CENSUS/DEPDIR FED) <earl.n.mayfield@census.gov>
Subject: RE: questions from yesterday

Thanks.

(b) (5)

Patrick F. Philbin
Deputy Counsel to the President
Office of White House Counsel
Pfp2dcp@who.eop.gov
O: 202-456-1904 (b)(6)

From: Earl N Mayfield (CENSUS/DEPDIR FED) <earl.n.mayfield@census.gov>
Sent: Saturday, November 28, 2020 1:34 PM
To: Philbin, Patrick F. EOP/WHO <Patrick.F.Philbin@who.eop.gov>
Subject: Re: questions from yesterday

(b) (5)

Trey Mayfield
Counsel to the Director of the United States Census
Office (301) 763-0707
(b)(6)

On Nov 28, 2020, at 1:24 PM, Philbin, Patrick F. EOP/WHO <Patrick.F.Philbin@who.eop.gov> wrote:

Thanks. Have you checked with Ben Overholt? He seemed to have identified this issue a while ago and may know the solution that census was going to apply.

Patrick F. Philbin
Deputy Counsel to the President
Office of White House Counsel
Pfp2dcp@who.eop.gov
O: 202-456-1904 (b)(6)

Sent from my iPhone

On Nov 28, 2020, at 1:14 PM, Earl N Mayfield (CENSUS/DEPDIR FED) <earl.n.mayfield@census.gov> wrote:

Pat,

Except for the question you had about separating out those in illegal status who are in ICE detention facilities, Ketan had sent your questions earlier yesterday afternoon to Michele Steinmetz at DHS, and she said she'd provide those questions to their SMEs. I just did a follow up email with your additional question, and a vm, to Michele, explaining the urgency of the request and need for answers tonight or tomorrow morn.

Thanks,

Trey Mayfield
Counsel to the Director of the United States Census
Office (301) 763-0707
(b)(6)

From: Earl N Mayfield (CENSUS/DEPDIR FED) <earl.n.mayfield@census.gov>
Sent: Saturday, November 28, 2020 12:23 PM
To: Philbin, Patrick F. EOP/WHO <Patrick.F.Philbin@who.eop.gov>
Subject: Re: questions from yesterday

Got it.

Trey Mayfield
Counsel to the Director of the United States Census
Office (301) 763-0707
(b)(6)

From: Philbin, Patrick F. EOP/WHO <Patrick.F.Philbin@who.eop.gov>
Sent: Saturday, November 28, 2020 9:56 AM
To: Earl N Mayfield (CENSUS/DEPDIR FED) <earl.n.mayfield@census.gov>
Subject: questions from yesterday

Trey,

If at all possible, I need the answers to the questions we discussed yesterday by this evening or tomorrow. Jeff Wall needs them for the argument on Monday.

Thanks,
Pat

Patrick F. Philbin
Deputy Counsel to the President
Office of White House Counsel
Pfp2dcp@who.eop.gov
O: 202-456-1904 (b)(6)

From: [Steven Dillingham \(CENSUS/DEPDIR FED\)](#)
To: [Kline, Katherine E. EOP/WHO](#)
Subject: Re: Scheduling of Brief Appointment with Dr. Fleming
Date: Friday, November 20, 2020 4:52:12 PM

Katherine,

Can you call me for 30 seconds? thx

Steve

(b)(6)

From: Kline, Katherine E. EOP/WHO <Katherine.E.Kline@who.eop.gov>
Sent: Friday, November 20, 2020 11:21 AM
To: Steven Dillingham (CENSUS/DEPDIR FED) <steven.dillingham@census.gov>
Subject: RE: Scheduling of Brief Appointment with Dr. Fleming

Great! What's the best number for you at that time?

From: Steven Dillingham (CENSUS/DEPDIR FED) <steven.dillingham@census.gov>
Sent: Friday, November 20, 2020 11:20 AM
To: Kline, Katherine E. EOP/WHO <Katherine.E.Kline@who.eop.gov>
Subject: Re: Scheduling of Brief Appointment with Dr. Fleming

Yes. Many thanks.

From: Kline, Katherine E. EOP/WHO <Katherine.E.Kline@who.eop.gov>
Sent: Friday, November 20, 2020 10:47 AM
To: Steven Dillingham (CENSUS/DEPDIR FED) <steven.dillingham@census.gov>
Subject: RE: Scheduling of Brief Appointment with Dr. Fleming

Absolutely happy to find some time! He's on a call now and then has a lunch. Would you be available around 1:30 or so?

From: Steven Dillingham (CENSUS/DEPDIR FED) <steven.dillingham@census.gov>
Sent: Friday, November 20, 2020 10:45 AM
To: Kline, Katherine E. EOP/WHO <Katherine.E.Kline@who.eop.gov>
Subject: Scheduling of Brief Appointment with Dr. Fleming

Katherine,

I realize how busy Dr. Fleming is. Is there anyway I can have a three minute call or visit with

him today?

Many thanks,

Steve

Steven D. Dillingham, Ph.D., Director
U.S. Census Bureau
o: 301-763-2135 | (b)(6)
[census.gov](https://www.census.gov) | [@uscensusbureau](https://twitter.com/uscensusbureau)

From: [Steven Dillingham \(CENSUS/DEPDIR FED\)](#)
To: [Kline, Katherine E. EOP/WHO](#)
Subject: Re: Scheduling of Brief Appointment with Dr. Fleming
Date: Friday, November 20, 2020 11:49:24 AM

(b)(6)

From: Kline, Katherine E. EOP/WHO <Katherine.E.Kline@who.eop.gov>
Sent: Friday, November 20, 2020 11:21 AM
To: Steven Dillingham (CENSUS/DEPDIR FED) <steven.dillingham@census.gov>
Subject: RE: Scheduling of Brief Appointment with Dr. Fleming

Great! What's the best number for you at that time?

From: Steven Dillingham (CENSUS/DEPDIR FED) <steven.dillingham@census.gov>
Sent: Friday, November 20, 2020 11:20 AM
To: Kline, Katherine E. EOP/WHO <Katherine.E.Kline@who.eop.gov>
Subject: Re: Scheduling of Brief Appointment with Dr. Fleming

Yes. Many thanks.

From: Kline, Katherine E. EOP/WHO <Katherine.E.Kline@who.eop.gov>
Sent: Friday, November 20, 2020 10:47 AM
To: Steven Dillingham (CENSUS/DEPDIR FED) <steven.dillingham@census.gov>
Subject: RE: Scheduling of Brief Appointment with Dr. Fleming

Absolutely happy to find some time! He's on a call now and then has a lunch. Would you be available around 1:30 or so?

From: Steven Dillingham (CENSUS/DEPDIR FED) <steven.dillingham@census.gov>
Sent: Friday, November 20, 2020 10:45 AM
To: Kline, Katherine E. EOP/WHO <Katherine.E.Kline@who.eop.gov>
Subject: Scheduling of Brief Appointment with Dr. Fleming

Katherine,

I realize how busy Dr. Fleming is. Is there anyway I can have a three minute call or visit with him today?

Many thanks,

Steve

Steven D. Dillingham, Ph.D., Director

U.S. Census Bureau

o: 301-763-2135 | (b)(6)

census.gov | [@uscensusbureau](https://twitter.com/uscensusbureau)

From: [Steven Dillingham \(CENSUS/DEPDIR FED\)](#)
To: [Kline, Katherine E. EOP/WHO](#)
Subject: Re: Scheduling of Brief Appointment with Dr. Fleming
Date: Friday, November 20, 2020 11:20:01 AM

Yes. Many thanks.

From: Kline, Katherine E. EOP/WHO <Katherine.E.Kline@who.eop.gov>
Sent: Friday, November 20, 2020 10:47 AM
To: Steven Dillingham (CENSUS/DEPDIR FED) <steven.dillingham@census.gov>
Subject: RE: Scheduling of Brief Appointment with Dr. Fleming

Absolutely happy to find some time! He's on a call now and then has a lunch. Would you be available around 1:30 or so?

From: Steven Dillingham (CENSUS/DEPDIR FED) <steven.dillingham@census.gov>
Sent: Friday, November 20, 2020 10:45 AM
To: Kline, Katherine E. EOP/WHO <Katherine.E.Kline@who.eop.gov>
Subject: Scheduling of Brief Appointment with Dr. Fleming

Katherine,

I realize how busy Dr. Fleming is. Is there anyway I can have a three minute call or visit with him today?

Many thanks,

Steve

Steven D. Dillingham, Ph.D., Director
U.S. Census Bureau
o: 301-763-2135 | (b)(6)
[census.gov](https://www.census.gov) | [@uscensusbureau](https://twitter.com/uscensusbureau)

From: [Earl N Mayfield \(CENSUS/DEPDIR FED\)](#)
To: [Kline, Katherine E. EOP/WHO](#)
Subject: Re: Staff Announcement: Andrea Davis, Diversity and Inclusion Coordinator
Date: Monday, October 19, 2020 2:36:18 PM

The Director said he'd like me to attend, also said he hadn't received an invite yet.

