

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

STATE OF NEW YORK, et al.,

Plaintiffs,

v.

UNITED STATES DEPARTMENT
OF COMMERCE, et al.,

Defendants.

18-CV-2921 (JMF)

NOTICE OF FILING OF TRIAL AFFIDAVITS

Plaintiffs hereby file with the Court the following trial affidavits:

1. Oct. 25, 2018 Affidavit of Susan Brower (Ex. 1).
2. Nov. 3, 2018 Supplemental Affidavit of Susan Brower (Ex. 2)
3. Oct. 26, 2018 Affidavit of George Escobar (Ex. 3)
4. Nov. 3, 2018 Supplemental Affidavit of George Escobar (Ex. 4)
5. Oct. 25, 2018 Affidavit of Marchelle Franklin (Ex. 5)
6. Nov. 3, 2018 Supplemental Affidavit of Marchelle Franklin (Ex. 6)
7. Oct. 24, 2018 Affidavit of Emily Freedman (Ex. 7)
8. Nov. 3, 2018 Supplemental Affidavit of Emily Freedman (Ex. 8)
9. Oct. 24, 2018 Affidavit of Jesús García (Ex. 9)
10. Nov. 3, 2018 Supplemental Affidavit of Jesús García (Ex. 10)
11. Oct. 26, 2018 Affidavit of Dr. Hermann Habermann (Ex. 11)
12. Oct. 24, 2018 Affidavit of Katherine Harvell Haney (Ex. 12)
13. Nov. 3, 2018 Supplemental Affidavit of Katherine Harvell Haney (Ex. 13)
14. Oct. 23, 2018 Affidavit of Jason Harmon (Ex. 14)

15. Nov. 3, 2018 Supplemental Affidavit of Jason Harmon (Ex. 15)

16. Oct. 26, 2018 Affidavit of Samer Khalaf (Ex. 16)

17. Nov. 2, 2018 Supplemental Affidavit of Samer Khalaf (Ex. 17)

18. Oct. 25, 2018 Affidavit of Christine Pierce (Ex. 18)

19. Oct. 26, 2018 Affidavit of Elizabeth Plum (Ex. 19)

20. Nov. 2, 2018 Supplemental Affidavit of Elizabeth Plum (Ex. 20)

21. Oct. 23, 2018 Affidavit of Arturo Vargas (Ex. 21)

22. Nov. 3, 2018 Supplemental Affidavit of Arturo Vargas (Ex. 22)

Respectfully submitted,

BARBARA D. UNDERWOOD

Attorney General of the State of New York

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

STATE OF NEW YORK, et al.,

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UNITED STATES DEPARTMENT
OF COMMERCE; et al.,

Defendants.

CIVIL ACTION NO. 1:18-cv-2921 (JMF)

**AFFIDAVIT OF SUSAN
BROWER**

Pursuant to 28 U.S.C. § 1746(2), I, SUSAN BROWER, hereby declare as follows:

1. I am over the age of eighteen and have personal knowledge of all the facts stated herein.
2. I obtained my Ph.D. in sociology from the University of Michigan.
3. I am the State Demographer for the State of Minnesota. As State Demographer, I oversee the Minnesota State Demographic Center ("the Center"). By statute, I am appointed by the Commissioner of Administration. Minn. Stat. § 4A.02(a). My duties are identified in Section 4A.02(b), and include gathering and developing demographic data relevant to the state; serving as the liaison to the United States Bureau of the Census; coordinating state and federal demographic activities; and aiding the state legislature in preparing a census data plan and form for each decennial census. I have been employed as the Minnesota State Demographer since 2012. My knowledge of the facts contained herein is based on my experience as a professional demographer, and in my capacity as the Minnesota State Demographer. My knowledge is also based on records I reviewed in my capacity as State Demographer, including records on Minnesota's redistricting, and on publically available data regarding the population and demographics of the State of Minnesota.

4. As liaison between the Census Bureau and the State of Minnesota with respect to redistricting, I inform the Census Bureau about the type of and format of data the State of Minnesota needs and wants to complete its redistricting. In order to identify what the State needs and wants in connection with redistricting, I anticipate communicating with the State of Minnesota legislative redistricting committees. Those committees have not been formed yet for the 2020 Census; based on the process for redistricting following the 2010 census, I expect each party caucus (one Republican and one Democratic Farmer Labor (“DFL”)) to form one committee per legislative chamber, such that there are four redistricting committees. I also anticipate working with the redistricting committees to send them the census data file from the Census Bureau and help them understand the data.

5. The Center works to ensure a full count and reduce non-response rates and undercounting. The Center’s outreach efforts are premised in part on providing residents accurate answers to their questions about the census. Residents have already asked questions about the impact of the citizenship question, and I expect those questions to continue. One question residents have asked relates to the confidentiality of survey responses. Census surveys are supposed to be confidential. That is one mechanism to encourage full participation to obtain an accurate count.

6. However, even if a specific person’s survey answers will not be public, some census data is generally made public on a very granular level. The U.S. Census produces some data at the block level. The block level is a low level of geography. For example, according to the 2010 Census Redistricting Data (Public Law 94-171) File, 26,213 blocks in Minnesota contained only one household; 95,220 blocks in Minnesota contained between one and nine households. That compares to the total of 151,646 blocks in Minnesota that contained more than zero households. In other words, 63% of the blocks in Minnesota that contained any households, contained fewer than ten households.

7. Relatedly, 5,685 blocks in Minnesota contained only one person; 87,135 blocks in Minnesota contained between one and nineteen people. That compares to 151,983 blocks in

Minnesota that contained more than zero persons. In other words, 57% of the blocks in Minnesota that contained any people contained fewer than twenty people. If the citizenship question is asked, therefore, the public would be aware on a block level, how many residents are non-citizens.

8. At a meeting with U.S. Census Bureau officials the week of July 30, 2018, in Los Angeles, I conveyed that Minnesota does not want to receive citizenship status at the block level. I did so because it is not necessary for redistricting, I believe that publishing that data could undermine the confidential nature of the survey, and I believe awareness that such data will be published could discourage residents from completing their census surveys.

9. I was informed by U.S. Census staff that even if the data was not published to the states in the form of a data file in connection with redistricting, if the Census gathers citizenship data, then it will make that data public on a block level. If I know that citizenship data will be published at a block level, it will be harder to give people assurances that their survey responses will be safe and confidential. Simply, the disclosure of block-level citizenship data will adversely affect our outreach and likely our response rates.

I declare under penalty of perjury that, to the best of my knowledge, the foregoing is true and correct.

Executed on this 25 day of 10, 2018



SUSAN BROWER

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

STATE OF NEW YORK, et al.,

Plaintiffs,

v.

UNITED STATES DEPARTMENT
OF COMMERCE, et al.,

Defendants.

CIVIL ACTION NO. 1:18-cv-2921 (JMF)

**SUPPLEMENTAL AFFIDAVIT
OF SUSAN
BROWER**

Pursuant to 28 U.S.C. § 1746(2), I, Susan Brower hereby declare as follows:

1. I make this Supplemental Affidavit in connection with *State of New York, et al., v. United States Department of Commerce, et al.*, in order to provide additional support for the testimony set forth in my prior affidavit sworn to on October 25, 2018 (the “First Brower Aff.”). I am over the age of eighteen and have personal knowledge of all the facts stated herein.

2. In ¶ 5 of the First Brower Aff., I testify that “Residents have already asked questions about the impact of the citizenship question, and I expect those questions to continue. One question residents have asked relates to the confidentiality of survey responses.” In that paragraph, I am referring to questions asked by residents of Minnesota at public outreach events where I was present, and I personally saw and heard those questions being asked.


3. In preparing ¶¶ 6 and 7 of the First Brower Aff., I relied on 2010 Census Redistricting Data, publicly available from the Census Bureau at the following link: https://www2.census.gov/census_2010/01-Redistricting_File--PL_94-171/Minnesota/ (last visited November 2, 2018).

4. In ¶ 9 of the First Brower Aff. I stated that “I was informed by U.S. Census staff

that even if the data was not published to the states in the form of a data file in connection with redistricting, if the Census gathers citizenship data, then it will make that data public on a block level.” The Census Bureau employee who made that statement to me was James Whitehorne, the Chief of the Census Bureau’s Redistricting Data Program.

I declare under penalty of perjury that, to the best of my knowledge, the foregoing is true and correct.

Executed on this 3rd day of November,
2018



Susan Brower

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

STATE OF NEW YORK, et al.,

Plaintiffs,

NEW YORK IMMIGRATION
COALITION, et al.,

Consolidated Plaintiffs

v.

UNITED STATES DEPARTMENT OF
COMMERCE, et al.,

Defendants.

Civil Action No. 1:18-cv-2921-JMF

DECLARATION OF GEORGE ESCOBAR

I, George Escobar, pursuant to the provisions of 28 U.S.C. § 1746, declare under penalty of perjury that the foregoing is true and correct:

1. I am the Chief of Programs and Services at CASA ("CASA"). In this capacity, I oversee CASA's services departments, including legal services, health services, workforce development, employment, education, and our immigrant integration programs.
2. Based on my nearly 20 years of professional experience working for Latino and immigrant serving organizations in both the public and private sectors, the current outreach to immigrant communities I oversee in my current capacity at CASA, and my conversations with individual CASA members, I believe the addition of a citizenship question to the 2020 Decennial Census short-form questionnaire will deter participation of many individuals in the Latino and immigrant communities and result in a disproportionate undercount of Latinos. As a result of the decision to add this question,

CASA has diverted and will continue to be required to divert resources from core organizational priorities to additional, remedial outreach to counteract the citizenship question's negative effect on Census response rates in our community.

3. This undercount will also injure many CASA members, many of whom live in areas of the United States in which immigrants of color and other communities of color exceed national and state averages. Specifically, they will be harmed because the disproportionate undercount that will result from the citizenship question among immigrants of color will diminish their political power relative to other parts of their states. In addition, this undercount will diminish the amount of Census-related funding those areas receive for key programs, services, and facilities that our members and their families rely on to succeed in the communities in which they live.

I. CASA's Mission and Activities

4. CASA is a non-profit 501(c)(3) membership organization headquartered in Langley Park, Maryland, with offices in Maryland, Virginia, and Pennsylvania. Founded in 1985, CASA is the largest membership-based immigrants' rights organization in the mid-Atlantic region, with more than 90,000 members.
5. CASA's mission is to create a more just society by increasing the power of and improving the quality of life of low-income immigrant communities. To advance this mission, CASA offers social, health, education, job training, employment, and legal services to immigrant communities. CASA serves nearly 20,000 people a year through its offices and provides support to additional clients over the phone and through email.
6. As Chief of Programs and Services, my fundamental role in the organization is to align its programming with its mission and ensure our interventions and programs are effective

in addressing disparities impacting immigrant communities while setting our members and their families on a path to success.

II. CASA's Census-Related Work

7. CASA has an ongoing commitment to promoting engagement in the Decennial Census among its members, constituents, and communities. Member participation in the Decennial Census advances CASA's mission by increasing the political power of low-income immigrant communities and improving quality of life for those communities through increased population-driven government funding.
8. Given CASA's 30 year history working with immigrant communities throughout the Mid-Atlantic region and the trust it has developed with these communities as a result of this history, CASA has consistently been a "go-to" organizational partner in conducting outreach and education around the Decennial Census and other related activities.
9. In 2010, CASA partnered with various local government education and outreach campaigns throughout Maryland. In addition, CASA received dedicated funding from other sources to conduct door-to-door outreach, facilitate group educational sessions, and work with local, ethnic media to inform, engage, and encourage participation in the Census among Limited English Proficient, immigrant communities in the region.

III. CASA's Work Connecting Members with Government Services

10. CASA provides a number of services screening, navigating and enrolling its members for public benefits for which they are eligible. This work includes connecting members with public benefits related to health, education, and legal services.
11. Through its Health and Social Service Program, CASA case managers assess its members needs and screen for eligibility for several public benefit programs. CASA assists eligible members in enrolling in food assistance programs such as the Supplemental

Nutritional Assistance Program (SNAP), which provides food assistance to low-income individuals, and the Special Supplemental Nutrition Program for Women Infants and Children (WIC), which provides supplemental foods, health care referrals, and nutrition education to eligible individuals.

12. CASA also assists eligible members in enrolling for health care coverage through Medicaid, or enrolling their children in the Children's Health Insurance Program.
13. CASA's Education Department works with families residing in dense immigrant neighborhoods to navigate them through the school enrollment process in Title 1 funded public schools serving these neighborhoods. Staff also provide information about early childhood education programs available in the neighborhoods served by CASA and partner with local providers to enroll eligible children in those programs.
14. In addition, CASA's Legal Program provides individualized legal counseling to individuals claiming employment discrimination, wage theft, and other issues that may lead to job loss. For those who have suffered from job loss, CASA provides assistance in navigating the unemployment insurance application process for those who are eligible.

IV. Harm to CASA as a Result of the Citizenship Question

15. As described below, the addition of a citizenship question to the Decennial Census harms CASA members, as well as the organization itself. The increased fear among immigrants, caused by the Trump Administration's anti-immigrant policies and rhetoric, has led to decreased engagement with the government generally, and specific fear of participating in the Decennial Census. This fear and decreased participation harms CASA as an organization, because we are now diverting our limited resources in an effort to encourage participation in the Decennial Census.

A. Fear in the Latino Immigrant Community under the Current Administration

16. Based on my conversations and work in the community, immigrant members of CASA have felt targeted, bullied and attacked by the rhetoric and actions of the Trump Administration. Starting with the presidential campaign, through to its current policies, CASA members have expressed fear, frustration and despair over how they feel this administration has scapegoated them. In particular, they have expressed fear over the emphasis this administration has placed on increased deportations and immigration enforcement.
17. In particular, policies such as family separation at the border, the “zero-tolerance policy” for immigrants entering the United States without documentation, and the elimination of the Deferred Action for Childhood Arrivals (DACA) and Temporary Protected Status (TPS) programs have all increased the fear among immigrant communities of being targeted by agencies such as Immigration and Customs Enforcement (ICE). This fear has led to a chilling effect on the willingness of immigrant communities of all types, regardless of immigration status, to interact with the federal government in any way.
18. The recent announcement of changes to the definition of who constitutes a “Public Charge” for immigration purposes has only inflamed the current situation. Collectively, these policies have led to widespread confusion and fear, to the point that many individuals are hesitant to apply for a public benefit for which they are eligible to receive.
19. CASA and its partner providers have begun to track a decrease in the number of individuals applying for certain public benefits. Most troubling has been a decrease in the number of enrollments into benefits completely unrelated to the policies that have been announced, such as a decrease in the number of immigrants applying for health insurance made available through the Affordable Care Act or a decrease in the number of

Legal Permanent Residents applying for citizenship. To those of us at CASA, this decreased participation indicates that the Trump Administration's policies are not only affecting those individuals and communities who are directly targeted by these policies, but are increasing fear among the immigrant community more broadly.

B. CASA Members are Less Willing to Engage with the Decennial Census due to Increased Fear

20. Under the current environment, CASA members have expressed fear of even a knock on their door by a stranger given the high number of arbitrary immigration enforcement actions that have resulted in the deportation of immigrants with little or no criminal background in the communities CASA serves. This fear of even speaking to someone approaching their door will certainly be compounded by a request by a government official, such as a census enumerator, regarding an individual's citizenship status, or the citizenship status of others in their household.
21. Many CASA members have expressed doubts and fears to me about how information within the government is shared, and whether an answer to a question on a particular document or application may lead to their family being harmed or separated. Under these circumstances, many have expressed a feeling that participation in the Census presents too high a risk to the safety and security of themselves and their families to justify participating.
22. The fear of participating in the Census has been shared with multiple CASA staff and volunteers who routinely conduct field outreach in the community, such as CASA Health Promoters and Community Organizers. Shortly after information about the addition of the citizenship question became public and was reported on by Spanish language media, these outreach workers reported that the reaction of fear in the community was

widespread. Many CASA staff members and volunteers reported an increase in general suspicion and fear among community members in completing any type of application or document associated with any government entity.

23. Recently, a CASA Health Promoter shared an interaction with me that she had with a CASA member who told her a story about a family member that he believed was placed in deportation proceedings shortly after applying for a Driver's License. "If those two things are linked," the member reportedly said, "then why on earth would I answer a question about immigration status on a form from the federal government? It's not worth the risk." That reaction is typical of what we have experienced in the community.
24. Through this litigation, I have learned that block-level data can identify the characteristics of a population within a very small geographic area. By identifying the citizenship status of individuals in such a small area, I am concerned that this could lead to immigration enforcement targeting these particular areas and communities, thus harming the privacy of CASA members. I believe this concern is particular will discourage CASA members from participating in the Decennial Census.