Trey Mayfield
Counsel to the Director of the United States Census
Office (301) 763-0707

(b)(6)

From: Kline, Katherine E. EOP/WHO <Katherine.E.Kline@who.eop.gov>
Sent: Monday, October 19, 2020 1:31 PM
To: Earl N Mayfield (CENSUS/DEPDIR FED) <earl.n.mayfield@census.gov>
Subject: RE: Staff Announcement: Andrea Davis, Diversity and Inclusion Coordinator

Thank you! I will pass this along.

I would check with Mr. Dillingham. You're welcome to join if he and the DepSec agree.

From: Earl N Mayfield (CENSUS/DEPDIR FED) <earl.n.mayfield@census.gov>
Sent: Monday, October 19, 2020 1:26 PM
To: Kline, Katherine E. EOP/WHO <Katherine.E.Kline@who.eop.gov>
Subject: Fw: Staff Announcement: Andrea Davis, Diversity and Inclusion Coordinator

Hi Katherine,
Dr. Flemming asked that the below be passed along per a mention in this morning's meeting.
Also, should I attend tomorrow's 10:30 meeting re: Census?
Thanks,
Trey

Trey Mayfield
Counsel to the Director of the United States Census
Office (301) 763-0707

(b)(6)

From: BOC BROADCAST (CENSUS/DIR) <boc.broadcast@census.gov>
Sent: Wednesday, October 7, 2020 2:04 PM
Subject: Staff Announcement: Andrea Davis, Diversity and Inclusion Coordinator

To: All Staff
From the Desk of Stefanie L. Watson, Diversity and Inclusion Officer . . .

Please join me in welcoming Andrea Davis, Ph.D., to the Diversity and Inclusion Office (DIO)

team. Andrea recently joined DIO as the Diversity and Inclusion Coordinator for the Census Bureau. In this role, she serves as a strategic workforce development expert and is responsible for the development and implementation of the Census Bureau's diversity and inclusion strategic initiatives. She also assists with the planning, development and oversight of diversity and inclusion work groups, committees, conferences and off-site meetings.

Andrea is a recognized scholar and educator within the fields of diversity, equity and criminology. She has received many honors and awards for her work, including the Equal Opportunity Employment Leadership Award from the U.S. attorney general. Andrea earned her bachelor's degree from Alabama State University and her master's degree and Ph.D. from the University of Florida. Prior to joining the Census Bureau, she worked at the Department of Justice's Office of the Inspector General. In her free time, she loves to travel, complete do-it-yourself projects and spend time with friends and family.

Andrea can be reached at andrea.davis2@census.gov.

From: [Earl N Mayfield \(CENSUS/DEPDIR FED\)](#)
To: [Kline, Katherine E. EOP/WHO](#)
Subject: Re: Staff Announcement: Andrea Davis, Diversity and Inclusion Coordinator
Date: Monday, October 19, 2020 2:45:12 PM

I think it's tough keeping track of all the meetings :)
Will, do, thanks!

Trey Mayfield
Counsel to the Director of the United States Census
Office (301) 763-0707

(b)(6)

From: Kline, Katherine E. EOP/WHO <Katherine.E.Kline@who.eop.gov>
Sent: Monday, October 19, 2020 2:39 PM
To: Earl N Mayfield (CENSUS/DEPDIR FED) <earl.n.mayfield@census.gov>
Subject: RE: Staff Announcement: Andrea Davis, Diversity and Inclusion Coordinator

He completed his waves for tomorrow, so someone has confirmed him!

Please complete the below waves link asap. We will be holding this meeting tomorrow at 10:30 a.m. in EEOB 210.

<https://events.whitehouse.gov/AppointmentRsvpForm?rid=HJJD3Y6GR2>

Best,

Katherine Kline
Office of the Chief of Staff
O: 202-456-1208

From: Earl N Mayfield (CENSUS/DEPDIR FED) <earl.n.mayfield@census.gov>
Sent: Monday, October 19, 2020 2:36 PM
To: Kline, Katherine E. EOP/WHO <Katherine.E.Kline@who.eop.gov>
Subject: Re: Staff Announcement: Andrea Davis, Diversity and Inclusion Coordinator

The Director said he'd like me to attend, also said he hadn't received an invite yet.

Trey Mayfield
Counsel to the Director of the United States Census
Office (301) 763-0707

(b)(6)

From: Kline, Katherine E. EOP/WHO <Katherine.E.Kline@who.eop.gov>
Sent: Monday, October 19, 2020 1:31 PM
To: Earl N Mayfield (CENSUS/DEPDIR FED) <earl.n.mayfield@census.gov>
Subject: RE: Staff Announcement: Andrea Davis, Diversity and Inclusion Coordinator

Thank you! I will pass this along.

I would check with Mr. Dillingham. You're welcome to join if he and the DepSec agree.

From: Earl N Mayfield (CENSUS/DEPDIR FED) <earl.n.mayfield@census.gov>
Sent: Monday, October 19, 2020 1:26 PM
To: Kline, Katherine E. EOP/WHO <Katherine.E.Kline@who.eop.gov>
Subject: Fw: Staff Announcement: Andrea Davis, Diversity and Inclusion Coordinator

Hi Katherine,
Dr. Flemming asked that the below be passed along per a mention in this morning's meeting.
Also, should I attend tomorrow's 10:30 meeting re: Census?
Thanks,
Trey

Trey Mayfield
Counsel to the Director of the United States Census
Office (301) 763-0707

(b)(6)

From: BOC BROADCAST (CENSUS/DIR) <boc.broadcast@census.gov>
Sent: Wednesday, October 7, 2020 2:04 PM
Subject: Staff Announcement: Andrea Davis, Diversity and Inclusion Coordinator

To: All Staff
From the Desk of Stefanie L. Watson, Diversity and Inclusion Officer . . .

Please join me in welcoming Andrea Davis, Ph.D., to the Diversity and Inclusion Office (DIO) team. Andrea recently joined DIO as the Diversity and Inclusion Coordinator for the Census Bureau. In this role, she serves as a strategic workforce development expert and is responsible for the development and implementation of the Census Bureau's diversity and inclusion strategic initiatives. She also assists with the planning, development and oversight of diversity and inclusion work groups, committees, conferences and off-site meetings.

Andrea is a recognized scholar and educator within the fields of diversity, equity and criminology. She has received many honors and awards for her work, including the Equal Opportunity Employment Leadership Award from the U.S. attorney general. Andrea earned her bachelor's degree from Alabama State University and her master's degree and Ph.D. from the University of Florida. Prior to joining the Census Bureau, she worked at the Department of

Justice's Office of the Inspector General. In her free time, she loves to travel, complete do-it-yourself projects and spend time with friends and family.

Andrea can be reached at andrea.davis2@census.gov.

From: [Earl N Mayfield \(CENSUS/DEPDIR FED\)](#)
To: [Nathaniel Cogley \(CENSUS/DEPDIR FED\)](#)
Cc: [Benjamin A Overholt \(CENSUS/DEPDIR FED\)](#); [Kline, Katherine E. EOP/WHO](#)
Subject: Re: Today
Date: Thursday, December 3, 2020 9:57:34 AM

Good by me.

Trey Mayfield
Counsel to the Director of the United States Census
Office [\(301\) 763-0707](#)
(b)(6)

On Dec 3, 2020, at 9:55 AM, Nathaniel Cogley (CENSUS/DEPDIR FED)
<nathaniel.cogley@census.gov> wrote:

1pm works for me too. Thanks for setting this up, Katherine.

—Nathaniel

Nathaniel Cogley, Ph.D.
Deputy Director for Policy
U.S. Census Bureau

From: Benjamin A Overholt (CENSUS/DEPDIR FED) <benjamin.a.overholt@census.gov>
Sent: Thursday, December 3, 2020 9:50 AM
To: Kline, Katherine E. EOP/WHO <Katherine.E.Kline@who.eop.gov>
Cc: Nathaniel Cogley (CENSUS/DEPDIR FED) <nathaniel.cogley@census.gov>; Earl N Mayfield (CENSUS/DEPDIR FED) <earl.n.mayfield@census.gov>
Subject: Re: Today

1 works for me.

Sent from my iPhone

On Dec 3, 2020, at 9:47 AM, Kline, Katherine E. EOP/WHO
<Katherine.E.Kline@who.eop.gov> wrote:

Hi team,

Dr. Fleming will need to do a conference call with you all today. We have had 1:00 open up. Please let me know if 1:00 works for the group and I will send dial info.

Best,

Katherine Kline
Office of the Chief of Staff
O: 202-456-1208

From: [Nathaniel Cogley \(CENSUS/DEPDIR FED\)](#)
To: [Benjamin A Overholt \(CENSUS/DEPDIR FED\)](#); [Kline, Katherine E. EOP/WHO](#)
Cc: [Earl N Mayfield \(CENSUS/DEPDIR FED\)](#)
Subject: Re: Today
Date: Thursday, December 3, 2020 9:55:30 AM

1pm works for me too. Thanks for setting this up, Katherine.

—Nathaniel

Nathaniel Cogley, Ph.D.

Deputy Director for Policy
U.S. Census Bureau

From: Benjamin A Overholt (CENSUS/DEPDIR FED) <benjamin.a.overholt@census.gov>
Sent: Thursday, December 3, 2020 9:50 AM
To: Kline, Katherine E. EOP/WHO <Katherine.E.Kline@who.eop.gov>
Cc: Nathaniel Cogley (CENSUS/DEPDIR FED) <nathaniel.cogley@census.gov>; Earl N Mayfield (CENSUS/DEPDIR FED) <earl.n.mayfield@census.gov>
Subject: Re: Today

1 works for me.

Sent from my iPhone

On Dec 3, 2020, at 9:47 AM, Kline, Katherine E. EOP/WHO
<Katherine.E.Kline@who.eop.gov> wrote:

Hi team,

Dr. Fleming will need to do a conference call with you all today. We have had 1:00 open up. Please let me know if 1:00 works for the group and I will send dial info.

Best,

Katherine Kline
Office of the Chief of Staff
O: 202-456-1208

From: [Benjamin A Overholt \(CENSUS/DEPDIR FED\)](#)
To: [Kline, Katherine E. EOP/WHO](#)
Cc: [Nathaniel Cogley \(CENSUS/DEPDIR FED\)](#); [Earl N Mayfield \(CENSUS/DEPDIR FED\)](#)
Subject: Re: Today
Date: Thursday, December 3, 2020 9:50:14 AM

1 works for me.

Sent from my iPhone

On Dec 3, 2020, at 9:47 AM, Kline, Katherine E. EOP/WHO
<Katherine.E.Kline@who.eop.gov> wrote:

Hi team,

Dr. Fleming will need to do a conference call with you all today. We have had 1:00 open up. Please let me know if 1:00 works for the group and I will send dial info.

Best,

Katherine Kline
Office of the Chief of Staff
O: 202-456-1208

From: [Benjamin A Overholt \(CENSUS/DEPDIR FED\)](#)
To: [Kline, Katherine E. EOP/WHO](#)
Cc: [Nathaniel Cogley \(CENSUS/DEPDIR FED\)](#); [Earl N Mayfield \(CENSUS/DEPDIR FED\)](#)
Subject: Re: Today
Date: Thursday, December 3, 2020 10:08:02 AM

Perfect. Thanks so much

Sent from my iPhone

On Dec 3, 2020, at 9:58 AM, Kline, Katherine E. EOP/WHO
<Katherine.E.Kline@who.eop.gov> wrote:

Of course! Please see below dial information for today, 12/3 at 1:00 p.m.

(b)(6)


From: Nathaniel Cogley (CENSUS/DEPDIR FED) <nathaniel.cogley@census.gov>
Sent: Thursday, December 3, 2020 9:56 AM
To: Benjamin A Overholt (CENSUS/DEPDIR FED) <benjamin.a.overholt@census.gov>;
Kline, Katherine E. EOP/WHO <Katherine.E.Kline@who.eop.gov>
Cc: Earl N Mayfield (CENSUS/DEPDIR FED) <earl.n.mayfield@census.gov>
Subject: Re: Today

1pm works for me too. Thanks for setting this up, Katherine.

—Nathaniel

Nathaniel Cogley, Ph.D.
Deputy Director for Policy
U.S. Census Bureau

From: Benjamin A Overholt (CENSUS/DEPDIR FED) <benjamin.a.overholt@census.gov>
Sent: Thursday, December 3, 2020 9:50 AM
To: Kline, Katherine E. EOP/WHO <Katherine.E.Kline@who.eop.gov>
Cc: Nathaniel Cogley (CENSUS/DEPDIR FED) <nathaniel.cogley@census.gov>; Earl N
Mayfield (CENSUS/DEPDIR FED) <earl.n.mayfield@census.gov>
Subject: Re: Today

1 works for me.

Sent from my iPhone

On Dec 3, 2020, at 9:47 AM, Kline, Katherine E. EOP/WHO
<Katherine.E.Kline@who.eop.gov> wrote:

Hi team,

Dr. Fleming will need to do a conference call with you all today. We have had 1:00 open up. Please let me know if 1:00 works for the group and I will send dial info.

Best,

Katherine Kline
Office of the Chief of Staff
O: 202-456-1208

From: [Earl N Mayfield \(CENSUS/DEPDIR FED\)](#)
To: [Kline, Katherine E. EOP/WHO](#)
Subject: Re: Waves Link - Tomorrow
Date: Monday, October 26, 2020 6:08:00 PM

Got it, thanks!

Trey Mayfield
Counsel to the Director of the United States Census
Office [\(301\) 763-0707](#)
(b)(6)

On Oct 26, 2020, at 5:52 PM, Kline, Katherine E. EOP/WHO
<Katherine.E.Kline@who.eop.gov> wrote:

Trey,

Apologies, it was just flagged for me that the team did not flag tomorrow's meeting. Please note the Census Updates Meeting will take place **tomorrow, October 27th** at **10:30 a.m.** in the **Roosevelt Room**. Additionally, the normal guest entrance located at 17th and State Place NW is closed and you will need to proceed to the 17th and G St NW Entrance to get onto campus.

Please complete the waves link ASAP.
<https://events.whitehouse.gov/AppointmentRsvpForm?rid=DPRHGD48PT>

Best,

Katherine Kline
Office of the Chief of Staff
O: 202-456-1208

From: [Earl N Mayfield \(CENSUS/DEPDIR FED\)](#)
To: [DeBacker, Devin A. \(OLC\)](#)
Cc: [Steinmetz, Michele](#); [Kepto, Abbie E. EOP/WHO](#); [Hamilton, Eric J. EOP/WHO](#); [Philbin, Patrick F. EOP/WHO](#); [Bhirud, Ketan](#); [Hamilton, Gene \(OAG\)](#)
Subject: Re: WHCO/OLC/DHS Connect
Date: Tuesday, November 3, 2020 12:07:26 PM

Pat, when you say you want everyone in the same room, does this mean that you want there to be a physical meeting as opposed to a conference call?

Trey Mayfield
Counsel to the Director of the United States Census
Office [\(301\) 763-0707](#)
(b)(6)

On Nov 3, 2020, at 11:02 AM, DeBacker, Devin A. (OLC)
<Devin.A.DeBacker@usdoj.gov> wrote:

Adding Gene Hamilton from DOJ.

Devin A. DeBacker
Deputy Assistant Attorney General
Office of Legal Counsel
U.S. Department of Justice
Office: (202) 514-4038
(b)(6)
devin.a.debacker@usdoj.gov

-----Original Message-----

From: (b)(6) >
Sent: Tuesday, November 3, 2020 10:58 AM
To: Kepto, Abbie E. EOP/WHO <Abigail.E.Kepto2@who.eop.gov>; Hamilton, Eric J. EOP/WHO <Eric.J.Hamilton@who.eop.gov>; Philbin, Patrick F. EOP/WHO <Patrick.F.Philbin@who.eop.gov>; DeBacker, Devin A. (OLC) <dadebacker@jmd.usdoj.gov>; Bhirud, Ketan (b)(6); earl.n.mayfield@census.gov
Subject: RE: WHCO/OLC/DHS Connect

Attached are the last round of documentation regarding the second data request from Census.

Thank you,

(b)(6)
Director, Immigration Data Integration Initiative
(b)(6)
Desk: 202-447-3685

(b)(6)

-----Original Appointment-----

From: Kepto, Abbie E. EOP/WHO <Abigail.E.Kepto2@who.eop.gov>

Sent: Monday, November 2, 2020 10:33 PM

To: Kepto, Abbie E. EOP/WHO; Hamilton, Eric J. EOP/WHO; Philbin, Patrick F. EOP/WHO; (b)(6); Devin.A.DeBacker@usdoj.gov; Bhirud, Ketan; earl.n.mayfield@census.gov

Subject: WHCO/OLC/DHS Connect

When: Tuesday, November 3, 2020 10:00 AM-10:30 AM Customized Time Zone.

(b)(6)

CAUTION: This email originated from outside of DHS. DO NOT click links or open attachments unless you recognize and/or trust the sender. Contact your component SOC with questions or concerns.