C. CASA is Diverting Resources to Encourage Participation in the Decennial Census

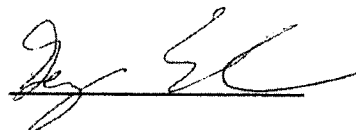
25. CASA recognizes the importance of the Decennial Census for its members and the broader Latino immigrant community. Participation in the Census is necessary to preserve the political power of these communities, and to ensure that these communities receive the vital federal resources that so many of our members rely upon. In order to combat the increased fear in the Latino immigrant community, and the unwillingness of many CASA members to participate in the Decennial Census, CASA is currently planning a massive response to try and overcome the many barriers to participation.

26. In order to combat these barriers, CASA will have to reorganize its communication team and reassign staff to Census outreach and education to a level not previously anticipated. Given significant funding for this work is not anticipated, much of the work will have to be funded through other sources, perhaps including CASA reserves and leveraged with volunteers.
27. Our work in response to the addition of the citizenship question on the Decennial Census has already begun. CASA's Community Organizing team has already conducted several "house" meetings on this topic to combat the fear and suspicion that has already been expressed about the addition to the citizenship question. These meetings have been held in many of the neighborhoods regularly canvassed by the community organizing team and have been focused on the importance of participating in the census.
28. Education about the census is also being imbedded within the "Get Out The Vote" canvassing work being done by CASA during the 2018 election season. CASA canvassers are provided talking points and some literature about the Census to share with voters as they conduct outreach in their work encouraging voters to cast their ballots.
29. The increased focus on Census outreach and education will necessarily divert CASA's limited resources, resulting in less resources being allocated to other vital CASA programs.

30. I declare under penalty of perjury that the foregoing is true and correct.

Executed: October 26, 2018

Washington, DC


George Escobar

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

STATE OF NEW YORK, et al.,

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Civil Action No. 1:18-cv-2921-JMF

SUPPLEMENTAL DECLARATION OF GEORGE ESCOBAR

I, George Escobar, pursuant to the provisions of 28 U.S.C. § 1746, declare under penalty of perjury that the foregoing is true and correct:

1. As explained in my October 26 Declaration, I am the Chief of Programs and Services at CASA (“CASA”). In this capacity, I oversee CASA’s services departments, including legal services, health services, workforce development, employment, education, and our immigrant integration programs.
2. All of the statements made in my October 26 Declaration and in this Declaration are made based on my personal knowledge, acquired in the course of my work with CASA and with the Latino immigrant community more broadly. In my role as the Chief of Programs and Services, I have become familiar with CASA’s records and membership, including where our members live and basic demographic information regarding the areas where they live.

3. In my role overseeing all CASA services programs, I have daily access to and conversations with CASA members, in addition to frontline staff and managers. As part of my job, I am constantly analyzing performance data as well as customer satisfaction metrics and regularly check back in with staff and members to determine the cause of certain trends that I observe in the data. A recent decrease in the number of members applying for or renewing certain public benefits precipitated me to interview key frontline staff as well as members who had declined to renew their benefits to learn why this was happening. During these interactions, I often heard that these decisions were driven by fear of interacting with the government, which arose from President Trump's anti-immigrant policies and rhetoric.
4. The statements I have made regarding CASA members' decreased engagement with federal programs as a result of the Trump Administration's anti-immigrant policies and rhetoric is therefore based on my personal observations as the Chief of Programs and Services at CASA. This knowledge is not based on the restatement of a particular individual's views. This knowledge is based on my own review of CASA's records regarding member participation in federal government programs and regular engagement with CASA members.
5. Through my regular conversations with CASA members, I have gained personal knowledge regarding the fear among Latino immigrants that has arisen as a result of President Trump's statements and policies that target the Latino immigrant community. In particular, I have gained personal knowledge of the concern in the Latino immigrant community surrounding the addition of a citizenship question to the Decennial Census and fear about potential uses of the data gathered based on this question.

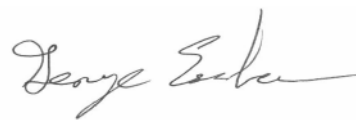
6. The statements I have made regarding the fear in the Latino immigrant community regarding the citizenship question and its effects on CASA members' willingness to participate in the Decennial Census is therefore based on my personal knowledge as a leader within CASA. This knowledge is not based on the restatement of a particular individual's views. The statements I have made regarding the effect of the citizenship question on the Latino immigrant community are not based on potential non-response rates or percentage undercount, but are my own observations based on my personal knowledge as a leader in CASA.
7. My statement regarding the potential diminished political power of the Latino immigrant community as a result of the citizenship question was not based on any specific estimated undercount, but on the common-sense principle that if members of the Latino immigrant community are not counted as part of the Decennial Census process, they will lose political power they otherwise would have had if they had been properly counted.
8. Similarly, my statement regarding a potential decrease in Census-related funding for these communities is not based on a specific estimated undercount, but on the common-sense principle that if members of the Latino immigrant community are not counted as part of the Decennial Census process, these communities will receive less federal funding from programs that rely on Census data.
9. My statement regarding concerns surround the collection of citizenship data at the census-block level is based on my personal knowledge of the current climate of fear in the Latino immigrant community. I know, based on my role as a leader in the Latino immigrant community, that there is an increased fear of immigration enforcement in the areas where CASA members live. If Census data is collected at such a granular level that

is possible to identify where non-citizens live, it is common sense that this will exacerbate fears among a community that already fears being targeted by immigration enforcement agencies.

10. My statements regarding decreased participation in the Decennial Census are also based on my role as a leader within CASA. I have worked with other leaders within CASA to determine how to best allocate our resources in preparation for the Decennial Census. There is general consensus among the leadership at CASA, based on our experience and engagement with CASA members, that diverting resources to increase funding for Decennial Census outreach will be necessary to combat the increased fear in the Latino immigrant community of participating in the Decennial Census.
11. I declare under penalty of perjury that the foregoing is true and correct.

Executed: November 3, 2018

Washington, DC

A handwritten signature in dark ink, appearing to read "George Escobar", written in a cursive style.

George Escobar

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

STATE OF NEW YORK, et al.,

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UNITED STATES DEPARTMENT
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Defendants.

CIVIL ACTION NO. 1:18-cv-2921 (JMF)

**AFFIDAVIT OF MARCHELLE
FRANKLIN**

Pursuant to 28 U.S.C. § 1746(2), I, Marchelle Franklin, hereby declare as follows:

1. I am over the age of eighteen and have personal knowledge of all the facts stated herein.
2. I am the Human Services Director for the City of Phoenix, a role I have held since November 2017. In this role, I oversee a staff of 375 employees and a budget of approximately \$84 million. Part of my work includes overseeing the federally-funded programs described in this declaration.
3. I have worked for the City of Phoenix since 2002. My previous roles include serving as the Interim Human Services Director, Director of the Police Department's Community Affairs Division, and Chief of Staff for former Mayor Phil Gordon. I have a Masters of Business Administration in finance from Grand Canyon University, a Bachelor of Science in business administration from the University of Phoenix, and I completed the Executive Development Program in human resources consulting and strategy development at the University of Southern California.
4. The City of Phoenix Human Services Department provides a comprehensive array of services to help people meet emergency, short-and long-term needs, and help every

individual reach their highest level of self-sufficiency. Program areas include early childhood education, emergency assistance, older adult services, crime victim services, homeless services, business/workforce development and community initiatives:

- a. **Education.** Responsible for overall implementation and monitoring of Head Start performance standards for more than 3,300 children through a directly operated program and contracted delegate agencies.
 - b. **Community and Senior Services.** Community Services develops, implements and operates human service programs to meet the emergency, short and long-term needs of eligible low-income residents, to include the elderly and individuals with disabilities.
 - c. **Family Advocacy Center.** The Family Advocacy Center uses a multidisciplinary approach to provide comprehensive services to victims of violent crime such as domestic and sexual violence, child abuse, physical assault and homicide.
 - d. **Homeless Services.** Homeless Programs provide emergency shelter, rapid-rehousing (Housing First), street outreach and supportive services components for homeless families, youth and individuals through city programs and through contracts with local community providers.
 - e. **Business and Workforce Development.** Business and Workforce Development programs provide job readiness and skills training for adults and youth.
5. An undercount of the true population of the City of Phoenix in the upcoming 2020 Census would impact the work of the Human Services Department in a number of ways.
 6. **Victims of Crime Act (“VOCA”) Funds.** The U.S. Department of Justice administers the

distribution of VOCA funds. The VOCA statutory distribution formula provides each state with a base amount for each state and distributes the remainder proportionately, based on U.S. Census population. These funds support direct services to victims of crime that assist with emotional, psychological or physical needs; stabilization after victimization; understanding and participating in the criminal justice system; and/or restoring a measure of security and safety. A differential undercount on the 2020 Census that impacts Arizona relative to other states would likely affect the VOCA funding passed through to the City of Phoenix that provide crucial services to victims of domestic violence, sexual assault, and physical assault. The services provided include crisis intervention, emergency services (i.e. transportation, child care services, and temporary housing), and comprehensive assistance with navigating the criminal justice system. The City of Phoenix's Family Advocacy Office receives \$ 665,420 annually in VOCA funding. A 1% cut in VOCA funding would make \$6,654 less funding available for the provision of these services.

7. **Temporary Assistance for Needy Families ("TANF") Funds.** The U.S. Department of Health and Human Services distributes TANF funds to the State of Arizona, who then distributes these funds to municipalities or other organizations based on the number of low-income individuals under 125% of the Federal poverty level in each service area. TANF funds are used to design and operate programs that help needy families achieve self-sufficiency. An undercount of the population in Phoenix would likely affect the funding provided to the City of Phoenix to provide case management services (counseling, skills development, budgeting, employment assistance, etc.) to individuals and families seeking self-sufficiency. The City of Phoenix's Community and Family Services Centers use \$985,710 in TANF funds annually. A 1% reduction in those funds would be a loss of

\$9,857, which would translate into a loss in man hours, negatively impacting the City's ability to provide critical services to its population.

8. **Low-Income Home Energy Assistance ("LIHEAP") Funds.** The U.S. Department of Health and Human Services distributes LIHEAP funds to the State of Arizona, who then distributes these funds to municipalities or organizations based on the number of low-income individuals under 125% of the Federal poverty level in each service area. LIHEAP funds are used to assist families with energy costs. A differential undercount in Arizona relative to other states, or in Phoenix relative to other municipalities in Arizona, would likely affect the funding provided to the City of Phoenix to provide assistance with paying utility bills, increasing the risk of health and safety problems that arise from unsafe heating and cooling practices. The City of Phoenix's Community and Family Services Centers have an annual LIHEAP budget of \$6,020,953. A 1% reduction would result in the loss of \$60,209 and would mean utility assistance payments will not be processed for roughly 109 households.
9. **Head Start Funds.** The U.S. Department of Health and Human Services grants funding directly to municipalities and other organizations to promote school readiness of children from birth through age 5 from low-income families through education, health, social and other services. Each municipality/non-profit providing Head Start services is required to use a community needs assessment in order to identify eligible families for selection and enrollment. Head Start slots are placed in specific areas related to where eligible families are in the city. The families we serve are at poverty and have additional risk factors. There is no requirement for them to have legal presence. The community needs assessments require the use of census data to identify where we place our services and slots. A differential

undercount of the population of children aged 0-5 in Phoenix, relative to other municipalities, would likely affect the community needs assessment, which will lead to erroneous information that will impact identifying families that meet the eligibility requirements for Head Start and associated services. A 1% cut in the City's \$34,405,759 annual Head Start budget would mean a loss of \$344,057 and result in the loss of 35 slots for these much-needed school readiness services.

10. **Workforce Innovation and Opportunity Act ("WIOA") Funds.** The U.S. Department of Labor grants funding to the State of Arizona, who then distributes to municipalities and other organizations based on: (a) local area relative share of total unemployed in area of substantial unemployment; (b) local area relative share of excess unemployed; and (c) local area relative share of economically disadvantaged adults ages 22-72. A differential undercount of the population of the City of Phoenix relative to other municipalities will impact the distribution of funds to the City of Phoenix by reducing the number of participants who would receive services under the WIOA programs and services such as employment training, skills development, occupational training. Stated differently, because allocations are based on formulas stated above, an undercount of individuals associated with a particular metric/data point will reduce the allocation, thereby reducing the number of individuals that can be served with those program funds. These programs also include a youth component designed to prepare youth to enter post-secondary education, training and employment. The City of Phoenix receives \$10,751,819 in WIOA funds annually. A 1% reduction in those funds would result in \$107,518 less funds available for employment and support services to adult, youth, and displaced workers.

I declare under penalty of perjury that, to the best of my knowledge, the foregoing is true and correct.

Executed on this 25th day of October, 2018


MARCHELLE FRANKLIN

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

STATE OF NEW YORK, et al.,

Plaintiffs,

NEW YORK IMMIGRATION
COALITION, et al.,

Consolidated Plaintiffs

v.

UNITED STATES DEPARTMENT OF
COMMERCE, et al.,

Defendants.

Civil Action No. 1:18-cv-2921-JMF

SUPPLEMENTAL AFFIDAVIT OF MARCHELLE FRANKLIN

Pursuant to 28 U.S.C. § 1746, I, Marchelle Franklin, hereby declare as follows:

1. As explained in my October 31 Affidavit, I am the Human Services Director for the City of Phoenix, Arizona, where I have been employed since 2002. My previous roles include serving as Interim Human Services Director, Director of the Police Department's Community Affairs Division, and Chief of Staff for former Mayor Phil Gordon. All of the statements made in my October 31 Affidavit and in this Affidavit are made based on my personal knowledge, acquired as part of my work for Phoenix. As Human Services Director, part of my work includes overseeing the federally-funded social services programs. Accordingly, my work requires me to keep apprised of federal grant programs that provide money to Phoenix.

2. As Director of Human Services, I have become familiar with the operations and funding requirements of several federal grant programs, including Victims of Crime Act ("VOCA") Funds, Temporary Assistance for Needy Families ("TANF") Funds, Low-Income

Home Energy Assistance (“LIHEAP”) Funds, Head Start Funds, and Workforce Innovation and Opportunity Act (“WIOA”) Funds. During the course of my work I have also become familiar with the formulas by which these federal funds are allocated to the State of Arizona and ultimately to Phoenix. Because I oversee these programs, I am aware of the kinds of services these programs provide to Phoenix residents. As Director of Human Services, I am uniquely positioned to have oversight of these four federal funding sources that are predicated in part on decennial census data.

3. As Director of Human Services, I regularly participate in meetings with staff who directly oversee and administer the four programs discussed in paragraph 2 and in my October 31 Affidavit. During those meetings, we have discussed how Phoenix’s eligibility and allotment of grant funds are determined, as described in paragraphs 6 through 10 of my October 31 Affidavit. I quickly came to understand during the course of my work with these programs that a decrease in Phoenix’s population count will lead to a decrease in its share of the federal funding for these programs. And I understand – based on my professional experience – that the population data used in applying these formulas is obtained from the Census Bureau.

4. When preparing my October 31 Affidavit, I confirmed the specific funding amounts Phoenix receives for the social services grant programs discussed therein, each of which are predicated at least in part on decennial census data. I then confirmed these funding numbers with available public records and with my City of Phoenix colleagues who administer these programs. I specifically verified the grant amounts discussed in paragraphs six through ten of my October 31 Affidavit in this manner.

5. My experience overseeing these programs forms the basis for my understanding that a decrease in Phoenix’s population count will lead to a decrease in its share of these federal

social service grants. I also understand that a decrease in the overall federal funds allocated to Arizona for these programs will lead to a decrease in the amount passed through to Phoenix.

6. As I explained in my October 31 Affidavit, decreases in Phoenix's share of these federal dollars would result in reductions of critical social services.

I declare under penalty of perjury that the foregoing is true and correct.

Executed: November 3, 2018

Phoenix, AZ


Marchelle Franklin

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

STATE OF NEW YORK, et al.,

Plaintiffs,

v.

UNITED STATES DEPARTMENT
OF COMMERCE, et al.,

Defendants.

CIVIL ACTION NO. 1:18-cv-2921 (JMF)

**AFFIDAVIT OF
EMILY FREEDMAN**

Pursuant to 28 U.S.C. § 1746(2), I, Emily Freedman, hereby declare as follows:

1. My name is Emily Freedman. I am over the age of eighteen and have personal knowledge of all the facts stated herein.
2. I am Director of Community Development for the City of Providence, Rhode Island. I oversee the administration, coordination, and preparation of all work required to complete and fulfill the City's obligations under its community development and housing programs, including but not limited to all HUD-funded programs. I have been employed by the City of Providence since 2016.
3. As the City's Community Development Director, I develop strategic goals, solicit and evaluate project proposals annually, develop program budgets and spending plans, issue and evaluate federally-funded contracts, and report to HUD and other relevant funding entities. Part of my work entails working with federal grant programs, including Community Development Block Grant funds, Emergency Solution Grant funds, and HOME Investment Partnership Program Funds.
4. The City of Providence receives millions of dollars in federal funding from the U.S. Department of Housing and Urban Development (HUD) on both an annual and competitive basis.

5. Annual entitlement funding from the U.S. Department of Housing and Urban Development is allocated by funding formulas that include weighted population, poverty, housing counts and other data points.

6. In Federal Fiscal Year 2018, the City of Providence will receive \$5,034,413 in Community Development Block Grant funding; \$421,403 in Emergency Solutions Grant funding, and \$1,700,757 in HOME Investment Partnerships Program funding.

7. The CDBG statute identifies poverty, deteriorated housing, economic distress, decline, and suitability of one's living environment as important components of community development need. The City's annual allocation of CDBG funds is calculated by HUD through Formula A or Formula B, as defined under 42 U.S.C. §5306. Formula A calculates funds to a jurisdiction based on its metropolitan area's share of 3 factors across all US metropolitan areas: 1) population, weighted at 25 percent; 2) people in poverty, weighted at 50 percent; and 3) overcrowded housing units, weighted at 25 percent. Formula B also calculates funds to a jurisdiction based on its metropolitan area's share of 3 factors across all US metropolitan areas, but the Formula B factors are: 1) population growth lag since 1960, weighted at 20 percent; 2) people in poverty, weighted at 30 percent; and 3) pre-1940 housing units, weighted at 50 percent. After HUD runs the calculations using the two formulas, it allocates the City the larger amount of the two. In recent years, the City of Providence has been awarded funds under Formula B. A differential undercount on the 2020 Census that impacts the Providence metropolitan area more heavily than other metropolitan areas will result in underreporting of the population and population growth lag as those formula factors are based on last Decennial Census counts.

8. Further, to utilize CDBG funds on neighborhood facilities or improvements, neighborhood Census Block populations must be 51% or greater low/moderate income. Any undercounting of residents, particularly in neighborhoods with high poverty rates and large minority and immigrant populations, would result in fewer neighborhoods being eligible for these critical neighborhood-based investments.

9. Reduced CDBG funding will result in a reduction in critical social services (such as homeless and domestic violence case management, food pantry operations, and job training programs) as well as reduced investment in local infrastructure and affordable housing. If a 1% funding reduction were to occur, over \$50,000 in critical services and programming would need to be cut from the City's annual CDBG budget. Activities eliminated from a reduced City CDBG budget to absorb such a cut would be free daycare and after-school programs for hundreds of low-income families, and street and sidewalk improvements.

10. The Emergency Solutions Grant (ESG) is an annual entitlement grant program whereby funds are allocated under a 24 C.F.R. § 576.3-defined formula. Allocations are a function of the prior year's CDBG allocation; therefore, if CDBG funds decrease, ESG funds will be reduced as well. ESG funds are used to provide rental assistance to persons experiencing homelessness, as well as street outreach and case management services.

11. A reduction in City ESG funding would result in higher rates of homelessness, displacement of at-risk populations from assisted housing, and a decline in case management and shelter services. Even a modest 1% reduction in funding (\$4,000) would mean cutting hundreds of hours for local case workers—hours that would have been spent finding housing for homeless living and dying on Providence streets.


12. Eligibility of a local government to receive HOME Investment Partnerships Program (HOME) is also a factor of the amount of CDBG received by the municipality. The HOME formula is then further determined by the following factors: 1) local and national vacancy rates (sourced by the Decennial Census), 2) prevalence of rental housing with substandard conditions, 3) number of pre-1950 rental units (sourced by the Decennial Census), 4) RS Means cost index and substandard rental units, 5) number of families in poverty, and 6) low net per capita income and population (population figures from the Decennial Census). If a differential undercount on the 2020 Census results in more homes being identified vacant than actually are, the formula would be negatively impacted as local market tightness (a proxy for local need for more affordable rental housing units) would be understated.

13. A reduction in City HOME funding will result in a decrease in the production of new affordable housing and a reduction in local down-payment and closing cost assistance programs to aid first-time homebuyers with limited means. A reduction of \$170,000 (1%) in HOME funds would result in approximately 22 low-income families not receiving down-payment and closing cost assistance and realizing the dream of homeownership.

14. Finally, it is important to note that all formula factors for the programs above are derived from either the Decennial Census or US Census Bureau American Community Surveys.

I declare under penalty of perjury that, to the best of my knowledge, the foregoing is true and correct.

Executed on this 24th day of October, 2018



/s/ Emily Freedman
EMILY FREEDMAN
Director of Community Development
for the City of Providence

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

STATE OF NEW YORK, et al.,

Plaintiffs,

NEW YORK IMMIGRATION
COALITION, et al.,

Consolidated Plaintiffs

v.

UNITED STATES DEPARTMENT OF
COMMERCE, et al.,

Defendants.

Civil Action No. 1:18-cv-2921-JMF

SUPPLEMENTAL AFFIDAVIT OF EMILY FREEDMAN

Pursuant to 28 U.S.C. § 1746, I, Emily Freedman, hereby declare as follows:

1. As explained in my October 24 Affidavit, I am Director of Community Development for the City of Providence, Rhode Island, where I have been employed since 2016. All of the statements made in my October 24 Affidavit and in this Affidavit are made based on my personal knowledge, acquired as part of my work for Providence. As Director of Community Development, I am responsible for overseeing the administration, coordination, and preparation of all work required to complete and fulfill Providence's obligations under its community development and housing programs, including but not limited to all HUD-funded programs.

2. As part of my role, and as discussed in paragraphs 2 and 3 of my October 24 Affidavit, I supervise and work closely with staff who administer several HUD-funded programs, including Community Development Block Grant funds, Emergency Solutions Grant funds, and HOME Investment Partnership Program funds. Because I oversee these programs, I am aware of

the kinds of services they provide to Providence residents as set forth in paragraphs 7, 10 and 13 of my October 24 Affidavit. As Director of Community Development, I am uniquely positioned to have oversight of these three HUD-funded sources that are predicated in part on decennial census data.

3. During the course of my work I regularly meet with colleagues about the administration of these programs. During these meetings, we have discussed the formulas that determine the funding that Providence will receive for these programs. It is important to my work to understand how HUD allocates these dollars, both for planning and administrative purposes. I have therefore come to have a keen understanding of the formulas used to allocate Providence's share of Community Development Block Grant funds, Emergency Solutions Grant funds, and HOME Investment Partnership Program funds. In reviewing the relevant HUD regulations, which is a necessary part of my job responsibilities, I have learned that for Emergency Solutions Grant funds, the amount Providence receives each year is dependent on the amount of Community Development Block Grant funds it received the prior federal fiscal year.

4. When preparing my October 24 Affidavit, I confirmed the specific funding amounts received under the three HUD grant programs that are predicated at least in part on decennial census data. I then confirmed these funding numbers with available public records and with my colleagues who administer these programs. I specifically verified the grant amounts discussed in paragraph 6 of my October 24 Affidavit in this manner.

5. I know that the HUD formulas dictate that changes in Providence's population count will directly impact the City's funding levels for these programs. Based on what I have learned during the course of my work as Director of Community Development, it is my

understanding that a decrease in Providence's population count will lead to a corresponding decrease in its share of funds for these programs.

6. As I explained in my October 24 Affidavit, decreases in Providence's share of these federal dollars would result in reductions of critical social services funded by these three grant programs, such as homeless and domestic violence case management and affordable housing.

I declare under penalty of perjury that the foregoing is true and correct.

Executed: November 3, 2018

Providence, RI


Emily Freedman

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

STATE OF NEW YORK, et al.,

Plaintiffs,

v.

UNITED STATES DEPARTMENT
OF COMMERCE, et al.,

Defendants.

CIVIL ACTION NO. 1:18-cv-2921 (JMF)

**AFFIDAVIT OF JESÚS G.
GARCÍA**

Pursuant to 28 U.S.C. § 1746(2), I, Jesús G. García hereby declare as follows:

1. My name is Jesús G. García, and I make this Affidavit in connection with *State of New York, et al., v. United States Department of Commerce, et al.* I am the Cook County Board Commissioner for the 7th District, which is located in Chicago, Illinois. I am over the age of eighteen and have personal knowledge of all the facts stated herein, except for those facts taken from records maintained by my office in the regular course of business.

2. I began my tenure on the Cook County Board in 2010. As a Cook County Commissioner, my duties include overseeing the operations and approving the budget of all County departments. The main areas of service under the County's jurisdiction are criminal justice and the court system, public health, and property taxes. I represent the 7th District of Cook County, located in the Southwest Side of Chicago, which is predominantly comprised of immigrant and working-class families. As a legislator, I work with other Commissioners and various stakeholders to develop and present policy proposals for consideration to the Board of Commissioners to further our mission of government accessibility and accountability. My office also provides direct constituent services to facilitate access to information and resources for

constituents. As a Cook County Commissioner I review and approve federal grant awards received by various County departments throughout the year. I have a strong history of going above and beyond my duties by supporting and partnering with diverse community partners and advocates on a range of social justice issues.

3. The Cook County Board of Commissioners established a Complete Count Committee leading up to the 2000 Census, which was comprised of nine subcommittees targeting various components of society including community based organizations, education, the media, and religion. In 1998, the County Planning and Development staff met with various departments throughout the County that were considered integral partners in working to ensure a complete count. The creation of the Committee was spurred by an undercount in the 1990 Census by at least 81,370 people, which resulted in a loss of over \$80 million a year (\$800 million over the decade) in federal and state funding. In efforts to keep this from recurring, the County at the time allocated \$340,000 and two staff persons towards the Complete Count Committee. The Committee was launched in 1999 and organized many creative events and activities for the following sixteen months, which included distributing a newsletter and partnering with diverse stakeholders. Even at the time, it was considered that Cook County was at risk of an undercount due to its large immigrant population. A copy of "Cook County Census 2000: Complete Count Committee," a booklet issued by the Complete Count Committee, has been submitted as Trial Exhibit PX-249, a copy of which is in the files maintained by my office in our regular course of business and which I consulted for the facts set forth in this paragraph.

4. My office monitors constituent concerns regarding matters of the public interest and, in the process, makes and maintains records of those constituent concerns.

5. My office is administering a survey with constituents in the 7th District and partner

organizations as part of our office practice of identifying ways to understand and address constituent concerns. With this survey, we seek to understand their reactions to the possible inclusion of a citizenship question in the 2020 Census. We plan to continue gathering responses through constituent walk-ins or community events my office participates in. Through discussions with partner organizations and elected officials who are also advocating for public awareness on the complexities of the 2020 Census (this group is described in more detail in Paragraph 9, below), it became clear that more had to be done to engage the public. Given that I represent a majority Latinx district, my staff and I decided to create this survey to better understand the current level of awareness and reactions to the possible inclusion of a citizenship question. It is my hope that the findings can help my office know how to best respond and disseminate information to constituents as we approach the Census.

6. During a Property Tax Workshop my staff conducted at our district office in late August 2018, the end of the event was dedicated to having a brief dialogue with attendees about the proposed citizenship question. Attendees remained fairly quiet. I was concerned that this lack of open reaction meant that my constituents were either afraid to speak publicly on the topic or did not have information on it in order to provide an opinion, and I therefore decided that a survey could be a more confidential strategy to gather information. A survey was created that same week using Google Forms. The survey does not ask for identifying or personal information besides asking for zip codes to understand where in the district responses are coming from and whether the respondent is a service provider, which could impact their view of the proposed questions and its impacts. It is intentionally anonymous in order to gain an objective understanding of reactions to this issue.

7. My staff has thus far distributed the survey at four community events: a community conversation about the 2020 Census hosted by Telpochcalli Community Education Project on

September 11, 2018, a Property Tax Workshop conducted by my staff at Jose Clemente Orozco Community Academy in the Pilsen neighborhood on September 19, 2018, a town hall event on October 11, 2018, and a community event hosted by the group Organized Communities Against Deportations on October 20, 2018. In addition, the survey was also e-mailed to the 7th District Health Task Force, which is a coalition of non-profits and direct service providers in my district. The survey is neutral in that no particular stance is taken for or against the citizenship question. A mixed methods approach focused on obtaining qualitative responses was used and included both open-ended and closed questions, as well as questions with the opportunity to respond using a Likert scale and currently has a sample size of 77.

8. Respondents are adults aged 18 and over and 81.8% identify as Latinx/Hispanic. All Respondents indicated negative initial reactions to learning about the potential citizenship question and described it as profiling and biased. One Respondent stated “This is an attempt to exploit the fear among people who are currently under attack by federal immigrant agents, in order to reduce the accuracy of the census. It is a racist, anti-immigrant, and anti-democratic effort by the federal administration.” The majority of respondents indicate that they do plan on participating in the Census. Using a Likert Scale with points 1 through 5, 37.7% of Respondents selected Option 5, indicating they are very likely to participate in the Census if asked about their citizenship. However, 61.1% selected Options 1 or 2 (“Extremely or very unlikely to participate”) when asked how likely they believe their neighbors or community are to participate if asked about their citizenship on the Census. Nearly all the Respondents believe the question is unnecessary, with one individual describing it as a “racist and xenophobic tactic” and another stating “the census survey is a way to ascertain support for a local community, and citizenship has no place in determining that support.” Another respondent stated the following: “The question is unnecessary given the current political

climate with respect to immigration practices and prejudices.... This type of questioning will either deter participation in the survey, fuel further distrust, and/or decrease data reliability.” I plan to continue distributing the survey to build a better picture of how the community I represent feels about this issue and determine the best strategies to work with constituents and partners on outreach for the 2020 Census. As of October 22, 2018, total costs for my office associated with this effort, which include printing costs, transportation to events, and staff time, are approximated to be \$442.61 and a total of 17.5 staff hours.

9. Other indications of community fear due to the proposed citizenship question are also strong. In June 2018, I hosted the first Count Me In 2020 Census Community Briefing in Illinois in collaboration with various civic organizations and other elected officials. Leaders from non-profit organizations throughout Chicago were in attendance. Many of them provide direct services to immigrant communities and their questions to panelists and Census Bureau staff clearly reflected the uncertainty and concern over how to safely direct community members to fill out the Census if a citizenship question is included. In surveys distributed to attendees, concern that the proposed citizenship question would reduce census participation was among the most common reasons participants gave for their continued interest in remaining engaged in census outreach. My office has directly received communications from organizations that want to learn about government appropriations to assist them with conducting outreach. Furthermore, at a community event held at my office in August 2018, attendees expressed concern over the question and remarked that its inclusion in the Census can be problematic for their neighbors and community, and for the federal funding the district receives.

10. Since early 2018, I have informally convened a representative group of local organizations and elected officials serving various hard-to-count communities on a monthly basis to

discuss strategy for the 2020 Census at various levels of government, and these leaders have also expressed increasing concern at the slow pace of building a campaign to engage the public. They are not sure how to confront the dilemma of communicating the importance of the Census to all communities and the impact of an accurate count in securing needed programs while confidently engaging noncitizens despite the uncertainty surrounding the rollout of the citizenship question. I can attest to the fact that the concerns leading up to the 2020 Census are unprecedented. I do not recall this level of alarm from government, philanthropy, and civic and community based organizations in past decades.

11. Much of the concern specific to the citizenship question coincides with heightened immigration enforcement and drastic changes within immigration law and policy on behalf of the federal government which are pushing longstanding advocates, including myself, to be cautious in how Census outreach will continue to be conducted.

12. Residents of the 7th District have directly experienced the impacts of this heightened federal immigration enforcement, as evidenced by the August 2018 arrest of Samuel Armando Peralta, a Honduran immigrant without a criminal history, in the Back of the Yards Neighborhood. Such incidents lead to heightened fear and mistrust throughout the immigrant community.