From: [Earl N Mayfield \(CENSUS/DEPDIR FED\)](#)
To: (b)(6)
Cc: [DeBacker, Devin A. \(OLC\)](#); [Kepto, Abbie E. EOP/WHO](#); [Hamilton, Eric J. EOP/WHO](#); [Philbin, Patrick F. EOP/WHO](#); [Bhirud, Ketan](#); [Gene Hamilton](#)
Subject: Re: WHCO/OLC/DHS Connect
Date: Tuesday, November 3, 2020 12:41:11 PM

That's completely fine with me. I was just checking.

Trey Mayfield
Counsel to the Director of the United States Census
Office [\(301\) 763-0707](#)
(b)(6)

On Nov 3, 2020, at 12:10 PM, (b)(6)
(b)(6) wrote:

I was assuming a conference call as I was starting to put together the list of DHS participants with Ketan. If you want it to be in person, I will add to the information I send to the DHS participants.

(b)(6)
Director, Immigration Data Integration Initiative

(b)(6)

From: Earl N Mayfield (CENSUS/DEPDIR FED) <earl.n.mayfield@census.gov>
Sent: Tuesday, November 3, 2020 12:07 PM
To: DeBacker, Devin A. (OLC) <Devin.A.DeBacker@usdoj.gov>
Cc: (b)(6) Kepto, Abbie E. EOP/WHO <Abigail.E.Kepto2@who.eop.gov>; Hamilton, Eric J. EOP/WHO <Eric.J.Hamilton@who.eop.gov>; Philbin, Patrick F. EOP/WHO <Patrick.F.Philbin@who.eop.gov>; Bhirud, Ketan (b)(6); Gene Hamilton <gene.hamilton@usdoj.gov>
Subject: Re: WHCO/OLC/DHS Connect

CAUTION: This email originated from outside of DHS. DO NOT click links or open attachments unless you recognize and/or trust the sender. Contact your component SOC with questions or concerns.

Pat, when you say you want everyone in the same room, does this mean that you want there to be a physical meeting as opposed to a conference call?

Trey Mayfield
Counsel to the Director of the United States Census
Office (301) 763-0707
(b)(6)

On Nov 3, 2020, at 11:02 AM, DeBacker, Devin A. (OLC)
<Devin.A.DeBacker@usdoj.gov> wrote:

Adding Gene Hamilton from DOJ.

Devin A. DeBacker
Deputy Assistant Attorney General
Office of Legal Counsel
U.S. Department of Justice
Office: (202) 514-4038
(b)(6)
devin.a.debacker@usdoj.gov

-----Original Message-----

From: (b)(6)
Sent: Tuesday, November 3, 2020 10:58 AM
To: Kepto, Abbie E. EOP/WHO <Abigail.E.Kepto2@who.eop.gov>;
Hamilton, Eric J. EOP/WHO <Eric.J.Hamilton@who.eop.gov>; Philbin,
Patrick F. EOP/WHO <Patrick.F.Philbin@who.eop.gov>; DeBacker, Devin
A. (OLC) <dadebacker@jmd.usdoj.gov>; Bhirud, Ketan
(b)(6) earl.n.mayfield@census.gov
Subject: RE: WHCO/OLC/DHS Connect

Attached are the last round of documentation regarding the second data
request from Census.

Thank you,

(b)(6)
Director, Immigration Data Integration Initiative
(b)(6)
(b)(6)
(b)(6)

-----Original Appointment-----

From: Kepto, Abbie E. EOP/WHO <Abigail.E.Kepto2@who.eop.gov>
Sent: Monday, November 2, 2020 10:33 PM

To: Kepto, Abbie E. EOP/WHO; Hamilton, Eric J. EOP/WHO; Philbin, Patrick F. EOP/WHO; (b)(6) Devin.A.DeBacker@usdoj.gov; Bhirud, Ketan; earl.n.mayfield@census.gov
Subject: WHCO/OLC/DHS Connect
When: Tuesday, November 3, 2020 10:00 AM-10:30 AM Customized Time Zone.

(b)(6)

CAUTION: This email originated from outside of DHS. DO NOT click links or open attachments unless you recognize and/or trust the sender. Contact your component SOC with questions or concerns.

From: [Nathaniel Cogley \(CENSUS/DEPDIR FED\)](#)
To: [Philbin, Patrick F. EOP/WHO; pfp2dcp@who.eop.gov](#)
Cc: [Earl N Mayfield \(CENSUS/DEPDIR FED\)](#)
Subject: Scan
Date: Thursday, November 12, 2020 11:31:17 AM
Attachments: [scan02.pdf](#)

Dear Pat,

Greetings. Please find the following scan concerning an ongoing deliberative legal issue attached. Trey Mayfield is CCed. Thanks in advance for your attention.

Sincerely,
Nathaniel

Nathaniel Cogley, Ph.D.
Deputy Director for Policy
U.S. Census Bureau

From: [Steven Dillingham \(CENSUS/DEPDIR FED\)](#)
To: katherine.e.kline@who.eop.gov
Subject: Scheduling of Brief Appointment with Dr. Fleming
Date: Friday, November 20, 2020 10:44:31 AM

Katherine,

I realize how busy Dr. Fleming is. Is there anyway I can have a three minute call or visit with him today?

Many thanks,

Steve

Steven D. Dillingham, Ph.D., Director
U.S. Census Bureau
o: 301-763-2135 | (b)(6)
[census.gov](https://www.census.gov) | [@uscensusbureau](https://twitter.com/uscensusbureau)

From: [Kevin Quinley \(CENSUS/ADCOM FED\)](#)
To: [Kevin Quinley \(CENSUS/ADCOM FED\)](#)
Bcc: [Mary Swoope](#); [Toni DeLancey](#); [Zgorski, Lisa Joy](#); [Lynch, Calder \(CMS/OA\)](#); [Ana Guevara](#); [Thomas Mulloy](#); [Father Michael Sorial](#); [Chris Leader](#); [Saccoccia, Tim](#); [Mason, Patrick](#); [Vickery, Ben \(Fed\)](#); [Sun, Ryan \(Federal\)](#); [Johnny Zokovitch](#); [John Johnson](#); [Amy Reumann](#); [James, Kathleen](#); [Jeffrey Woodworth - ZCC](#); [Claire Loxsom - QQBA](#); [usamarketing](#); [Jenny Smulson](#); [Travis Wussow](#); [Rich Rogers](#); [Wagner, Bridgett](#); [Heyl, Dean A - OSEC](#); [Johnston, Darcie \(HHS/IEA\)](#); [kemp@kemppartners.com](#); [Drema Johnson](#); [Natalia Mahmud](#); [JENNINGS, JAKE E](#); [GATLIN, ROLF](#); [Michele.Matthews@usn.salvationarmy.org](#); [Fr. Henry Sands](#); [Mealy Filomena](#); [Freeman Anne C](#); [dilligesaucier@peacecorps.gov](#); [\(b\)\(6\)](#); [Kimberly, Brad](#); [\(b\)\(6\)](#); [Laura Hellstern](#); [Smith, Tina \(Federal\)](#); [Noble, Erik U. EOP/OSTP](#); [Heilig, Rebecca B. EOP/WHO](#)
Subject: Spread the Word: Time is Running Out to Respond to the 2020 Census
Date: Monday, September 14, 2020 3:16:58 PM

Good afternoon:

Beginning on [Constitution Day, September 17](#), through **Sunday, September 20**, please join Census Bureau partners nationwide in reminding your network that time is running out to respond to the 2020 Census.

We have a couple of ways that you can get involved. Share [this 2020 Census graphic](#) with your social media followers using the hashtag #2020Census, and post [this 2020 Census banner](#) on your website. Plan to send an email or text message reminder to your employees with a link to respond at [2020census.gov](#), and post a reminder on your intranet. Chalk the sidewalk in high-traffic areas of your community with a 2020 Census reminder.

Here are a list of resources you can use this weekend:

- Time is Running Out Social Media Graphics – [Graphic 1](#), [Graphic 2](#)
- Time is Running Out Web Badges and Banner – [Badge 1](#), [Badge 2](#), [Banner](#)
- [2020 Census Outreach Materials](#)
- [Where to Count Yourself If You Haven't Responded Yet](#)
- [Sample Drop-In Messages to Encourage Response](#)

Thank you for your continued support as we move toward our goal of counting everyone in the 2020 Census.

Kevin

From: Kevin Quinley (CENSUS/ADCOM FED)
Sent: Thursday, September 10, 2020 4:56 PM
To: Kevin Quinley (CENSUS/ADCOM FED) <kevin.quinley@census.gov>
Subject: Save the Date -- Last Push for 2020 Census Coming on September 18-20

Good afternoon:

Thanks for your support of the 2020 Census throughout our campaign. It's been a marathon, but we are near the finish line. You may have seen that we are over 89% total response (here's a nice [infographic about passing 85%](#)).