13. In order to combat the anticipated negative effects of the citizenship question, the Cook County Board approved a resolution (Item #18-2098) in February 2018 that calls on Congress and the Secretary of Commerce to ensure Census funding, fairness, and accuracy. It cites the constitutional requirement to count all persons living in the United States, regardless of citizenship or legal status as well as research that documents the growing reluctance of immigrants to participate in surveys or census tests. The resolution calls for Congress and the Department of Commerce to reject the Department of Justice's request to include the question. Cook County faces

stark demographic challenges as the largest county in the nation to witness a continuous population decline. The County is also home to over one million immigrants from all over the world, and it is vital that the diversity of our constituents be counted to ensure needed service provision and representation.

14. On October 17, 2018, the Cook County Board of Commissioners approved a resolution (Item #18-6056) titled “Establishing the Cook County Complete Count Committee to Develop and Implement an Outreach Strategy for the 2020 Census.” I was one of the co-sponsors of this resolution and successfully proposed amendments to include language that indicates the risk of a disparate impact on immigrant communities with the proposed citizenship question. A copy of this resolution was submitted as Trial Exhibits PX-244 and PX-245. Furthermore, the Resolution requires that adequate funding and staff be allocated to the Complete Count Committee for it to be able to carry out its functions. County officials have stated the possibility that \$750,000.00 will be allocated for this purpose, although the amount has yet to be approved by the Cook County Board.

15. In addition to this resolution, I also filed a Proposed Resolution (Item #18-6420) to “Establish an Emergency Fund to Address the Citizenship Question in the 2020 Census” for the October 17, 2018 Cook County Board of Commissioners Meeting. A copy of this Proposed Resolution was submitted as Trial Exhibit PX-243. This fund would draw a minimum of \$200,000 from the surplus in the County’s operating funds and would focus on specialized outreach to immigrant communities for the 2020 Census. I plan to file a budget amendment on this matter in November. I have worked with Alderman Gilbert Villegas of the Chicago City Council to ensure a similar resolution was filed at that level of government on October 17, 2018 (Resolution #R2018-1074) which would call for an emergency fund in the amount of \$500,000. A copy of this Resolution was submitted as Trial Exhibit PX-246. This Proposed Resolution, however, will not be on the agenda

until the next City Council meeting on October 31, 2018. These funds alone would cost the City of Chicago at least \$700,000.00.

16. As a member of the Cook County Board of Commissioners, I am one of the seventeen Commissioners that make up the legislative body of this unit of government. My colleagues and I are tasked with determining and voting on a balanced budget for the entire county for every fiscal year. This includes analyses of budgets proposed by all departments throughout the County and proposing new revenue sources as applicable. Furthermore, as a Commissioner, I vote to approve receipt of federal awards either to the appropriate County departments or of funds that pass through the County to smaller jurisdictions. Much of this funding is reliant on Census data.

17. In June 2018, the Board of Commissioners, including my office, received an annual report on federal awards granted to Cook County during Fiscal Year 2017. My staff cross-checked this report with the award information made public by the Census Bureau itself. Specifically, my office used the report titled “Uses of Census Bureau Data in Federal Funds Distribution: A New Design for the 21st Century” which was issued in September 2017 by the U.S. Census Bureau to identify the federal awards granted to Cook County that are reliant on U.S. Census population data. Cook County and jurisdictions within the County currently receive over \$90 million in federal funding. Fourteen of the grants from the federal government use data from the Census to determine amount of funding to award. In Fiscal Year 2017, the County and jurisdictions within the county received fourteen grants totaling more than \$43 million that are affected by the Census. About half of the federal funding that the County and its jurisdictions have received is affected by the Census; these federal funds include Highway Planning and

Construction funds, Community Development Block Grants, Crime Victim Assistance, and the National School Lunch Program.

18. The data obtained from the decennial Census and intermittent surveys assist in tracking demographic changes that determine how to prioritize the allocation of federal funding.

19. Just over half of the federal funds that Cook County received and managed for Fiscal Year 2017 came from programs that allocate funding on the basis of Census Bureau data. In order to arrive at this conclusion, my staff made an analysis of federal grants Cook County received for Fiscal Year 2017, using an annual audit report and a listing of federal funds that use Census Bureau data. Various Cook County programs are funded by agencies and programs that rely on Census population data, with the greatest amount of funding allocated on the basis of Census data coming from the following agencies: the U.S. Department of Housing and Urban Development (\$27.54 million), the U.S. Department of Agriculture (\$8.4 million), and the U.S. Department of Justice (\$5.9 million).

20. An undercount would not accurately capture the population of Cook County and would result in a misinterpretation of where and how much federal funding is needed.

21. With the reliance of these programs on federal funding, the annual award would decrease as a result of an undercount and result as an impediment to delivering needed services. For example, the WIC Special Supplemental Nutrition Program for Women, Infants, and Children provides \$7.8 million to Cook County residents, which include residents of the City of Chicago, and losing any portion of that due to an undercount would negatively impact women and children during a critical time in their lives. Additionally, Community Development Block Grants awarded through the U.S. Department of Housing and Human Development have \$9.5 million at stake, which could compromise needed investment in infrastructure and affordable

housing to parts of the County with limited options. The loss of such funding would starve Cook County residents of resources that should instead be expanded.

22. The Cook County Board of Commissioners is responsible for establishing the boundaries of 17 commissioner districts. In 2011, as a member of the redistricting committee and as of the Cook County Board of Commissioners, I considered testimony and comprehensive data analyses to decide the configuration of the districts. The County Board is required by the U.S. Constitution, the Illinois Constitution, and by federal law, including the Voting Rights Act to comply with the general principle of one-person one vote as well as to take care to not diminish the voting strength of two protected minority groups.

23. Federal and Illinois state courts have determined that Decennial Census is the only source of population and demographic data that we may use in determining the final configuration of Cook County Board districts. To that end, we require use of Decennial Census data to have a complete and accurate population count, a complete and accurate count of voting age population, and complete and accurate counts by race and ethnicity, all at the level of individual blocks in order to establish commissioner districts that are essentially equal in population and that afford African Americans/Black and Hispanics/Latinos opportunities to elect candidates of their choice pursuant to the requirements of the Voting Rights Act. Decennial Census data is modeled down to the block level using data through Public Law 94-171. The citizenship status of Cook County residents does not factor directly into the design of these election districts.

24. I have experienced the outcomes of discriminatory redistricting in the past. The outcomes of the *Ketchum v. Byrne* litigation, which functioned as a response to the discriminatory 1981 redistricting plan for the City of Chicago that unjustly denied fair

representation for Black and Latino residents, ultimately led to my election as Alderman of the 22nd Ward in 1986. Furthermore, I am concerned that an undercount in the next Census could deprive communities in suburban areas and the collar counties of the Chicago region from creating districts where Latinos can become a supermajority, given that there has been significant growth of the Latino population in suburban areas. I have direct knowledge of concern on this matter from partners at the Mexican American Legal Defense and Education Fund and the Latino Policy Forum. Similarly, the NAACP and the Chicago Urban League have expressed concern to me that an undercount would impact the ability to draw districts in historically African American communities in the Chicago area, which have experienced dramatic population decline.

25. Based on 2016 U.S. Census American Community Survey data, out of the seventeen Cook County districts, the 7th District which I represent has the largest foreign-born population, with 110,152 residents born outside the United States. The foreign-born population in the 7th District is among the densest per square mile, and comprises 51% to over 75% of the population within the district's boundaries. The demographic data is sourced from 2012-2016 American Community Survey 5-Year Estimates, Table #B99051 Allocation of Citizenship Status, Geography: US Census Block Group. The information on district boundaries is provided by the Cook County Bureau of Technology GIS Department, using the boundaries determined by the County Board. My staff and I have reviewed both of these sources. The data indicates that the 7th District has the highest risk of an undercount when compared to the rest of Cook County. When compared to the rest of the State of Illinois, Cook County and its neighboring counties have the largest accumulation of hard-to-count communities. The immigrant/foreign-born population in Cook County is at largest risk of an undercount when compared to the rest of the

state as well; while, according to City University of New York data, the foreign-born population comprises approximately 15% of the state's population, the foreign-born population comprises approximately 21% of the population in Cook County alone. The data suggests that based on the higher concentration of foreign-born residents in Cook County and the 7th District in particular, the proposed citizenship question could have a disproportionate impact on people living here and more education and support is needed to tailor outreach to these residents.

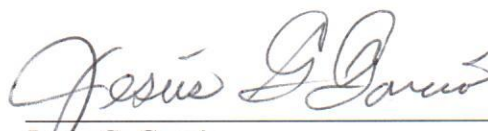
26. In 2012, at the time when the district boundaries for the Cook County Board were last established, the County Board determined that the districts must be contiguous and compact, that they must adhere to the principle of one-person one-vote, that they must conform to the requirements established by the United State and Illinois State Constitutions, and that they must conform to the Voting Rights Act as interpreted by the courts. Data with respect to voting age population and population counts of African Americans/Blacks and of Hispanics/Latinos, including those who indicate that they are one race or of several races, are used to determine whether districts do not overly pack or dilute the capacity of these minority groups from electing candidates of their choice. Other factors, such as known community boundaries, boundaries of other units of governments, known boundaries of other election districts and visible or physical barriers are secondary considerations. Knowledge of these issues is generally gathered through public testimony. The final map is decided by a vote of the Cook County Board of Commissioners following extensive public comment. Members of the County Board are also able to present amendments or substitute maps during the course of redistricting process. All amendments and substitute maps are required to rely on Census data in the same manner as the maps generated by the Cook County Board in order for them to receive consideration by the Board.

27. An undercount affecting an identifiable population will have the effect of diluting the ability of that population to elect a candidate of its choice. This is because the process of redistricting works within a fixed jurisdiction and, in the case of Cook County, divides that population equally among seventeen election districts. Consequently, the district boundaries of an undercounted area must be unnecessarily expanded to include areas that would not otherwise be included but for the fact that the population count was flawed. Similarly, systematic undercounts of African American/Black and Hispanic/Latino populations result in districts that take in non-Latino and non-African American populations thereby diminishing the voting strength of those minority districts as well as possibly denying either of these groups an additional district in which they may elect a candidate of their choice.

28. Such an impact on representational interests is harmful because it would limit the ability of residents in undercounted areas to have a voice within their own government. It would be less likely for policies to advance the interests of these communities to be developed and would serve to extend inequity in our society.

I declare under penalty of perjury that, to the best of my knowledge, the foregoing is true and correct.

Executed on this 24 day of October, 2018

A handwritten signature in cursive script, reading "Jesus G. Garcia". The signature is written in dark ink and is positioned above a horizontal line.

Jesus G. García,
Cook County Board Commissioner, 7th District

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

STATE OF NEW YORK, et al.,

Plaintiffs,

v.

UNITED STATES DEPARTMENT
OF COMMERCE, et al.,

Defendants.

CIVIL ACTION NO. 1:18-cv-2921 (JMF)

**SUPPLEMENTAL AFFIDAVIT
OF JESÚS G. GARCÍA**

Pursuant to 28 U.S.C. § 1746(2), I, Jesús G. García hereby declare as follows:

1. My name is Jesús G. García, and I make this Supplemental Affidavit in connection with *State of New York, et al., v. United States Department of Commerce, et al.*, in order to provide additional support for the testimony set forth in my prior affidavit sworn to on October 24, 2018 (the “First García Aff.”). I am over the age of eighteen and have personal knowledge of all the facts stated herein.

2. As stated in ¶ 4 of the First García Aff., a regular part of my duties as a Cook County Commissioner is to monitor constituent concerns regarding matters of the public interest and, in the process, make and maintain records of those constituent concerns. This process includes communicating on a regular basis with community organizations and non-profits which provide services to my constituents or of which my constituents are members, including, but not limited to: the Telpochcalli Community Education Project; the 7th District Health Task Force and its member organizations; the Mexican American Legal Defense and Education Fund; the Latino Policy Forum; the NAACP; and the Chicago Urban League. The information I receive about constituent concerns from such community organizations and non-profits forms part of the

basis on which I make decisions about where and how the Cook County Board of Commissioners needs to allocate funds.

3. The report “Uses of Census Bureau Data in Federal Funds Distribution: A New Design for the 21st Century”, which I consulted for information regarding the federal awards granted to Cook County reliant on U.S. Census population data, as set forth in ¶ 17 of the First García Aff., is a report issued by the U.S. Department of Commerce, and is publically available at the following link: <https://www2.census.gov/programs-surveys/decennial/2020/program-management/working-papers/Uses-of-Census-Bureau-Data-in-Federal-Funds-Distribution.pdf> (last visited on November 2, 2018). I relied on the same document in preparing ¶ 19 of the First García Aff., referring to it in that paragraph as “a listing of federal funds”.

4. In preparing ¶ 19 of the First García Aff., I also consulted the “Cook County Illinois Report on Federal Awards (In accordance with the Single Audit Act Amendments of 1996, and Uniform Guidance) For the Fiscal Year Ended November 30, 2017,” prepared in the regular course of business by Washington, Pittman & McKeever, LLC, Certified Public Accountants And Management Consultants, on behalf of the Cook County Board of Commissioners, a copy of which is attached hereto as Exhibit A. A copy of this report is regularly maintained in the files of my office.

5. In preparing ¶ 25 of the First Garcia Aff., I relied on 2016 U. S. Census American Community Survey Data, publicly available from the Census Bureau at the following link: https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_16_5YR_B99051&prodType=table (last visited on November 2, 2018), in combination with information on Cook County Board of Commissioners district boundaries provided to my office by the Cook County Bureau of Technology GIS Department. Due to my direct involvement in redistricting, I

maintain such information on district boundaries in my office in the regular course of business.

I declare under penalty of perjury that, to the best of my knowledge, the foregoing is true and correct.

Executed on this 3rd day of November,
2018

A handwritten signature in blue ink, appearing to read "Jesús G. García", written over a horizontal line.

Jesús G. García,
Cook County Board Commissioner, 7th District

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

STATE OF NEW YORK, et al.,

Plaintiffs,

v.

UNITED STATES DEPARTMENT
OF COMMERCE, et al.,

Defendants.

18-CV-2921 (JMF)

Affidavit of Dr. Hermann Habermann

I. Professional experience and qualifications.

1. I have over thirty-five years of experience as a statistician, earning much of that experience at statistical agencies of the United States government. Among other federal government positions, I have served as Chief Statistician of the United States (1988–1992) and as Deputy Director and Chief Operating Officer of the United States Census Bureau (2002–2007). I also served for eight years as Director of the United Nations Statistics Division (1994–2002).

2. I earned my Ph.D. in Statistics from the University of Wisconsin–Madison in 1975. A copy of my curriculum vitae is PX-353.

II. Summary of Findings.

3. I was retained by the plaintiffs in this litigation to provide my expert opinion on the policies and procedures federal statistical agencies follow when designing, modifying, and implementing statistical instruments, and on the extent to which the Commerce Department and

Census Bureau complied with or deviated from these policies and procedures in deciding to add a question on citizenship status to the 2020 Decennial Census. I was also asked to evaluate the Commerce Secretary's reference, in his March 26, 2018 decision memo, to the recommendations of the United Nations regarding population censuses.

4. Based on my analysis, I have formed the following opinions:

5. First, there is insufficient justification of the need for citizenship data at the block level.

6. Second, the Census Bureau's interactions with the Department of Justice do not reflect sufficient coordination with the requesting agency to determine their actual data needs.

7. Third, even if one accepts the need for block-level data, there is a less-costly and better-quality alternative, which was proposed by the Census Bureau.

8. Fourth, there is a need for pretesting of the citizenship question, including the impact on response and quality.

9. Fifth, creating and maintaining a current database on citizens is likely to damage the credibility of the 2020 Census and the Census Bureau.

10. Sixth, the United Nations recommendations on population censuses do not independently support the Commerce Secretary's decision to add a citizenship question to the census.

11. A copy of the report that I submitted in this case is PX-316.

III. Overview.

12. Federal statistics touch every part of the country at all levels of government, and affect every resident. Federal economic statistics, such as gross national product and unemployment, are used by government and corporate decision makers as well as individual

investors. Demographic statistics, including income and wealth data, track poverty trends and the state of inequality, and are used in allocation formulas for federal funds. Crime data provide information on the safety of our neighborhoods. Federal statistics not only illuminate the health of the nation, but are used in developing policies on improving health at national, state, and local levels. Federal statistics are used to determine if a new business comes to a neighborhood or where a new road or hospital goes.

13. The decennial census holds a special place in federal statistics. It is enshrined in the Constitution and is used for apportioning the House of Representatives. The decennial corresponds to a national ceremony. It becomes a series of photographs of where we have been, where we are, and where we are likely to be as a nation.

14. The use and value of federal statistics—including the decennial census—depends on their being seen as accurate and unbiased. If statistics are seen as biased and inaccurate, they will not be used, and therefore they will be of little or no value. Statistics are trusted when the agencies that produce the data are seen as making decisions based on professional, not political, considerations. For their data to be credible, the Census Bureau must gain and hold the trust of the nation. Professional independence is a foundation for building this trust. Decisions about statistical matters should be free of any real or perceived political interference.

15. The Office of Management and Budget, which coordinates the federal statistical system, has identified several fundamental responsibilities of federal statistical agencies, including that they maintain both impartiality and the perception of impartiality. Office of Management & Budget, *Statistical Policy Directive No. 1: Fundamental Responsibilities of Federal Statistical Agencies and Recognized Statistical Units*. PX-354. The Committee on National Statistics of the National Academy of Sciences has also identified independence from

political, and other undue external influence as a core principle for federal statistical agencies. National Academies of Sciences, Engineering, and Medicine, *Principles and Practices for a Federal Statistical Agency, Sixth Edition* (2017), PX-355.

16. Professional independence is important not only for the credibility of the statistics agency, but also for the credibility of the decisions made by political appointees. The reason for professional independence is to ensure that decisions based on statistical outputs are not tainted by real or perceived political interference.

17. In addition, federal statistics cannot be produced without the voluntary cooperation of people and the business community to provide data. This holds even for those data collections that are labeled “mandatory” and are required by law. Respondents provide data with the belief that their data will be confidential and not used against them.

18. While statistical information is critical to the nation, it is also true that any question that is asked about a person’s characteristics is by its very nature intrusive and a burden. It is the responsibility of the government to ensure that the intrusion and burden are carefully considered and fully justified. When a question is proposed for any census or survey instrument, including the decennial census, federal statistical agencies proceed from the premise that there is a burden of proof on the requestors of the question to demonstrate the need for the question and to demonstrate that the proposed question will not harm the survey instrument nor damage the credibility of the statistical system with the public.

19. There is not a single federal statistics agency that collects and disseminates statistical information. The United States has a decentralized statistical system with over 100 agencies that conduct statistical activities, of which thirteen are designated “principal statistical agencies” by the Office of Management and Budget. These agencies are located in their

respective Departments (for example, Bureau of Labor Statistics in the Labor Department, Census Bureau in the Commerce Department), with an oversight and coordinating agency in the Office of Management and Budget (OMB).

20. The head of each statistical agency may be a career official (for example, the National Center for Health Statistics) or a Presidential Appointee with Senate Confirmation (for example, the Census Bureau) who reports to senior officials in the Department in which the statistical agency is located. While OMB does not have line management authority over individual statistical agencies, OMB approval is needed for any data collection that is promulgated to ten or more respondents. Moreover, OMB develops system-wide standards to ensure federal statistics are of high quality and that the burden on the public is minimized. Like all agencies that collect information for statistical purposes, the Department of Commerce and the Census Bureau are accountable for following the OMB standards when they propose to add a question to any of their data collections, including the decennial census.

21. On March 26, 2018, the Secretary of Commerce concluded that a citizenship question should be added to the 2020 Decennial Census (short form, asked of 100 percent of households). This proposal is intended to produce information on citizenship at the census block level. A census block is the smallest geographic unit used by the Census Bureau for tabulation of 100-percent data (data collected from all houses, rather than a sample of houses). Currently, citizenship information is available from the American Community Survey at the census block-group level. A census block group is a geographical unit used by the Census Bureau, which is the next largest geographic area after a block, and which generally contains between 600 and 3,000 people. It is the smallest geographic unit for which the bureau publishes sample data (that

is, data which is only collected from a fraction of all households). The Census Bureau can provide estimates of block data from block-group data by using statistical modeling techniques.

IV. There is insufficient justification of the need for citizenship data at the block level.

22. The Congress and the Executive Branch have developed laws and procedures to reduce the burden of federal information collection on respondents and to ensure that questions proposed for a survey instrument (including the decennial census) have a practical utility. These laws and procedures generally require statistical agencies to demonstrate that a particular data collection is necessary to properly perform a given agency function. The record of the Commerce Secretary's decision to add a citizenship question to the decennial census fails to demonstrate sufficient justification of the need for citizenship data at the block level.

23. The Paperwork Reduction Act (PRA) of 1995, the most recent legislative update of laws that commenced with the Federal Reports Act of 1942, was enacted to ensure that agencies minimize the burden resulting from the collection of information, and maximize the utility of information created, collected, maintained, used, shared, and disseminated by or for the Federal Government. 44 U.S.C. § 3501(1), (2). At the heart of the PRA is a requirement that the agency proposing to collect information from the public evaluates the trade-off between the burden imposed upon the public and the "practical utility" of the collection to the government. Practical utility is defined in § 3502(11) of the PRA as "the ability of an agency to use information, particularly the capability to process such information in a timely and useful fashion." Furthermore, § 3506(c)(3)(a) of the PRA requires that before seeking final OMB approval of a collection of information, the agency must certify (and provide a record supporting such certification, including public comments received by the agency) that the information "is

necessary for the proper performance of the functions of the agency, including that the information has practical utility.”

24. The implementing rule for the PRA, 5 C.F.R. Part 1320 (PX-356), outlines the agency collection of information responsibilities (prior to seeking OMB approval) which include, among others, an evaluation of the need for the collection of information, a test of the collection of information through a pilot program, the reasons for which the information is being collected, and the way such information is to be used to further the proper performance of the functions of the agency. The proposer of the question is required to justify the reason for the information collection. The implementing rule for the PRA notes that the justification must include a citation and brief description of any statute or Executive Order that requires the collection. Agencies must provide background information on the program and describe how the collection supports it, and detail any specific program problems to be resolved. Further, the agency must furnish justification for the proposed granularity of data, including, most importantly, how the agency would use information at the requested level of detail in fulfilling its responsibilities. For sensitive questions—such as religious beliefs, sexual behavior and attitudes, or other matters commonly considered private—the agency is expected to indicate why the question is necessary, the specific uses to be made of the information, the explanation to be given to people from whom the information is requested, and any steps to be taken to obtain their consent must also be provided.

25. Given the many potential uses of decennial census data, and its highly desired geographic detail, great care must be taken in determining whether to use this vehicle to meet a particular information need. The Census Act requires that the subjects to be included in the next census be submitted to the Congress no later than three years before the census date (in the case

of the 2020 Census, no later than March 31, 2017). 13 U.S.C. § 141(f). This requirement is in addition to the mandates of the PRA. At the three-year deadline to identify subjects for the 2020 census, the Census Bureau notified Congress of a citizenship subject on the ACS, but not on the short form. Census Bureau, *Subjects Planned for the 2020 Census and American Community Survey* (Mar. 28, 2017) (PX-357).

26. With respect to the addition of a citizenship question, on November 4, 2016, the Department of Justice sent a letter to the Census Bureau that “supplements my letter of July 1, 2016 in which I advised that, at this time, the Department of Justice had no needs to amend the current content and uses or to request new content in the American Community Survey (ACS) for the 2020 Census.” PX-001 (AR 000311). The letter goes on to request the Census Bureau to consider a new topic in the ACS relating to LGBT populations. Approximately thirteen months later, on December 12, 2017, the Department of Justice sent a letter to the Census Bureau again outlining its needs and requesting to add a citizenship question to assist with Voting Rights Act enforcement. PX-003 and PX-004 (AR 001525 and AR 004012). The Department of Justice did not request block-level citizenship data for purposes of enforcement for any of the decades beginning with 1970, the first decennial census after the Voting Rights Act was enacted in 1965.

27. On December 22, 2017, John Abowd, the Census Bureau’s Chief Scientist, sent a memorandum to Acting Director Ron Jarmin, in which he stated: “[b]ased on balanced consideration of multiple factors of quality, cost and feasibility, we recommend that the citizenship data for Department of Justice Voting Rights Act enforcement be obtained through the use of administrative records and not through the addition of a question to the decennial census instrument.” PX-004 (AR 010443).

28. Also on December 22, 2017, Ron Jarmin sent an email to Arthur Gary at DOJ. PX-004 (AR 05656). In that email, Jarmin stated that the findings of the Census Bureau professional staff “suggest that the best way to provide block-level data with citizen voting population by race and ethnicity would be through utilizing a linked file of administrative and survey data the Census Bureau already possesses. This would result in higher quality data produced at lower cost.” Jarmin goes on to suggest a meeting with technical experts to discuss the details of the DOJ proposal.

29. This suggestion for a meeting is normal Census Bureau procedure. It allows the technical experts to better understand how the Census Bureau can meet the needs of the proposers. It also allows for a discussion of alternative ways of meeting a request. In this case, the Census Bureau suggested that modeling of the American Community Survey data would meet the DOJ needs at less cost than adding a question to the decennial census. Without such a meeting, it would not be possible to know if the modeling approach would in fact meet the DOJ’s needs.

30. A meeting was scheduled but the Department of Justice subsequently cancelled the meeting and declined to further justify or elaborate its requirements. In an email from Jarmin to Acting Deputy Secretary Karen Dunn Kelley on February 6, 2018, Jarmin wrote that he spoke with Arthur Gary, who reported that DOJ believed its requirements were fully described and did not want to meet. PX-004 (AR 09074).

31. One of the reasons given by the Secretary in his March 26 memo on the citizenship question for rejecting the approach of the Census Bureau to model the citizenship data was because the Census Bureau could not confirm that such modeling would have a sufficient degree of accuracy. However, without greater degree of specificity from the DOJ on

what the DOJ actually intended to use the block-level data for, it is not possible to know whether modeling would satisfy the requirements of the Department of Justice. As noted above, the Census Bureau attempted to meet with the DOJ to obtain more information, but DOJ declined to meet.

32. The Secretary rejected the option of not adding a citizenship question and using modeling techniques on ACS data on the grounds that it does not provide actual, complete number counts and that there is no guarantee that data could be improved using small-area modeling methods. With respect to the insistence on “actual” data, Section C of the January 19, 2018 memorandum from John Abowd to Secretary Ross notes that responses from non-citizens who assert they are citizens are incorrect on the ACS about 30% of the time. PX-001 (AR 001277). The record identifies no reason to conclude that responses to a citizenship question would be *more* accurate on the decennial census than on the ACS. With respect to completeness, even with an added question on citizenship, some degree of imputation will be required to provide a “complete” set of responses. The problem with statistical modeling of ACS data remains that DOJ has failed to provide sufficient information on its needs—despite efforts of the Census Bureau to obtain this information—which would allow the Census Bureau to determine if modeling is an effective solution.

33. The PRA final rule says (in part) “the agency . . . shall certify . . . that the proposed collection of information . . . (b) is not unnecessarily duplicative of information otherwise reasonably accessible to the agency.” 5 C.F.R. § 1320.9(b). OMB further requires that the agency “[d]escribe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use . . .” Office of Management and Budget Form 83-I INST (October 1995) (PX-362). Because the Department of Justice did not

provide sufficient information to enable the Census Bureau to determine that its data request was non-duplicative and could not be met through existing data sources, the request for a citizenship question does not meet the standards a federal statistical agency would ordinarily apply to justify collecting block-level citizenship data.

V. The Census Bureau's interactions with the Department of Justice do not reflect sufficient coordination with the requesting agency to determine their actual data needs.

34. The decennial census has long served as the fundamental source of data for agencies across federal, state, and local governments. Needs it has addressed range from the enumeration used in congressional reapportionment nationally and redistricting at the state level, to allocation of federal, state, and local resources, to ascertaining compliance with statutes and regulations, to providing the denominators for an array of more focused surveys. To ensure that information collected through the decennial census program is required by federal programs, regular content reviews have been carried out. The content review process is intended to confirm that questions on the decennial census are required by federal programs, that only the information needed is requested, and that the information collection is as minimally burdensome as possible.

35. A critical component of the content review process is interagency communication to determine the data needs of any agency that believes census content is needed for the federal programs it administers. Over the years, OMB and the Census Bureau have collaborated on interagency consideration of forthcoming Decennial Census content and question wording. Along with the relevant agencies, they participated in assessments of the agencies' needs for specific questions, with particular attention to the justification for granularity of data (whether data needs had to be met on the short form, or some other information collection). In

addition to ensuring that requests passed the “granularity¹ litmus test,” the interested agencies worked to review, test, and evaluate alternative wording of many questions on items such as educational achievement, employment status, race and ethnicity.

36. More recently, for example, OMB hosted an ongoing technical group to exchange views and recommendations with respect to the Decennial Census content and questions, including the nascent ACS that ultimately replaced the long (sample) decennial census questionnaire. In addition to the ongoing technical group, on August 2012, OMB and the Census Bureau chartered the Interagency Council on Statistical Policy Subcommittee on the ACS (ICSP-SACS) to “provide advice to the Director of the Census Bureau and the Chief Statistician at OMB on how the ACS can best fulfill its role in the portfolio of Federal household surveys and provide the most useful information with the least amount of burden.” *Charter of the Interagency Council on Statistical Policy, Subcommittee on the American Community Survey* (Aug. 10, 2012, rev. Nov. 15, 2017) (PX-358). The Subcommittee charter also states that the Subcommittee would be expected to “conduct regular, periodic reviews of the ACS content . . . designed to ensure that there is clear and specific authority and justification for each question to be on the ACS, the ACS is the appropriate vehicle for collecting the information, respondent burden is being minimized, and the quality of the data from ACS is appropriate for its intended use.” The deliberations of the ICSP-SACS were informed in part by the work of the ongoing technical group. The formation of the ICSP-SACS also embraced the 2020 OMB-Census Bureau process to examine and confirm the value of each question on the decennial census program that began in 2014, and to confirm and update the statutory and regulatory authorities for the questions.

¹ Granularity refers to the lowest census geographic area that is required.

37. In 2014, OMB and the Census Bureau began the inter-departmental review to examine and confirm the value of each question on the ACS, and to confirm and update the statutory and regulatory authorities for the questions. As part of this inter-departmental review, the Commerce Department wrote to the Justice Department in May 2014; and Arthur Gary, General Counsel of DOJ's Justice Management Division, responded in June 2014 with "DOJ's affirmation that it continues to need relevant information as described above and in the attachment, and that the legal authorities for the use of such information are accurate, current, and complete." PX-001 (AR 000278). The attachment details statutory requirements, uses, lowest geography (census block group), ACS characteristics, and frequency (annual) for citizenship data required through the ACS.

38. In 2016, the Census Bureau asked Federal agencies to provide updates, if any, to their documentation. In response to this request, DOJ's Gary wrote, "[t]his letter updates my letter of July 1, 2016, in which I advised that, at that time, the Department of Justice had no needs to amend the current content and uses or to request new content in the American Community Survey (ACS) for the 2020 Census." PX-001 (AR 000311). It does not further discuss the citizenship question. But on December 12, 2017, after the subjects for the 2020 Decennial Census and the American Community Survey had been submitted to the Congress, DOJ's Gary wrote to Acting Census Bureau Director Ron Jarmin regarding a request to reinstate a citizenship question on the 2020 census questionnaire. PX-001 (AR 000663).

39. Although the Census Bureau undertook all phases of the Interagency Question Revision Process—including extensive discussions with other federal agencies and outside stakeholders, substantial research and cognitive testing of alternatives, and robust testing in the 2015 National Content Test—with respect to possible changes in the race/ethnicity questions for

the 2020 Census, none of those processes were followed with respect to adding the citizenship question to the 2020 Decennial Census short form.

40. Despite repeated references in the Administrative Record to steps involving “robust processes” for working with OMB and the ICSP-SACS [see, for example, PX-004 (AR 003890), PX-004 (AR 005567), PX-004 (AR 005512)], the addition of the citizenship question just prior to the submission of planned questions to the Congress appears to have taken place without any apparent consultation with OMB or the ICSP-SACS. In fact, as of March 6, 2018, a Census Bureau briefing for the Department of Commerce indicated that there would be no changes to the 2020 Census subjects, that an OMB briefing had taken place on February 22, and that the ICSP-SACS briefing would take place on March 14. PX-001 (AR 000435).

41. In addition, as noted above, the Census Bureau requested a meeting with the Department of Justice in order to give the technical experts an opportunity to discuss the details of the proposal to add a citizenship question, but the Department of Justice declined to meet. PX-004 (AR 009074); (Abowd 8/30/2018 dep. tr. 96-99). As Dr. Abowd testified on behalf of the Census Bureau, it is unusual to receive a data request from an agency and then for the agency to refuse to meet to discuss the technical aspects of that data request. (Abowd 8/30/2018 dep. tr. 98-99).