As of yesterday, [we're above 90% total completion in 28 states](#). However, as you can see

from the link, there are still areas where we need help like Alabama, Georgia, Mississippi, Montana and Arizona.

Next week, we will be doing one final coordinated push where we urge our partners to promote the Census on social media and their websites. I am bringing this to your attention for now, and next week I will provide further information along with graphics you can use.

Have a nice evening.

Kevin

Kevin Quinley, Director of Strategic Initiatives
Communications Directorate
U.S. Census Bureau

(b)(6)

[census.gov](https://www.census.gov) | [@uscensusbureau](https://twitter.com/uscensusbureau)

Shape your future. START HERE > 2020census.gov

From: [Nathaniel Cogley \(CENSUS/DEPDIR FED\)](#)
To: [Fleming, John C. Jr. EOP/WHO](#)
Subject: TRO Extension
Date: Thursday, September 17, 2020 4:48:33 PM
Attachments: [142 - TRO EXTENSION.pdf](#)

FYI

United States District Court
Northern District of California

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

NATIONAL URBAN LEAGUE, et al.,
Plaintiffs,
v.
WILBUR L. ROSS, et al.,
Defendants.

Case No. 20-CV-05799-LHK

**ORDER EXTENDING TEMPORARY
RESTRAINING ORDER FOR
DEFENDANTS' PARTIAL
PRODUCTION OF THE
ADMINISTRATIVE RECORD**

Plaintiffs National Urban League; League of Women Voters; Black Alliance for Just Immigration; Harris County, Texas; King County, Washington; City of Los Angeles, California; City of Salinas, California; City of San Jose, California; Rodney Ellis; Adrian Garcia; National Association for the Advancement of Colored People; City of Chicago, Illinois; County of Los Angeles, California; Navajo Nation; and Gila River Indian Community (collectively, "Plaintiffs") sue Defendants Commerce Secretary Wilbur L. Ross, Jr.; the U.S. Department of Commerce; the Director of the U.S. Census Bureau Steven Dillingham, and the U.S. Census Bureau ("Bureau") (collectively, "Defendants") for violations of the Enumeration Clause and Administrative Procedure Act ("APA").

Plaintiffs seek to preliminarily enjoin Defendants from implementing Defendants' August 3, 2020 Replan. The Replan shortens census data collection and processing timelines from the eight months set forth in the Defendants' April 13, 2020 COVID-19 Plan to four months. The first approaching Replan deadline is the September 30, 2020 deadline for the end of data collection, which consists of both self-responses to Census questionnaires and Non-Response Follow Up ("NRFU") field operations. Under the COVID-19 Plan, data collection would end on October 31, 2020. Plaintiffs claim that the Replan's shortened timelines will unlawfully harm the accuracy of crucial census data.

On September 5, 2020, the Court granted Plaintiffs' motion for a Temporary Restraining Order ("TRO") in order to preserve the status quo until the September 17, 2020 hearing on Plaintiffs' motion for stay and preliminary injunction ("preliminary injunction motion"). ECF No. 84 at 2.

On September 10, 2020, the Court ordered Defendants to produce the administrative record on September 13 and 16, 2020. ECF No. 96. Defendants have failed to comply with that order. As of today, September 17, 2020, Defendants have failed to produce the administrative record. Because of Defendants' failure to comply with the Court's Order to Produce the Administrative Record and the need for the Court to rule on Plaintiffs' preliminary injunction motion quickly, the parties and the Court agreed that on September 18, 2020 Defendants shall produce the documents that Defendants produced to the United States Department of Commerce Office of the Inspector General ("OIG production") regarding the Defendants' decision to adopt the Replan. ECF No. 132. Defendants have represented that the OIG production includes about 1,800 documents totaling about 15,000 pages. ECF No. 141 at 26:15–16. Defendants have represented that they may assert the deliberative process, attorney-client, attorney work product, and White House privileges as to the OIG production. *Id.* at 35:25–36:18.

Accordingly, Defendants' September 18, 2020 OIG production has necessitated a continuance of the preliminary injunction hearing from September 17, 2020 to September 22,

2020 to allow for the following:

- September 18, 2020: Defendants to produce the OIG production and a privilege log
- September 19, 2020: Plaintiffs to file any objections to Defendants' assertions of privilege
- September 20, 2020: Defendants to file responses to Plaintiffs' privilege objections and the parties to file supplemental briefs on the motion for preliminary injunction addressing the OIG production
- September 21, 2020: United States Magistrate Judges to rule on the parties' privilege disputes
- September 22, 2020: Hearing on motion for preliminary injunction

ECF No. 140. The Court understands the urgency of issuing a ruling on the motion for preliminary injunction. To that end, the Court has issued rulings within 24 hours and 48 hours throughout this case thus far. The Court will issue its reasoned decision on the motion for preliminary injunction as soon as possible after the September 22, 2020 hearing. However, because of the complexity of the issues and the fact that 1,800 documents may be produced three days before the hearing, the Court finds good cause to extend the TRO until the Court issues its decision on the preliminary injunction motion or through September 24, 2020, whichever is sooner.

I. PROCEDURAL HISTORY

The procedural history of this case is necessary to understand why there is good cause to extend the TRO. The Court thus recounts the events leading up to the TRO, the issuance of the TRO, and Defendants' subsequent failure to produce the administrative record. In brief, the timeline below is as follows: (1) at first, Defendants denied the existence of an administrative record; (2) Defendants then disclosed that there are documents that were considered by agency decisionmakers at the time of the decision to adopt the Replan and that field operations are already winding down; (3) the Court issued a TRO that expires on September 17, 2020; (4) the Court ordered production of the administrative record; and (5) despite that order, Defendants failed to

1 produce the administrative record. The Court details each event in turn.

2 **A. At First, Defendants Repeatedly Denied the Existence of an Administrative Record.**

3 On August 18, 2020, Plaintiffs filed suit to challenge the Census Bureau’s August 3, 2020
4 Replan which advanced the 2020 Census deadlines for self-responses to Census questionnaires,
5 Non-Response Follow-Up (“NRFU”) field operations, data processing, and deadlines for reporting
6 Census counts to the President and the states.

7 To allow Plaintiffs to effectively challenge the Replan, including the September 30, 2020
8 end of data collection, the parties stipulated to a briefing schedule and hearing date of September
9 17, 2020 on Plaintiffs’ motion for stay and preliminary injunction (hereafter, “motion for
10 preliminary injunction”). ECF No. 35. Pursuant to that schedule, Plaintiffs filed a motion for a
11 preliminary injunction on August 25, 2020 based on their claims under the Enumeration Clause
12 and the APA. ECF No. 36.

13 On August 26, 2020, the Court held a case management conference. At that conference, the
14 Court asked Defendants whether there was an administrative record for the purposes of APA
15 review. Defendants repeatedly denied the existence of an administrative record. *E.g.*, ECF No. 65
16 at 9:22–24 (Q: “Is there an administrative record in this case?” A: “No, Your Honor. On behalf of
17 the Defendants, no, there’s not.”), 10:17–18 (“[A]t this point there is no administrative record.”).
18 Rather, Defendants suggested that the only document that provided the contemporaneous reasons
19 for the Replan was the Bureau’s August 3, 2020 press release. *Id.* at 20:6–7 (“[A]t this point I’m
20 not aware of any other documents, but I would propose that I check with my client . . .”). Even
21 so, the Court instructed Defendants that “[i]f there’s an administrative record, it should be
22 produced. [The Court] will need it to make a decision in this case.” *Id.* at 10:13–14.

23 **B. Defendants Disclosed That There Are Documents Considered by Agency**
24 **Decisionmakers at the Time the Replan Was Adopted and that Field Operations are**
Already Concluding.

25 To assist the Court in determining by what date a ruling on Plaintiffs’ motion for
26 preliminary injunction must be issued, Defendants agreed to file a statement by September 2, 2020

as to when the winding down of field operations would begin relative to the September 30, 2020 deadline for ending data collection. Defendants filed the following statement:

[T]he Census Bureau has already begun taking steps to conclude field operations. Those operations are scheduled to be wound-down throughout September by geographic regions based on response rates within those regions. As will be described in Defendants' forthcoming filing on Friday, September 4, 2020, any order by the Court to extend field operations, regardless of whether those operations in a particular geographic location are scheduled to be wound-down by September 30 or by a date before then, could not be implemented at this point without significant costs and burdens to the Census Bureau.

ECF No. 63. Based on Defendants' statement, Plaintiffs moved on September 3, 2020 for a TRO to preserve the status quo for 12 days until the September 17, 2020 preliminary injunction hearing.

ECF No. 66. On September 4, 2020, Defendants opposed the motion, ECF No. 74, and the Court held a hearing on the motion. During the hearing, Defendants relied upon a declaration that would be filed later that evening in opposition to Plaintiffs' motion for preliminary injunction. ECF No. 81-1. On September 5, 2020, Plaintiffs filed a reply. ECF No. 83.