42. The content review process for the DOJ’s request for a citizenship question did not follow the basic protocols for interacting with OMB and the Census Bureau to assure that questions on the decennial census are required by federal programs and that the information collection is as minimally burdensome as possible.

43. An example of a typical interagency collaboration process illustrates the extent to which the Commerce Department deviated from typical practice here. Revisions to survey

questions in the federal statistical system usually involve an extensive, multi-faceted process. This is particularly true when a question may be employed, or its data used, by multiple agencies. A salient case is the question employed across the government when asking about race and ethnicity. Prior to the mid-1970s, there was no standard approach to asking this question on federal information collections, whether for general demographic information, for the evaluation of federal program initiatives, or for enforcement of government policies. At the request of several agencies, OMB undertook the development of a standard approach to collecting this information, and in 1977 issued a standard for use by agencies that intended to collect race and ethnicity data. For the first time, the “denominators” from the decennial census could be used with “numerators” from various surveys (e.g., education, labor, health) as well as administrative reports (school enrollment, employee characteristics, patient records) to better understand access to learning, labor force participation, and use of services. The 1977 standard, based largely on the question then used by the Office of Education in the Department of Health, Education, and Welfare, was adopted following an OMB-led consultation with several federal agencies.

44. In the early 1990s, Congress highlighted the need for a review and possible revision of the OMB standards for data on race and ethnicity. OMB agreed to undertake this review, outlining a three-pronged process. This included: (1) establishing an interagency committee comprising the producers and users of data on race and ethnicity (30-plus agencies); (2) conducting a research and testing program to examine and assess alternatives that were under consideration; and (3) providing multiple opportunities for public input and comment on options (via public hearings as well as multiple Federal Register notices).

45. The process ultimately spanned four years, from inception to announcement of revisions (October 1997). During that time, both affected federal agencies and stakeholders

outside government had multiple, continuing opportunities to contribute to the research agenda and to comment on the potential changes. The incremental research and testing program (which included substantial cognitive work) allowed for full consideration of alternatives, some of which came into view as the process unfolded.

46. The standards that ultimately were adopted, though not necessarily the first choice of some constituencies, were well-received as a consequence of the robust process that had been employed. A four-year process is not always necessary, but the critical components of the process need to be carried out: interagency involvement, research and testing, and timely public comment.

VI. The Commerce Secretary rejected a less-costly and better-quality alternative that the Census Bureau proposed for producing block level citizenship data.

47. Part IV of this affidavit discussed the standards that apply to an agency's request for a particular data collection, including the requirement that the request be supported by sufficient justification to demonstrate the practical utility of a collection, and the necessity of that collection to properly perform a given agency function. I further discussed that insufficient information was provided in the Commerce Secretary's March 2018 memo for rejecting the Census Bureau's opinion that the information needed by the DOJ could be obtained through modeling of existing ACS data.

48. However, assume for the moment that such evidence *had* been supplied by DOJ. In that event, the Census Bureau did develop a solution which would provide block-level data on citizenship, but would not require adding a question on citizenship. Moreover, this option would, in the judgment of the Census Bureau, be less costly and provide better quality data than

adding a citizenship question to the decennial census, to obtain “actual” data.² The solution proposed by the Census Bureau was to link decennial census responses to administrative records to determine the citizenship characteristics of the respondent and to model the remaining estimated 10% for whom a linkage was not possible. This is the Option C described in the January 19, 2018 Abowd memo to the Secretary. PX-001 (AR 001277). The Census Bureau option is based on its extensive administrative records research and its confidence that it could successfully model the citizenship of the approximately 10% of the decennial census responses through a model it would develop.

49. The Secretary rejected this approach by asserting that “the Census Bureau is still evolving its use of administrative records, and the Bureau does not yet have a complete administrative records data set for the entire population.” PX-001 (AR 001316).

50. The Census Bureau will always be evolving in its use of administrative records. The Census Bureau has always looked at the use of administrative records as a way to reduce the burden on respondents and there is no evidence that it is the Bureau’s intention (nor its mandate) to have a complete administrative records data set for the entire population. The position of the Bureau, in its analysis of the options, is that the Bureau was confident that Option C could be accomplished through a combination of the Bureau’s existing record linkage program, augmentation of existing agreements with those agencies possessing administrative records on citizenship, and development of an estimation model.

51. After reviewing the options identified in Dr. Abowd’s January 19, 2018 memorandum, the Secretary directed the Census Bureau to develop an Option D that would be a

² One issue with “actual” data on citizenship is that, as the Secretary notes in his March 26, 2018 memo, a non-citizen is likely to give an erroneous response approximately 30% of the time to the question of whether they are a citizen.

combination of the administrative records approach (Option C), and the option proposed by the Secretary to add a citizenship question to the decennial census (designated as Option B).

52. As described in the March 1, 2018 memo from Dr. Abowd to the Secretary, the Census Bureau understands that Option D can be described as follows: “Administrative data from the Social Security Administration (SSA), Internal Revenue Service (IRS), U.S. Citizenship and Immigration Services (USCIS), and the State Department would be used to create a comprehensive statistical reference list of current U.S. citizens. Nevertheless, there will be some persons for whom no administrative data are available. To obtain citizenship information for this sub-population, a citizenship question would be added to the 2020 Census questionnaire. The combined administrative record and 2020 Census data would be used to produce baseline citizenship statistics by 2021. Any U.S. citizens appearing in administrative data after the version created for the 2020 Census would be added to the comprehensive statistical reference list. . . . The comprehensive statistical reference list would be kept current, gradually replacing almost all respondent-provided data with verified citizenship status data.” PX-001 (AR 001308).

53. In its analysis of Option D the Census Bureau notes that: “[i]n sum, Alternative D would result in poorer quality citizenship data than Alternative C. It would still have all the negative cost and quality implications of Alternative B outlined in the draft January 19, 2018 memo to the Department of Commerce.” *Ibid.*

54. As I discussed in Part IV of this affidavit above, the applicable standards require federal statistical agencies to minimize respondent burden, demonstrate practical utility, minimize cost, and utilize existing information when conducting a collection of information from the public. 44 U.S.C. § 3501; OMB Statistical Policy Directive No. 1 (PX-000354). Even if the DOJ’s need for block-level data on citizenship had been adequately justified, the Secretary’s

decision to reject the Census Bureau's less-costly and better-quality alternative failed to meet these standards.

VII. Statistical standards for developing questions require pretesting of the citizenship question, including the impact on response and quality.

55. Standards and Guidelines for Statistical Surveys (including censuses) are government-wide methods and practices issued to ensure the maximum usefulness of the statistics produced. Under the PRA, OMB is responsible for developing and overseeing the implementation of government-wide policies, principles, standards, and guidelines concerning statistical collection procedures and methods. 44 U.S.C. § 3504(e)(3)(A). With expertise from its Federal Committee on Statistical Methodology³ (FCSM), OMB most recently updated and issued these standards in 2006, and supplemented the standards with an addendum on Standards and Guidelines for Cognitive Interviews in 2016. *OMB Standards & Guidelines for Statistical Surveys* (Sept. 2016), PX-359; *Statistical Policy Directive No. 2 Addendum: Standards & Guidelines for Cognitive Interviews*, PX-360; 81 Fed. Reg. 70586 (Oct. 12, 2016); 71 Fed. Reg. 55522 (Sept. 22, 2006).

56. There are 20 core standards issued by OMB that apply to federal censuses and surveys: they set forth the professional principles and practices to which federal agencies are required to adhere and the level of quality and effort expected in all statistical activities. Among these are several that contribute directly to the utility of information, including survey planning, survey design, survey response rates, and pretesting of survey systems. For example, the survey

³ As previously described, the United States has a decentralized statistical system. The overwhelming preponderance of statistical expertise resides in the agencies, not in OMB. OMB then relies on agency workgroups and committees to develop technical standards and guidelines for the entire statistical system under OMB sponsorship and direction. The Census Bureau has traditionally played a prominent role in these committees, including the FCSM.

planning standard requires agencies to provide a justification that includes, in part, the decisions the survey is designed to inform, the precision required of estimates (e.g., the size of differences that need to be detected), when and how frequently users need the data, and the tabulations and analytic results that will inform decisions and other uses. The pretesting survey systems' standard requires agencies to ensure that all components of a survey function as intended when implemented in the full-scale survey, and that measurement error is controlled by conducting a pretest of the survey components.

57. Standards and guidelines for *cognitive interviews* issued by OMB similarly apply to federal censuses and surveys. Cognitive interviewing is a key method used to pretest survey questions and questionnaires that can indicate whether a survey question captures the intended construct, and identify difficulties that respondents experience in understanding and accurately answering proposed questions.

58. In adding a question to a survey, the normal practice is to test the question. This testing is done to understand, *inter alia*, how the question will be received by different respondents (including response rates and quality of responses); what wording of the question performs best, and the question's impact on other questions; and the correct placement of the question. These practices are part of the OMB standards.

59. With respect to these OMB standards on development of questions, the administrative record produced in this lawsuit shows that the Census Bureau stated it needed to undertake a rigorous process to evaluate proposed content additions to the decennial census. PX-004 (AR 003890). This process includes several steps related to testing.

60. For example, the Census Bureau wrote that it "must test the wording of the new question." The Census Bureau stated that since "it is too late to add a question to the 2018 End-

to-End Census Test . . . additional testing on a smaller scale would need to be developed and implemented as soon as possible. This test would also require approval from OMB, which includes notifying the public and inviting comments through a Federal Register Notice (FRN).”

61. In addition, the Census Bureau wrote that it “must make additional operational adjustments, beyond testing, to include new content. This includes re-designing the paper questionnaires and adjusting the paper data capture system. For all automated data collection instruments (including Internet self-response, Census Questionnaire Assistance, and Nonresponse Followup), the additional question will require system redevelopment, for English and all supported non-English languages. In addition, the training for the enumerators and Census Questionnaire Assistance agents will need redevelopment.”

62. The Census Bureau also explained that “[b]ased on the result of the testing, the Census Bureau must finalize the actual 2020 Census questionnaires (paper and automated). The Census Bureau then must submit for OMB approval of the 2020 Census information collection. This submission also requires notifying the public and inviting comments through a Federal Register Notice.”

63. This rigorous and “well-established process” is referenced repeatedly in the Administrative Record and is consistent with OMB standards. PX-004 (AR 004773; AR 004874; AR 005512; AR 005565; AR 005567).

64. In his March 26 memo, the Secretary, while acknowledging the principle of testing, concludes: “[t]he Census Bureau staff have advised that the costs of preparing and adding the question would be minimal due in large part to the fact that citizenship question is already included on the ACS, and thus the citizenship question has already undergone the cognitive research and questionnaire testing required for new questions.” PX-001 (AR 001313).

65. Dr. John Abowd took this same position, that testing of the citizenship question was not required because it had been included on the ACS, in his January 19, 2018 memo to the Secretary. PX-001 (AR 001277). However, at least some in the Census Bureau have stated a different opinion of the need for pretesting of the citizenship question. In a September 20, 2017 memo the Center for Survey Measurement (CSM) of the Census Bureau noted that they had noticed recent increases in respondents expressing concerns about confidentiality in some of the pretesting studies in 2017. PX-004 (AR 10386). In particular, interviewers reported that respondent's fears have increased markedly in the past year. For example, respondents reported "being told by community leaders not to open the door without a warrant signed by a judge" To address these concerns, the memo recommended "designing and pretesting wording that could address these concerns in mailing materials, the Decennial Internet Self Response instrument, FAQs provided to enumerators, etc."

66. It should be noted that this material was anecdotal and not based on any randomized control study. Moreover, by itself, the CSM position might not be determinative. However, this was not the only voice calling for pretesting of the citizenship question. With respect to the importance of testing a proposed citizenship question, on January 26, 2018, six former Directors of the Census Bureau wrote a letter to Secretary Ross. PX-001 (AR 001057). In that letter, they state that they "strongly believe that adding an untested question on citizenship status at this late point in the decennial planning process would put the accuracy of the enumeration and success of the census in all communities at grave risk." They further state that "[a]dding a citizenship question without a testing opportunity in a contemporary, census-like environment will invalidate the results and lessons learned from the End-to-End test."

67. The subject of testing was also addressed by the Committee on National Statistics. In their letter report of August 7, 2018, the Committee pointed out that the 2020 census is not the same as the American Community Survey and is much more than a single, simple questionnaire. Committee on National Statistics, *Letter Report on the 2020 Census*, 2018 (PX-539). They note that both paper and electronic questionnaires would need to add a citizenship question and that it should not be assumed that respondents would react the same way to any question on paper or as an electronic form. They point out that:

“Because many households will not respond to the 2020 Census, either via the Internet or by mail (and the extent of nonresponse could be increased due to publicity about the citizenship item), the citizenship question would also have to be included on the Enumerator Questionnaire used in nonresponse follow-up (NRFU) operations. . . . Though an objective of the 2020 census is to reduce the NRFU field workload through recourse to administrative records data from other federal government sources, the quality of citizenship information in those administrative data is known (and acknowledged, explicitly, in the Secretary’s decision memorandum) to have issues. And even with the use of administrative records, enumerators will be making millions of NRFU field visits throughout the country. It is not known the extent to which publicity about the citizenship question would induce households to not provide this information or avoid the interview entirely.”

68. The operating conditions of an annual survey like the American Community Survey and the decennial census are vastly different. The publicity and national effort involved in a decennial census cannot be compared to any survey, even one as large as the American Community Survey. Moreover, comparing the state of the country now and even ten years ago ignores the added complexities that are now involved in conducting a decennial census. The country is more polarized now and the ability of individual groups to disseminate their views and possibly provoke dissent is much greater. It would seem more than prudent, even necessary then, to understand how different groups and segments of society will react to such a question, and the best way to prepare for the additional question. Even though response to the decennial census is required by law, a successful census depends on the voluntary cooperation of

respondents. Without this voluntary cooperation costs will go up and quality will go down. Testing to determine improved methods for outreach to these groups would seem to be mandatory. Without testing the Census Bureau will be forced into conducting the 2020 decennial census with limited awareness of the impact of adding a citizenship question.

VIII. Creating and maintaining a current database on citizens is likely to damage the credibility of the 2020 census and the Census Bureau.

69. In addition to the utility of proposed questions and adherence to good practice, is the importance of ensuring that new questions and surveys do no harm to the credibility of the statistical agency and do not have a deleterious effect on public trust.

70. The recognition of the importance of agency credibility for public trust is found globally. The “Fundamental Principles of Official Statistics” were first adopted by the United Nations Statistical Commission in April 1994 and later were adopted by the General Assembly of the United Nations in January 2014. *Fundamental Principles of Official Statistics*, PX-361. This document states, *inter alia*: “[t]o retain trust in official statistics, the statistical agencies need to decide according to strictly professional considerations, including scientific principles and professional ethics, on the methods and procedures for the collection, processing, storage, and presentation of statistical data.”

71. The Office of Management and Budget also recognizes the importance of trust, and the part that professional independence and professional judgment play in generating that trust. *OMB Statistical Policy Directive No. 1: Fundamental Responsibilities of Federal Statistical Agencies and Recognized Statistical Units*, PX-354. This Directive states that the four “Fundamental Responsibilities” of a federal statistical agency are: (1) “produce and disseminate relevant and timely information,” (2) “conduct credible and accurate statistical activities,” (3)

“conduct objective statistical activities,” and (4) “protect the trust of information providers by ensuring the confidentiality and exclusive statistical use of their responses.”

72. Since 1992 the Committee on National Statistics of the National Academy of Sciences has issued a report on Principles and Practices for a Federal Statistical Agency. *Principles and Practices for a Federal Statistical Agency, Sixth Edition* (2017), PX-355. The *Principles & Practices* echo the importance of the OMB principles, and note: “[t]o be credible and unhindered in its mission, a statistical agency must maintain a widely acknowledged position of independence from undue external influences. It must avoid even the appearance that its collection, analysis, or reporting processes might be manipulated for political purposes or that individually identifiable data collected under a pledge of confidentiality might be turned over for administrative, regulatory, or law enforcement uses.”

73. What do these principles say about the statistical decision-making process that was employed with respect to adding a question on citizenship? The Census Bureau developed lower-cost and higher-quality alternatives than proposed by the Commerce Department, and the public may well believe that political judgments were substituted for what should have been professional ones. As a result, the credibility of the 2020 census and the Census Bureau itself are likely to be damaged by the addition of a citizenship question.

74. Moreover, one outcome of the Secretary’s decision is the planned creation of a current, comprehensive statistical reference list on citizens. PX-001 (AR 001308). This comprehensive statistical reference list could be, and has already been perceived by experts as, the beginning of a population register of characteristics which would be maintained by the Census Bureau. Committee on National Statistics, *Letter Report on the 2020 Census* (PX-539). The Census Bureau rests its credibility as a statistical agency on the foundation that it collects

data solely for statistical purposes, and that the information provided by individuals will not be used against them by law enforcement or administrative agencies. The existence of such a comprehensive statistical reference list is unprecedented and will raise doubts about the credibility of the Census Bureau and the 2020 Decennial Census.

75. While the Census Bureau has used administrative data from comprehensive sources to provide data on various topics, such as commuting patterns to work, the creation of a continuing database of information that the public perceives as sensitive, such as citizenship, is new. Moreover, the creation of such a list may subject the Census Bureau to disclosure pressure from law enforcement agencies that it has not previously experienced.

76. Indeed, in its August 2018 letter report on the citizenship question, the Committee on National Statistics of the National Academy of Sciences notes: “[b]ecause there is no apparent statistical justification for the Census Bureau to create this citizenship registry, legitimate concerns arise that this information could somehow be used for law enforcement, adjudicatory, or other non-statistical purposes in some manner, which would undermine the mission of the Census Bureau (as well as violate title 13, Section 9).” *Ibid.*

77. The Secretary’s decision to add a citizenship question against the advice of Census Bureau professionals, and his decision to further create a current, comprehensive statistical reference list on citizenship, risks undermining the credibility of the Census Bureau and the 2020 Decennial Census, as well as the professional staff of the Census Bureau.

IX. The United Nations recommendations on population censuses do not support the Commerce Secretary’s decision to add a citizenship question to the census.

78. In the Secretary’s March 26, 2018 decision memorandum, the Secretary stated that the United Nations recommends “that its member countries ask census questions identifying both an individual’s country of birth and country of citizenship.” PX-001 (AR 001313, 001319).

This reference to the United Nations Principles and Recommendations for Population and Housing Censuses (the UN Principles) omits important context and fails to capture the full scope of the UN's recommendations on population censuses.

79. The United Nations develops statistical standards and recommendations for a broad range of statistical systems and for countries with greatly varying needs. It is not intended that all the recommendations would apply equally to all countries. The specific needs and state of development of each country must be considered. Some countries will decide that only relatively few of the recommendations apply to them while others will adopt most of the recommendations. The United Nations recognizes this, and notes in the UN Principles that “[e]ach country’s decision with regard to the topics to be covered should depend upon a balanced appraisal of how urgently the data are needed and whether the information could be equally well or better obtained from other sources.” PX-361 (UN Principles ¶ 4.6, at 172).

80. Among the country-specific considerations that the UN Principles identify as central to determining census content is the sensitivity of a particular topic or question (and the accompanying respondent burden) in light of local conditions: “It is advisable to avoid topics that could increase the burden on respondents and those that are likely to arouse fear, local prejudice or superstition or that might be used to deliberately promote political or sectarian causes as these are likely to have a detrimental effect on response rates and support for the census.” *Ibid.* ¶¶ 4.2(c), 4.10, at 171, 173.

81. The UN Principles also state: “[i]t should be stressed that no country should attempt to cover all the topics included in the list of population topics (see Table 3).” *Ibid.* ¶ 4.14, at 174.

82. In fact, there are 49 total topics in the list of United Nations recommendations and 26 of these are considered “core” recommendations. However, of these 26 core recommendations, the United States has decided that only five are to be directly included in the short form: age, sex, marital status, ethnicity, and place of residence. The United States also includes race but it is not a separate category in the list of recommended topics by the United Nations. Citizenship is one of the core recommendations in the UN Principles, and the United States does collect this information, through the American Community Survey which is the replacement of the long form on the decennial census.

83. Apart from census topics, the UN Principles also identify core considerations for every country to follow in planning to conduct a population census. Among these is the recommendation that in developing census content, countries “ensure that the topics are appropriate for meeting the demonstrated requirements of users,” including “suitable consultation with existing and potential users at all stages,” and “adequate testing of new topics to ensure successful collection and production of reliable results.” *Ibid.* ¶ 2.8, at 33. As I stated earlier in this affidavit, the Secretary’s decision to add a citizenship question did not follow suitable consultation with the requesting agency (the Department of Justice), and did not involve adequate testing of the new question.

84. The list of population census topics in the UN Principles thus means only that a global consensus has been reached that the topic warrants consideration – along with the list of other topics – by the country, bearing in mind local conditions, and consistent with the foundational obligations to justify and test all census content.

85. The Secretary states in his decision memo that it is important to note that other major democracies inquire about citizenship on their census. He supplied a disparate list with

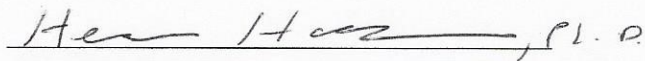
respect to cultural and political norms as well as the development of their statistical systems. Two of the countries on his list which seem most comparable to the United States are Australia and Canada. Australia has only a long form census, which can be responded to either online or by paper and asks 51 questions, including one on citizenship, relating to individuals. Canada conducts its census in much the same manner as did the United States. During the census there is both a short and a long form. The long form goes to approximately one in four households and it is on this long form that questions about citizenship are asked. Questions on citizenship are not asked on the short form. The United States has moved away from simultaneously conducting a short and long form census. It now conducts a short form census every ten years, which is intended to reach every household. The successor to the long form is the ACS, a yearly survey of 3.5 million households, and it is on the ACS that questions on nativity and citizenship are already currently asked.

X. Conclusion.

86. Adding a citizenship question to the decennial census fails to demonstrate need, does not allow for required preliminary testing, and provides inadequate justification for rejection of a lower cost and higher quality Census Bureau proposal. Additionally, if implemented, the option proposed by the Department would damage the Census Bureau's position of trust with the public.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

DATED: October 26, 2018


Hermann Habermann, Ph.D.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

STATE OF NEW YORK, et al.,

Plaintiffs,

v.

UNITED STATES DEPARTMENT
OF COMMERCE; et al.,

Defendants.

CIVIL ACTION NO. 1:18-cv-2921 (JMF)

**AFFIDAVIT OF KATHERINE
HARVELL HANEY**

Pursuant to 28 U.S.C. § 1746, I, Katherine Harvell Haney, do hereby depose and state the following:

1. I am the Chief Financial Officer at the Massachusetts Executive Office of Health and Human Services. I have served in this role for the last eleven months. Previous to serving in this role, I spent ten years working in various finance capacities for Masshealth, the MA Department of Elder Affairs and the MA department of Mental Health. I also spent five years as the Budget Director for the Harvard T.H. Chan School of Public Health managing the school's more than \$120,000,000 annual federal grant expenditures.
2. I have either personal knowledge of the matters set forth below or, with respect to those matters for which I do not have personal knowledge, I have reviewed information gathered for me in my capacity as Chief Financial Officer.
3. The Executive Office of Health and Human Services (EOHHS) is the secretariat responsible for approximately fifteen agencies that provide benefits and services to some of Massachusetts' most vulnerable citizens, including children, families, individuals with disabilities and elders. EOHHS works with the agencies within EOHHS to ensure federal grant

requirements such as reporting, state plan compliance and federal match requirements are met so that agencies may draw down federal revenue to cover allowable grant expenditures.

4. Many of the agencies within EOHHS rely on federal grants to fund the services they provide to these vulnerable populations. Many of these federal grants use state population figures from the federal decennial census to determine the amount of funding available under the grant. The Department of Children and Families, the Massachusetts Commission for the Blind, the Department of Public Health, the Department of Mental Health, the Massachusetts Rehabilitation Commission, and the Executive Office of Elder Affairs together receive fourteen different grants that consider state population figures from the decennial census to determine the amount of funding allocated to the Commonwealth.

5. For example, the Massachusetts Rehabilitation Commission (MRC) and the Massachusetts Commission for the Blind (MCB) receive funding from the Vocational Rehabilitation State Grant (VR grant). The VR grant provides funding to state agencies that offer vocational rehabilitation (in Massachusetts, MRC and MCB are the agencies that receive VR grant funds) to pay for services for individuals with disabilities to prepare for and engage in employment with the ultimate goal of achieving economic self-sufficiency. The formula for distributing VR grants to states and territories is to first allocate what the state or territory received in fiscal year 1978. Of the remainder of the funds, one-half is distributed based upon states' general population, as established by the decennial census, and a factor that compares the state's per capita income to the national per capita income; the other one-half is distributed according to the state population, again drawn from decennial census figures, and the square of the per capita income. The larger a state's population, the more funds it will receive, but the higher a state's per capita income compared to the national level, the lower its allotment will be.

In this way, an undercount of low-income residents of a state would have a heightened impact on reducing VR grant funding received by that state.

6. In State Fiscal Year 2018 (SFY18), Massachusetts received approximately \$46 million in VR grant funds. If Massachusetts' share of the population relative to other states were to appear to decrease because of an undercount in the decennial census, the formula used to distribute VR grant funds to states would award less to Massachusetts.

7. Similarly, Community-Based Child Abuse Prevention (CBCAP) Grants are given to state child welfare agencies to support community-based efforts to prevent child abuse and neglect. In SFY18, the Massachusetts Department of Children and Families received approximately \$460,000 in CBCAP funding. Funds are distributed to states based on the number of children under age 18 in each state, which figure is drawn from decennial census data. If the population of children under 18 in Massachusetts were to appear to decrease relative to other states because of an undercount in the census, the formula used to distribute the CBCAP Grants would award less to Massachusetts. In this way, even if there is little to no net undercounting of the national population, if the Massachusetts population of children under 18 were to be disproportionately undercounted as compared to other states, the Massachusetts' percentage of all children under 18 in the nation would appear to decrease, and Massachusetts' share of CBCAP grants would also decrease.

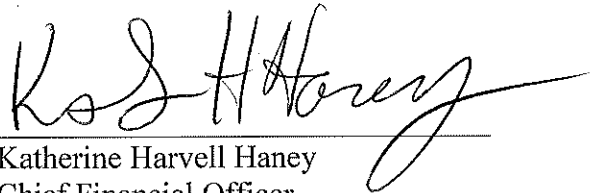
8. Finally, the Older Americans Act (OAA) Grants for State and Community Programs on Aging are given to state agencies designated as "State Units on Aging" and used to support the state's over 60 population to fund home and community-based services, such as home-delivered meal and other nutrition programs, in-home services, transportation, legal services, elder abuse prevention and caregiver support. In SFY18, the Executive Office of Elder

Affairs received approximately \$26 million in OAA funding. Each state receives OAA funds according to a formula based on the state's share of the national population of seniors, age 60 and older, as assessed by the decennial census. If the population of 60 and older residents in Massachusetts were to appear to decrease relative to other states' populations of residents aged 60 and older because of an undercount in the decennial census, the formula used to distribute OAA funds to states would award less to Massachusetts.

9. If there is an undercount of eligible populations in Massachusetts as compared to other states, Massachusetts would receive less funding even though the actual number of individuals in the eligible populations has not decreased.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 24, 2018.

A handwritten signature in black ink, appearing to read "K. Harvell Haney", written over a horizontal line.

Katherine Harvell Haney
Chief Financial Officer
Executive Office of Health and Human Services
Commonwealth of Massachusetts

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

STATE OF NEW YORK, et al.,

Plaintiffs,

v.

UNITED STATES
DEPARTMENT OF COMMERCE; et
al.,

Defendants.

CIVIL ACTION NO. 1:18-cv-2921 (JMF)

**SUPPLEMENTAL AFFIDAVIT
OF KATHERINE HARVELL
HANEY**

Pursuant to 28 U.S.C. § 1746, I, Katherine Harvell Haney, do hereby depose and state the following:

1. As explained in my October 24 Affidavit, I am the Chief Financial Officer (CFO) at the Massachusetts Executive Office of Health and Human Services (EOHHS). All of the statements made in my October Affidavit and in this Affidavit are made based on my personal knowledge, acquired after years of working in various finance capacities for agencies within Massachusetts. As CFO, I am responsible for understanding and managing the EOHHS budget as a whole. Additionally, my responsibilities include working with EOHHS's various departments to build department budgets based on that department's federal funding as well as any state funding enhancements. Accordingly, my work requires me to keep apprised of federal grant programs that provide money to Massachusetts.

2. As CFO, I support EOHHS's departments in their federal reporting responsibilities. Because I oversee the various departments within EOHHS, I am aware of the

kinds of services that these departments provide to Massachusetts residents as set forth in paragraph 4 of my October 24 Affidavit. As CFO, I am uniquely positioned to have oversight of all fourteen federal funding sources that are predicated in part on decennial census data, though they are received by different departments within EOHHS.

3. As described in my October 24 Affidavit at paragraph 5 and 6, I deal directly with Community Programs on Aging and the Vocational Rehabilitation State Grant (VR grant) as a part of my regular work responsibilities. For the past year I have worked very closely with the Massachusetts Rehabilitation Commission (MRC) whose largest source of funding is the VR grant. In September 2017, the MRC completed a review with the VR federal oversight agency, the Rehabilitation Services Administration. At the time, the MRC did not have a chief financial officer; the position was vacant. The MRC had a limited amount of time to respond to the federal oversight review, and I was tasked with providing extra assistance to the MRC. During my work on the federal oversight response, I learned a great deal on how Massachusetts receives funds via the VR grant formula and the requirements for maintenance of effort and state matching funds.

4. My CFO role requires me to have knowledge of the Community-Based Child Abuse Prevention (CBCAP) Grant described in paragraph 7 of my October 24 Affidavit. As CFO, I have participated in several meetings with staff at the Massachusetts Department of Children. During these meetings, we have discussed the CBCAP grant and the formulas that determine the funding pursuant to that grant program at length.

5. I am also personally familiar with the budget formula for the Older Americans Act (OAA) Grant as set forth in paragraph 8. I previously served as the Budget Director at the

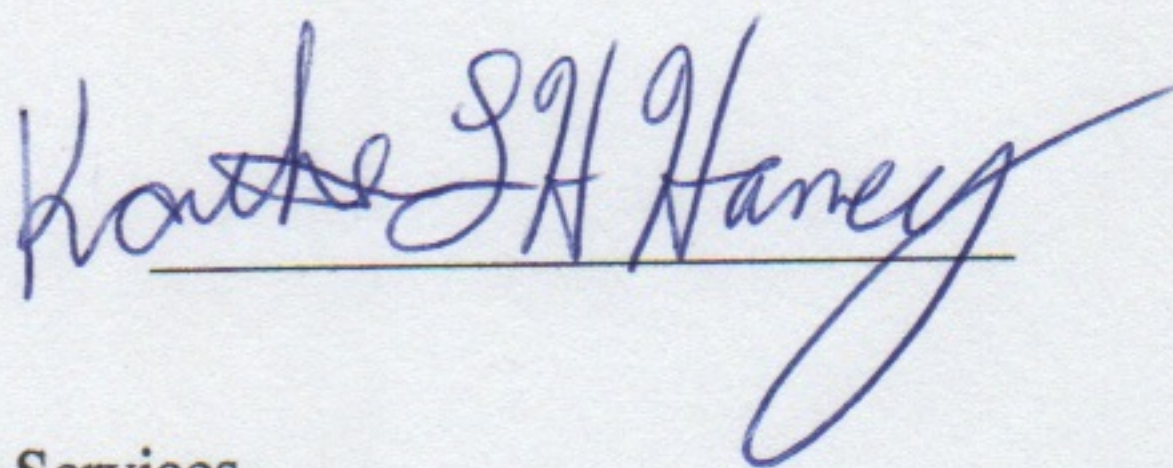
Massachusetts Department of Elder Affairs, which is the direct recipient of the OAA grants. In this role, I dealt with the OAA grants in my daily work, and towards the end of my tenure, I worked on funding models with assumptions on the outcome of the 2010 census for long-term planning purposes.

6. When preparing my October 24 Affidavit, I consulted with contacts at all EOHHS departments to confirm the specific funding amounts received under federal grants that are predicated at least in part on decennial census data. I then confirmed these funding numbers with public records maintained on the website of the Comptroller of the Commonwealth of Massachusetts, <https://www.macomptroller.org/>. This website makes state spending and payroll data publicly available. It also publishes state agency financial reports, budgets, and grant data. I specifically verified the grant amounts I discussed in paragraphs 6, 7, and 8 of my October 24 Affidavit on this website.