At the September 4, 2020 hearing on the motion for a TRO, Defendants reiterated their position that no administrative record existed, ECF No. 82 at 33:13–15, but disclosed that there were documents considered by agency decisionmakers at the time the Replan was adopted.

Defendants stated:

The Census Bureau generates documents as part of its analysis and as part of its decisions and as part of its deliberations. And there are documents that the Replan was not cooked up in a vacuum, it was part of the agency's ongoing deliberations. And so certainly there are going to be documents that reflect those documents [sic].

Id. at 33:2–7. That said, Defendants said no administrative record technically existed because “the documents that fed into the operational plans and the operational decisions are internal documents that are subject to the deliberative process privilege.” *Id.* at 32:14–16.

Only a few minutes later, however, Defendants retracted their assertion of deliberative process privilege. *Id.* at 36:15–:17 (“[T]o be clear, we are not asserting the deliberative process privilege because there is no record and there's nothing to consider.”). Defendants conceded that “[i]f there is final agency action that is reviewable and the APA applies, we would have an

obligation to produce the administrative record.” *Id.* at 35:24–36:1. However, Defendants urged the Court to rely solely on the declaration that Defendants would file that evening with Defendants’ opposition to the motion for preliminary injunction. *E.g., id.* at 16:21–23 (“We will not be filing documents in addition to the declaration.”). Indeed, when Defendants filed their opposition that night, Defendants’ only evidence was the declaration of Albert E. Fontenot, Jr., Associate Director for Decennial Census Programs at the U.S. Census Bureau. ECF No. 81.

C. The Court Issued a TRO That Expires on the September 17 Hearing Date.

On September 5, 2020, the Court issued a TRO after full briefing and a hearing on the motion. ECF No. 84. The Court made the requisite TRO findings. Specifically, the Court found that the balance of the hardships tipped sharply in Plaintiffs’ favor; that Plaintiffs presented serious questions going to the merits at least as to Plaintiffs’ claims under the APA; that Plaintiffs would likely suffer irreparable harm without a TRO; and that a TRO would further the public interest. ECF No. 84.

The Court also expressly recognized that TROs “serv[e] the[] underlying purpose of preserving the status quo and preventing irreparable harm just so long as is necessary to hold a hearing, and no longer.” *Id.* at 2 (quoting *Granny Goose Foods, Inc. v. Bhd. of Teamsters & Auto Truck Drivers Local No. 70 of Alameda Cty.*, 415 U.S. 423, 439 (1974)). Thus, the Court ordered that the TRO expire after the “September 17, 2020 hearing on Plaintiffs’ PI motion.” *Id.* at 7. The Court incorporates its TRO, ECF No. 84, herein by reference.

D. The Court Ordered Production of the Administrative Record.

On September 8, 2020, three days after issuing the TRO, the Court held a case management conference and inquired into Defendants’ earlier statements about documents considered by the agency decisionmakers when the Replan was adopted. Defendants again stated that “there is no administrative record in this case because there is no APA action.” ECF No. 98 at 62:15–16.

Even so, Defendants confirmed their statements from the TRO hearing that the Replan is

“indeed codified.” *Id.* at 21:7. The Replan simply was “not necessarily codified in one particular document.” *Id.* at 21:9–10. Accordingly, Plaintiffs asked the Court to order Defendants to produce the administrative record. *E.g., id.* at 43:16–17. The parties briefed the issue on September 8 and 9, 2020. *See* ECF Nos. 88–89, 92.

On September 10, 2020 at 2:46 a.m., the Court issued its Order to Produce the Administrative Record. ECF No. 96. In response to Defendants’ claim that the Court needed to address threshold arguments before ordering production, the Court addressed those arguments to avoid any doubt about its authority to compel production. Specifically, the Court addressed whether the Replan presented a political question, whether Plaintiffs have standing to challenge the Replan, whether the Replan constitutes final agency action, and whether the Replan is not committed to agency discretion by law. *Id.* at 9. The Court ruled in Plaintiffs’ favor on each threshold issue. Thus, the Court concluded that the instant case was reviewable. The Court noted, though, that its conclusions in this APA case were necessarily “provisional” and “subject to change after production of Defendants’ administrative record.” *Id.* at 8; *see id.* at 9–17.

The Court then explained why the Court could not rely solely on Associate Director Fontenot’s declaration, as Defendants so insisted. *Id.* at 19–21. In short, for APA claims, “the focal point for judicial review should be the administrative record.” *Id.* at 20 (quoting *Camp v. Pitts*, 411 U.S. 138, 142 (1973)). Litigation affidavits such as Associate Director Fontenot’s are thus impermissible “post hoc rationalizations” that are “manifestly inappropriate” bases for the Court’s review. *Id.* (first quoting *Overton Park, Inc. v. Volpe*, 401 U.S. 402, 419 (1972); then quoting *Cnty. for Creative Non-Violence v. Lujan*, 908 F.2d 992, 998 (D.C. Cir. 1990) (R. Ginsburg, Thomas, Sentelle, JJ.)).

For all those reasons, the Court concluded that Defendants must produce the administrative record. However, because of the competing need to resolve the motion for preliminary injunction as quickly as possible, the Court split the production into three stages. The first two stages (the “September 13 Production” and the “September 16 Production”) would be completed before the

September 17, 2020 preliminary injunction hearing and would be limited to documents with certain subject matters, date range, and custodians. Specifically, the Court's order for the first two stages of production was:

By September 13, 2020, Defendants Bureau Director Steven Dillingham and Secretary of Commerce Wilbur Ross and all of their direct reports/subordinates shall file the following, and a privilege log for any privileged documents: All documents comprising the Replan and its various components for conducting the 2020 Census in a shortened time period, including guidance, directives, and communications regarding same. The date range of the documents is April 13, 2020 to August 3, 2020. These custodians can limit their review to documents and materials directly or indirectly considered during these four months.

By September 16, 2020, Associate Director Fontenot, his subordinates, and the individuals engaged with Fontenot to consider and prepare the Replan shall file the following, and a privilege log for any privileged documents: All documents and materials directly or indirectly considered when making the decision to replace the COVID-19 Plan with the Replan. The date range of the documents is April 13, 2020 to August 3, 2020. These custodians can limit their review to documents and materials directly or indirectly considered during these four months.

Id. at 21. As for the final stage of production, the Court specified it would consult with the parties on a schedule after the preliminary injunction ruling. *Id.* at 22. Moreover, given these production deadlines, the Court continued the deadline for Plaintiffs' reply in support of their preliminary injunction motion from September 10 to September 15, 2020. The Court incorporates the Order to Produce the Administrative Record, ECF No. 96, herein by reference.

E. Despite the Court's Order, Defendants Failed to Produce the Administrative Record.

On September 13, 2020 at 11:45 a.m. Pacific Time, twelve hours before the production deadline, Defendants filed a notice stating that they had identified more than 8,800 documents as responsive for the September 13 Production, but that Defendants had reviewed only 2,484 of those documents. ECF No. 104 at 2. Defendants stated that "[r]eview of the remaining documents remains ongoing" and that "[b]ecause review of the remaining documents remains ongoing, and due to the volume of documents involved, Defendants will be unable to produce or log any additional documents today." *Id.* Moreover, Defendants did not identify when they would

complete the September 13 Production.

At the September 14, 2020 case management conference, Defendants stated that their next production would be on September 16, 2020, but that they “d[id] not anticipate” completing the September 13, 2020 Production on September 16, 2020. ECF No. 126 at 22:6. Moreover, Defendants stated that they were still collecting documents for the September 16 Production and did not know how many documents would be responsive. *See, e.g., id.* at 20:6–10. Overall, Defendants stated that they would be unable to comply with the Court’s Order to Produce the Administrative Record because compliance would be “a physical impossibility.” *Id.* at 41:16–17.

In response to Defendants’ failure to comply with the Court’s order on September 13, 2020, Plaintiffs filed the Department of Commerce Inspector General’s August 13, 2020 Information Memorandum for Secretary of Commerce Wilbur Ross, which included the following Request for Information:

To assist the OIG [“Office of Inspector General”] in its oversight responsibilities, please provide all documents or communications, including but not limited to email, instant messages, and text messages:

1. Discussing or referring in any manner to the decision to accelerate the 2020 Census schedule as described in the August 3, 2020 press release.
2. Detailing the persons involved, and their respective involvement, in the decision to accelerate the 2020 Census schedule.
3. Detailing the reasons for the decision to accelerate the 2020 Census schedule.

Please provide all requested documents and communications by close of business Monday, August 17, 2020. You may also produce any additional documentation or information you deem relevant to this request for information.

ECF No. 111-2 at 5. Plaintiffs also noted that Associate Director Fontenot had averred that the Census Bureau had produced many documents to the OIG. ECF No. 111 at 5 (citing Fontenot Decl., ECF No. 81-1 at 36 ¶ 103). Associate Director Fontenot did not disclose the OIG’s Request for Information about the Replan, but rather spoke in more general terms: “We produce a massive amount of documents and other information to the Office of the Inspector General and the General

Accounting Office every week, and these organizations interview Census Bureau staff on almost a daily basis.” ECF No. 81-1 at 36 ¶ 103. In other words, Defendants had neither disclosed to the Court the OIG’s Request for Information nor produced the OIG documents in response to the Court’s Order to Produce the Administrative Record. *See* ECF No. 111-2 at 5.

Given that Defendants had already produced documents to the OIG—and that Defendants would fail to produce even a partial administrative record before the September 17, 2020 preliminary injunction hearing—the Court asked Defendants two questions: (1) if Defendants had “complied in whole or in part” with the OIG’s Request for Information; and (2) if Defendants would agree to producing *in camera* “the documents Defendants [had] produced to the Inspector General that would constitute the administrative record or would be included in the administrative record.” ECF No. 119 at 3. The Court further proposed that it “would treat all such documents as privileged and conduct an *in camera* review. If the Court determines that a document is not privileged, Defendants shall have an opportunity to object to the Court’s determination. The Court would not consider in its determination of Plaintiffs’ motion for stay and preliminary injunction any privileged documents.” *Id.*

Defendants’ September 14, 2020 response represented that Defendants had “complied with the OIG request at issue.” ECF No. 122 at 2. As to producing the OIG production in the instant case, Defendants’ September 14, 2020 response, ECF No. 122 at 2, agreed that Defendants “would be willing to provide to the Court all of the documents that the Census Bureau and the Department of Commerce provided to the Department of Commerce Office of Inspector General . . . on the understanding that:”

1. The Court would treat all such documents as privileged and conduct an *in camera* review. If the Court determines that a document is not privileged, Defendants shall have a reasonable opportunity to object to the Court’s determination;
2. The Court would not base its resolution of the preliminary injunction on privileged documents; and
3. The documents that the Court finds to be non-privileged, along with the nonprivileged documents that Defendants have already produced, shall be deemed by the Court to

constitute the entire record in this matter. Defendants will not be required to conduct further document searches, reviews, or productions, or respond to any discovery, to develop a record in this case.

Id.

On September 15, 2020, Plaintiffs replied with three major points. First, Plaintiffs stated that “Defendants must ultimately produce the complete AR [administrative record].” ECF No. 129 at 2. Second, to assess to what extent the OIG production comprises a complete record, Plaintiffs asked the Court to order Defendants “to file a declaration from a knowledgeable source attesting to the following:”

(1) whether the production included materials from the Secretary and his subordinates, in addition to the Census Bureau; (2) what time frame was searched for these documents; (3) what custodians were searched; (4) whether the Department complied fully with the scope of the production request; (5) the exact date on which the documents were produced to OIG; (6) whether any portion of the production to OIG is still outstanding; and (7) how many documents were produced.

Id. Third, Plaintiffs asked that within two days after the production and review of the OIG production, the parties would have the opportunity to file simultaneous briefs addressing the OIG production.

The Court inquired further into producing the OIG documents at the September 15, 2020 hearing on allegations of Defendants’ potential non-compliance with the TRO. At that hearing, Defendants at first reiterated that they were “very confident” that they had complied with the OIG request and that they had completed their production to the OIG. ECF No. 141 at 32:9. However, Defendants later clarified that Defendants had not completed their production to the OIG and that Defendants’ production was “substantially complete.” *Id.* at 35:10. “One document” remained “outstanding that is still undergoing review.” *Id.* at 34:11–14. Moreover, Defendants did not know the OIG production’s custodians (such as whether the Secretary Ross’s office was included), timeframe searched, or dates of production. *See, e.g., id.* at 29:14–15 (Defendants: “I, off the top of my head, do not know all the custodians whose files were pulled for the OIG production.”); *id.* at 30:6–7 (The Court: “What timeframe was searched for these documents?” Defendants: “So I

also don't have the precise timeframe, Your Honor."); *id.* at 31:4–9 (The Court: "So when were they produced?" Defendants: "Over the course of weeks, Your Honor." The Court: "I know. From what date to what date? From when to when?" Defendants: "I don't have the specifics, Your Honor.").

Defendants did, however, represent that the OIG production comprised of about 1,800 documents totaling about 15,000 pages. *Id.* at 26:15–16. Defendants further stated that they "would anticipate" asserting four different privileges over the OIG production, including deliberative process, attorney-client, attorney work product, and White House privileges. *Id.* at 35:25–36:18. In addition, even though Defendants did not have a confirmed method of producing the documents to the Court, Defendants continued to oppose the Court's proposed extension of the TRO. *See id.* at 51:13–25. Without an extension, the TRO would expire on September 17, 2020.

Given the exigency, both parties agreed that "in the short term, focusing on the OIG documents for purposes of getting to a PI ruling and whatever appeal follows makes sense." *Id.* at 72:19–21; *see id.* at 33:14–22, 41:6–9 (Defendants' agreement). The Court thus ordered Defendants to produce the OIG documents that would constitute the administrative record or would be included in the administrative record, stayed the Order to Produce the Administrative Record until a case management conference after the impending preliminary injunction decision, and continued the preliminary injunction hearing to Tuesday, September 22, 2020. *Id.* at 71–77; *see* ECF No. 132. As the Court found, both the parties and the Court were "running out of time." ECF No. 141 at 38:6, 71:14. The Court's Order to Produce Inspector General Document Production, ECF No. 132, is incorporated herein by reference.

II. DISCUSSION

Plaintiffs argue that "the record demonstrates good cause to extend the TRO for two independent reasons." ECF No. 111 at 4. "First, good cause exists because Defendants have not complied with the Court's order requiring production of the [administrative record] in this case." *Id.* "Second, good cause exists if the Court needs 'more time' to 'fully . . . consider the parties'

arguments and motions.” *Id.* (quoting *Costa v. Bazron*, 2020 WL 2410502, at *2 (D.D.C. May 11, 2020)). The Court agrees.

A. Defendants’ Violation of the Court’s Order to Produce the Administrative Record Has Necessitated Delay of the Preliminary Injunction Hearing and Extension of the TRO.

As detailed above, Defendants failed to complete even the first stage of ordered production of the administrative record. Nor did Defendants expect to complete the first production by the September 17, 2020 preliminary injunction hearing date and TRO expiration date. Specifically, on September 13, 2020, Defendants produced only a quarter of the September 13, 2020 Production with more than 12 hours to spare and refused to produce more that day. *See* ECF No. 104 at 2 (stating that Defendants had reviewed only 2,484 of more than 8,800 documents, but that “Defendants will be unable to produce or log any additional documents today.”) Then, at the September 14, 2020 case management conference, Defendants stated that they “d[id] not anticipate” completing the September 13, 2020 Production on September 16, 2020. ECF No. 126 at 22:6.

As for the September 16 Production, Defendants stated that they were still collecting documents for it and did not know how many documents would be responsive. *See, e.g., id.* at 20:6–10. Overall, Defendants stated that they would be unable to comply with the Court’s Order to Produce the Administrative Record because compliance would be “a physical impossibility.” *Id.* at 41:16–17. Much of this asserted “physical impossibility” the Court suspects is of Defendants’ own making. The instant case has been, from its very start on August 18, 2020, a case arising under the APA. In an APA case, it is settled that “review is to be based on the full administrative record that was before the Secretary at the time he made his decision.” *Overton Park, Inc. v. Volpe*, 401 U.S. 402, 420 (1972); *accord, e.g., Camp*, 411 U.S. at 142 (explaining that “[t]he focal point for judicial review [of APA claims] should be the administrative record”); *Creative Non-Violence v. Lujan*, 908 F.2d at 998 (holding that relying on litigation affidavits rather than the administrative record is “manifestly inappropriate”). Defendants’ repeated denial of the existence of an

administrative record and failure to make any attempt to collect the administrative record over the past month have necessitated delay of the preliminary injunction hearing and extension of the TRO.

B. The Need for Partial Production of the Administrative Record and to Preserve the Status Quo Constitutes “Good Cause” for an Extension of the TRO.

In any event, to expeditiously resolve Plaintiffs’ motion for preliminary injunction, the Court has ordered Defendants to produce a stipulated partial administrative record that Defendants already produced (or is about to produce) to the United States Department of Commerce Office of Inspector General. *See* 5 U.S.C. § 706 (providing that “the court shall review the whole record or those parts of it cited by a party”); ECF No. 141 at 33:14–22 (Defendants’ agreement), 72:19–21 (Plaintiffs’ agreement); *cf. Walter O. Boswell Mem’l Hosp. v. Heckler*, 749 F.2d 788, 793 (D.C. Cir. 1984) (holding that “in the circumstances of this case”—an appeal resolved more than a year after a district court decision that was neither expedited nor interlocutory—the district court should have considered the “whole record”).¹ Defendants must either produce or add to their privilege log about 1,800 documents. Defendants have represented that they may assert deliberative due process, attorney-client, attorney work product, and White House privileges as to these documents. Plaintiffs must review the production and file any privilege objections. Defendants must respond to the objections. United States Magistrate Judges must resolve the parties’ privilege disputes. The

¹ As the Court has repeatedly stated and the parties understand, the Court may need to review the “whole record” after deciding the motion for preliminary injunction. 5 U.S.C. § 705. “The ‘whole’ administrative record [] consists of all documents and materials directly or *indirectly* considered by agency decision-makers and includes evidence contrary to the agency’s position.” *Thompson v. U.S. Dept. of Labor*, 885 F.2d 551, 555 (9th Cir. 1989) (emphasis in original) (quoting *Exxon Corp. v. Department of Energy*, 91 F.R.D. 26, 32 (N.D. Tex. 1981)); *see also IMS, P.C. v. Alvarez*, 129 F.3d 618, 623–624 (D.C. Cir. 1997) (“It is a widely accepted principle of administrative law that the courts base their review of an agency’s actions on the materials that were before the agency at the time its decision was made.”); 33 Wright & Miller’s Federal Practice & Procedure: Judicial Review § 8391 & n.8 (2d ed. Apr. 2020 update) (“[T]he ‘record’ for informal proceedings [i]s, in essence, including all the relevant material that the decision-maker considered before taking action.”).

parties must file supplemental briefs on the motion for preliminary injunction addressing the OIG production. The Court must hold a hearing and issue a reasoned decision. Clearly, all this will not happen when the TRO expires on September 17, 2020, the day before Defendants produce the OIG production on September 18, 2020.

If the TRO expires, Plaintiffs would face hardships that tip sharply in their favor and would likely suffer irreparable harm. Moreover, Plaintiffs have shown serious questions going to the merits and that a TRO is in the public interest. *See* ECF No. 84. All told, the same conditions that warranted a TRO on September 5, 2020 still hold true today. *See* 11A Wright & Miller's Federal Practice & Procedure: Civil § 2953 (3d ed. Apr. 2020 update) ("Although there does not seem to be any case law on what constitutes 'good cause' for purposes of extending a Rule 65(b) order, a showing that the grounds for originally granting the temporary restraining order continue to exist should be sufficient.").

Even Associate Director Fontenot stated in his declaration that field staff are terminated when field operations stop, and it is difficult to bring back field staff once they are terminated. Associate Director Fontenot in effect requested that if the Court were to enjoin the Defendants, the Court should do so sooner rather than later, so that Defendants would not terminate field staff. Specifically, Associate Director Fontenot stated:

Lack of field staff would be a barrier to reverting to the COVID Schedule were the Court to rule later in September. The Census Bureau begins terminating staff as operations wind down, even prior to closeout. Based on progress to date, as is standard in prior censuses, we have already begun terminating some of our temporary field staff in areas that have completed their work. It is difficult to bring back field staff once we have terminated their employment. Were the Court to enjoin us tomorrow we would be able to keep more staff on board than were the Court to enjoin us on September 29, at which point we will have terminated many more employees.

ECF No. 81-1 at 35 ¶ 98.

Accordingly, like other courts in analogous circumstances, the Court finds good cause to extend the TRO. In fact, the Federal Rules of Civil Procedure authorize the Court to grant a TRO for 14 days without hearing from Defendants and to extend that TRO an additional 14 days for

1 good cause for a total of 28 days. *See* Fed. R. Civ. P. 65(b)(2) (“The order expires at the time after
2 entry—not to exceed 14 days—that the court sets, unless before that time the court, for good
3 cause, extends it for a like period or the adverse party consents to a longer extension.”); *see*
4 generally 11A Federal Practice & Procedure, *supra*, § 2953 (collecting cases on 28-day limit). In
5 the instant case, the duration of the Court’s TRO was 12 days, and the Court’s extension in the
6 instant case is seven days or fewer.

7 Other courts have found good cause to extend TROs on the same grounds present in the
8 instant case. *See, e.g., H-D Michigan, LLC v. Hellenic Duty Free Shops S.A.*, 694 F.3d 827, 843–
9 45 (7th Cir. 2012) (allowing TRO extensions “to give the parties sufficient time to prepare for a
10 preliminary injunction hearing” so long as the TRO does not last longer than 28 days); *Costa*,
11 2020 WL 2410502, at *2 (finding good cause “because the parties need time to brief, and the
12 Court needs time to consider, the forthcoming motion for a preliminary injunction”); *Acosta*
13 *Ginger Green, Inc.*, No. 2:18-CV-4098, 2018 WL 3361397, at *1 (C.D. Cal. May 18, 2018)
14 (extending TRO for good cause because, among other things, the restrained party failed to comply
15 with a subpoena for documents).

16 Moreover, failing to extend the TRO would fail to “preserv[e] the status quo.” *Granny*
17 *Goose Foods, Inc. v. Bhd. of Teamsters & Auto Truck Drivers Local No. 70 of Alameda Cty.*, 415
18 U.S. 423, 439 (1974); *accord, e.g., E. Bay Sanctuary Covenant v. Trump*, 932 F.3d 742, 779 (9th
19 Cir. 2018) (“a TRO ‘should be restricted to . . . preserving the status quo and preventing
20 irreparable harm just so long as is necessary to hold a hearing and no longer”) (ellipsis in original).

21 To be sure, Defendants have asserted that an extended TRO may effectively become an
22 appealable preliminary injunction. That assertion, however, is inapt here. A TRO only becomes a
23 preliminary injunction in “extraordinary circumstances.” *Washington v. Trump*, 847 F.3d 1151,
24 1158 (9th Cir. 2017) (per curiam). In *Washington*, for example, “[t]he district court’s order has no
25 expiration date, and no [preliminary injunction] hearing has been scheduled.” *Id.* The Government
26 also “argued that emergency relief is necessary to support its efforts to prevent terrorism.” *Id.*; *see*
27

1 *also Serv. Employees Int'l Union v. Nat'l Union of Healthcare Workers*, 598 F.3d 1061, 1067 (9th
2 Cir. 2010) (appealable “TRO” lasted longer than three months until preliminary injunction
3 hearing, and the district court had held two-day evidentiary hearing). Here, the TRO has an
4 expiration date. A hearing on the motion for preliminary injunction is scheduled on September 22,
5 2020. The Government does not allege that extending the TRO in the instant case puts our national
6 security at risk. Thus, extending the TRO to allow Defendants to produce a partial administrative
7 record will enable the Court to evaluate Plaintiffs’ APA claims when ruling on the motion for
8 preliminary injunction.

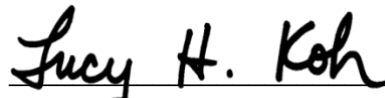
9 Thus, the Court exercises its discretion to extend the TRO up to seven days until the Court
10 issues its decision on the preliminary injunction motion or through September 24, 2020, whichever
11 is sooner. The Court understands the gravity of the situation and the parties’ need for a prompt
12 ruling on the Plaintiffs’ motion for preliminary injunction to allow for appellate review. To that
13 end, the Court has ruled expeditiously on motions thus far. The Court ruled on Plaintiffs’ motion
14 for TRO within 48 hours. The Court likewise ordered production of the administrative record at
15 2:46 a.m. on September 10, 2020—also within 48 hours after Defendants confirmed that the
16 Replan was “codified” and Plaintiffs moved for production of the administrative record. The Court
17 issued the Order to Produce Inspector General Document Production within 24 hours of Plaintiffs’
18 identification of the OIG production and Defendants’ agreement to produce it in the instant case.

19 In sum, based on Defendants’ violation of the Court’s Order to Produce the Administrative
20 Record as discussed above, an extension of the TRO is necessary for Defendants to produce the
21 OIG production and a privilege log; for the parties to litigate objections to at least four different
22 grounds of privilege; for United States Magistrate Judges to resolve the parties’ privilege disputes;
23 for the parties to file supplemental briefs on the motion for preliminary injunction addressing the
24 OIG production; and for the Court to hold a hearing on the motion for preliminary injunction and
25 to issue a reasoned decision. Accordingly, the Court extends the TRO until the Court issues its
26 decision on the preliminary injunction motion or through September 24, 2020, whichever is

1 sooner.

2 **IT IS SO ORDERED.**

3
4 Dated: September 17, 2020



LUCY H. KOH
United States District Judge

United States District Court
Northern District of California