7. Because of my unique professional position and experience, I have factual knowledge of how these formulas work in Massachusetts as well as financial expertise. During the last dozen years of working in financial capacities in Massachusetts state agencies, I have observed how grant funding for these and other programs changes from year to year. Based on my understanding and experience with the programs that allocate these grant funds and from observing these funding fluctuations, I understand that the programs described in this and my October 24 affidavit rely in part of population figures derived from census data.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 3, 2018.

A handwritten signature in blue ink, reading "Katherine Harvell Haney", written over a horizontal line.

Katherine Harvell Haney
Chief Financial Officer
Executive Office of Health and Human Services
Commonwealth of Massachusetts

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

STATE OF NEW YORK, et al.,

Plaintiffs,

v.

UNITED STATES DEPARTMENT
OF COMMERCE, et al.,

Defendants.

CIVIL ACTION NO. 1:18-cv-2921 (JMF)

**AFFIDAVIT OF JASON
HARMON**

Pursuant to 28 U.S.C. § 1746(2), I, JASON HARMON, hereby declare as follows:

1. I am over the age of eighteen and have personal knowledge of all the facts stated herein.
2. I am the Director of the Office of the Every Student Succeeds Act ("ESSA") Funded Programs at the New York State Education Department ("NYSED") and have been employed by NYSED since 2013. Part of my work includes overseeing the federally-funded programs described below.
3. My office administers approximately \$1.4 billion in federally funded ESSA Programs to Local Education Agencies ("LEAs"), Boards of Cooperative Educational Services ("BOCES"), and Institutions of Higher Learning ("IHL") across the State each year, and is responsible for monitoring the programmatic and fiscal components for each of the federally funded programs identified below:
 - o Title I, Part A – Improving basic programs operated by LEAs;
 - o Title I, Part C – Education of migratory children;
 - o Title I, Part D – Prevention and intervention programs for children and youth who are neglected, delinquent, or at-risk;
 - o Title I – School Improvement Grants ("SIG")
 - o Title II, Part A – Supporting effective instruction;

- Title IV Part A – Student Support and Academic Enrichment Grants;
- Title V, Part B – Rural education; and
- Title IX – McKinney-Vento Homeless Assistance Act.

4. Many of the ESSA funded programs utilize formulas that directly rely on the population counts for children living in poverty (“children counts”) from the federal Census Bureau. Any decline in the number of children in these counts would have a significant impact on not only State resources, but on the ability of school districts and charter schools to serve their administrators, teachers and more importantly, the students of this State.

5. For example, Title I, Part A funds of the Elementary and Secondary Education Act (ESEA), as amended by ESSA, are used to provide financial assistance to LEAs and schools with high numbers or high percentages of children in poverty to help ensure that all children meet challenging state academic standards. The ESSA statute requires the U.S. Department of Education (“USDOE”) to calculate Title I allocations based on four formulas: Basic Grants, Concentration Grants, Targeted Grants, and Education Finance Incentive Grants (“EFIG”) to LEAs. Each of these grants directly utilizes the definition of “formula children” to determine each LEA’s allocation. The definition of formula children is based on annually-updated poverty estimates by the federal Census Bureau and this count affects the amount of funds an eligible LEA receives under each formula.

6. For the basic grants formula, an LEA is eligible for funds if the LEA has at least 10 formula children and that number exceeds two percent of the Census Bureau’s estimate of the LEA’s ages 5 to 17 population. An LEA is eligible for concentration grants, if the LEA meets the basic grant’s eligibility formula and if its number of formula children exceeds 6,500 or 15 percent of the Census Bureau’s estimate of the LEA’s ages 5 to 17 population. An LEA is eligible for Targeted Grants and EFIG if the LEA has at least 10 formula children and that number equals or exceeds five percent of the Census Bureau’s estimate of the LEA’s ages 5 to 17 population.

7. New York State’s 2017-2018 Title I, Part A allocation was \$1,208,000,088 and its 2018-2019 allocation is \$1,213,935,615.

8. Title I, Part A funds are used by LEAs for academic support for at-risk students, including, but not limited to: academic intervention services (AIS) and response to intervention (RTI) services provided by certified teachers and teaching assistants; counseling, school-based mental health programs, specialized instructional support services, mentoring services supported by school counselors, social workers, and other support personnel; prekindergarten programs; summer and extended day programs; professional development for teachers, teaching assistants, and other school personnel; and equitable services to students in participating private schools.

9. These programs and services for at-risk students would be directly and substantially impacted by any decrease in the count of “formula children” and the resulting decrease in Title I, Part A funds. For example, a decrease in the count of “formula children” as small as 0.02 percent could cause an LEA to lose funding under the Targeted Grants and EFIG. Among LEAs that lost funding under those two programs in the 2018-2019 school year, the average decrease was nearly 40 percent of Title I, Part A funding compared to the previous year. For one LEA, a decrease of 1.54 percent in the count of “formula children” resulted in a loss of nearly \$300,000 in Title I, Part A funding in a single year. For an LEA with an average teacher salary of \$50,000 when budgeting, losing \$300,000 translates into a loss of approximately 6 full time academic support teachers, and potentially threatens hundreds of students with a reduction in services.

10. Title II, Part A funds from ESEA, as amended by ESSA, are also directly reliant on poverty counts from the federal Census Bureau data. There is a two-step allocation process for Title II, Part A funds. First, the USDOE calculates an SEA apportionment, using the most recent federal Census Bureau data. For Fiscal Year (FY) 2017, the amount of funds allocated to each state was based on the following:

- 35 percent according to each State’s population of children ages 5 through 17 relative to the number of these children in all States; and
- 65 percent according to each State’s relative numbers of individuals ages 5 through 17 from families with incomes below the poverty line relative to the number of these children in all States.

11. Beginning in fiscal year 2018, new percentages have been phased in. The share of excess funds allocated on the basis of a State's relative number of children ages 5 through 17 from families with incomes below the poverty line increases and the share allocated on the basis of a State's relative number of children ages 5 through 17 decreases, as follows:

Fiscal Year	Percentage based on population ages 5 - 17	Percentage based on population ages 5 - 17 in poverty
FY 2017	35	65
FY 2018	30	70
FY 2019	25	75
FY 2020 and subsequent years	20	80

12. After required reserves for subgrants to eligible LEAs and allowable reserves for administration and state-level activities, the SEA, then distributes funds to LEAs based solely on the following formula:

- 20 percent of the funds must be distributed to LEAs based on the relative numbers of individuals ages 5 through 17 who reside in the area the LEA serves (based on the most recent Census data, as determined by the Secretary); and
- 80 percent of the funds must be distributed to LEAs based on the relative numbers of individuals ages 5 through 17 who reside in the area the LEA serves and who are from families with incomes below the poverty line (based on the most recent Census data, as determined by the Secretary) (ESEA section 2102(a)).

13. Both funding formulas directly rely on population counts from the federal Census Bureau. If the population counts for children under the Census Bureau were to decline, this would have a negative direct impact on not only statewide activities supported by the New York State Education Department, but on the nearly 1,000 school districts and charter schools across New York State.

14. New York State's 2017-2018 Title II, Part A allocation was \$166,390,917 and its 2018-2019 allocation is \$157,360,601.

15. Specifically, a decrease in Title I, Part A and Title II, Part A funds would immediately reduce the amount of available administrative funds used to support State-level program activities. Such a reduction would immediately and substantially diminish NYSED's capacity to: assist schools, districts, charter schools, and private schools with basic program implementation; develop tools and resources such as technical assistance aids, guidance materials, and other supports; and conduct effective compliance monitoring based on established risk protocols. A decrease in Title II, Part A funds would also drastically reduce the State's capacity to provide guidance and resources on the Next Generation Learning Standards; to train teachers in low performing schools on how to develop curriculum materials aligned to such standards; and to ensure that teachers properly prepared on these new standards and appropriately qualified to teach low income students. These supports and training are necessary to ensure that low income students will have consistent or equitable access to effective educators and properly trained and skilled teachers as compared to their peers from lower-needs communities across the state.

16. Beyond the negative impacts described above, decreases in Title I, Part A funding as the result of a decline in population counts used in the federal Census Bureau data would also have a disproportionately negative impact on the lowest performing schools and districts in the state. Under Section 1003 of ESSA, 7 percent of Title I funds must be set-aside annually for the purposes of School Improvement. School Improvement Grants are funds that are set aside specifically for the lowest achieving schools, that have the greatest need for funding and who demonstrate the strongest commitment to ensuring funds are used to improve the academic achievement of the lowest performing students in these schools. Low performing LEAs use School Improvement funds help implement critical supports, services, and evidence-based interventions detailed in school and district-level improvement plans that are informed by a state-required review process. Funds to support improvement plans are primarily targeted at addressing (1) the specific

academic, social-emotional, and safety needs of students, (2) the professional development needs of teachers and (3) effectively engaging parents and families.

17. An LEA's funding allocation for Title IV, Part A of ESSA is also contingent upon the LEA's funding allocation provided under Title I, Part A, which as described in paragraph 5 above, is directly reliant on the population counts of the federal Census Bureau. As a result, if an LEA's Title I allocation decreases as a result of a decline in child poverty counts, its Title IV, Part A allocation will also decrease. Title IV, Part A funding is used to support well-rounded educational programs such as college and career counseling, STEM education, arts, civics and advanced programs such as International Baccalaureate/Advanced Placement; safe and healthy school programs including school climate surveys, comprehensive school mental health, drug and violence prevention, training on trauma-informed practices, and health and physical education; and to support the effective use of technology. These services may be at risk with any decrease in funding.

I declare under penalty of perjury that, to the best of my knowledge, the foregoing is true and correct.

Executed on this 23rd day of October, 2018


JASON HARMON

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

STATE OF NEW YORK, et al.,

Plaintiffs,

NEW YORK IMMIGRATION
COALITION, et al.,

Consolidated Plaintiffs

v.

UNITED STATES DEPARTMENT OF
COMMERCE, et al.,

Defendants.

Civil Action No. 1:18-cv-2921-JMF

SUPPLEMENTAL AFFIDAVIT OF JASON HARMON

Pursuant to 28 U.S.C. § 1746, I, Jason Harmon, hereby declare as follows:

1. As explained in my October 23 Affidavit, I am Director of the Every Student Succeeds Act ("ESSA") Funded Programs at the New York State Education Department ("NYSED"), where I have been employed since 2013. All of the statements made in my October 23 Affidavit and in this Affidavit are made based on my personal knowledge, acquired as part of my work for NYSED. Part of my work includes overseeing various federally-funded education programs. Accordingly, my work requires me to keep apprised of federal education grant programs that provide money to New York State.

2. As I testified in paragraphs 2 and 3 of my October 23 Affidavit, my job entails working With the following federal education funding programs:

- Title I, Part A - Improving basic programs operated by LEAs;
- Title I, Part C - Education of migratory children;
- Title I, Part D - Prevention and intervention programs for children and youth who are neglected, delinquent, or at-risk;

- Title I - School Improvement Grants ("SIG")
- Title II, Part A - Supporting effective instruction;
- Title IV Part A - Student Support and Academic Enrichment Grants;
- Title V, Part B - Rural education; and
- Title IX - McKinney-Vento Homeless Assistance Act.

As Director of the ESSA-funded programs at NYSED, I am uniquely positioned to have oversight of these sources of federal education funding that are predicated in part on decennial census data. As part of my job responsibilities, I have become personally familiar with the funding formulas and the operations of those programs, and their impact on the State of New York.

3. In my role, I regularly participate in meetings with NYSED personnel who administer the ESSA-funded programs listed in paragraph 2. I work very closely and supervise the administrators of these programs, and during the course of our work we frequently discuss at length the ESSA grants and the formulas that determine New York State's share of those dollars.

4. When preparing my October 23 Affidavit, I confirmed the specific funding amounts received under ESSA grants that are predicated at least in part on decennial census data. I then confirmed these funding numbers with public records maintained on NYSED's website. I specifically verified the grant amounts discussed in paragraphs 7 and 14 of my October 24 Affidavit in this manner.

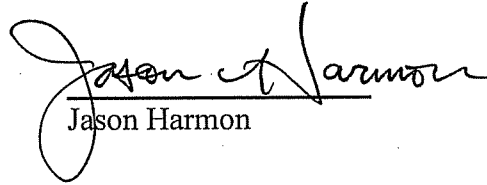
5. Based on my knowledge of the funding formulas' reliance on decennial census data, I understand that a decrease in New York's population count will lead to a decrease in its share of the ESSA-funded education grants to New York, and that there will be a corresponding decrease in the amount allocated to nearly all local education agencies ("LEAs") across the state. During the course of my work at NYSED, I have learned that State of New York does not exercise discretion in determining the amount of these federal dollars allocated to LEAs.

6. As I explained in my October 23 Affidavit, decreases in New York State's share of these federal dollars would result in reductions of critical educational services and support for at-risk and low-income children throughout New York State.

I declare under penalty of perjury that the foregoing is true and correct.

Executed: November 3, 2018

Albany, NY


Jason Harmon

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

STATE OF NEW YORK, et al.,

Plaintiffs,

NEW YORK IMMIGRATION
COALITION, et al.,

Consolidated Plaintiffs

v.

UNITED STATES DEPARTMENT OF
COMMERCE, et al.,

Defendants.

Civil Action No. 1:18-cv-2921-JMF

DECLARATION OF SAMER E. KHALAF

I, Samer E. Khalaf, pursuant to the provisions of 28 U.S.C. § 1746, declare under penalty of perjury that the foregoing is true and correct:

1. I am the National President of the American-Arab Anti-Discrimination Committee (“ADC”) and ADC Research Institute (“ADCRI”). My responsibilities include overseeing all of the work of both organizations, and leading our efforts regarding the 2020 Decennial Census.

2. Based on my knowledge as a leader in the Arab-American community, ADC and ADCRI’s community outreach work, and my interactions with individual ADC members, I believe the addition of a citizenship question to the 2020 Decennial Census short-form questionnaire will deter participation of many individuals in the Arab-American community and result in a disproportionate undercount of Arab Americans. As a result of the decision to add this question, ADC and ADCRI have diverted and will continue to be required to divert resources

from core organizational priorities to additional, remedial outreach to counteract the citizenship question's negative effect on Census response rates in our community.

3. This undercount will also injure many ADC members, many of whom live in areas of the United States in which immigrants of color and other communities of color exceed national and state averages. Specifically, they will be harmed because the disproportionate undercount that will result from the citizenship question among immigrants of color will diminish their political power relative to other parts of their states as well as the amount of Census-related funding those areas receive for key programs, services, and facilities that our members and their communities use.

I. Background on ADC and ADCRI

A. ADC and ADCRI's Mission and Activities

4. Senator James G. Abourezk founded ADC in 1980. As the first Arab American to serve in the United States Senate, Abourezk founded ADC in response to stereotyping, defamation, and discrimination directed against Americans of Arab origin.

5. In 1981, Senator Abourezk founded ADCRI. It is a corporation exempt from taxation under Section 501(c)(3) of the Internal Revenue Code. The Institute sponsors a wide range of programs on behalf of Arab Americans and of consequence to the wider American community.

6. ADC is a civil rights membership organization that is committed to defending and promoting the rights and liberties of Arab Americans and other persons of Arab heritage. In fact, ADC is the largest American-Arab grassroots civil rights organization in the United States.

7. ADC's mission focuses on combating stereotypes and discrimination against and affecting the Arab-American community in the United States and serving as its public voice for

on domestic and foreign policy issues, as well as educating the American public in order to promote greater understanding of Arab history and culture. ADC advocates, educates, and organizes to defend and promote human rights and civil liberties of Arab Americans and other persons of Arab heritage, from recent immigrants to citizens born in the United States.

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

9. ADC focuses its legal advocacy efforts on issues that have a large impact on the Arab American community, which includes employment discrimination, education discrimination, and immigration. The Legal Department has continued its efforts to work with established coalitions and build new partnerships with other minority groups on issues of mutual interest. Furthermore, the Legal Department maintains a strong relationship with government agencies to ensure that the diverse voices of the Arab American community are heard by key decision-makers in American government.

10. ADCRI's programs train Arab Americans in the exercise of their constitutional rights as citizens. They include research studies and publications, seminars, and conferences, which document and analyze the discrimination faced by Arab Americans in the workplace, schools, media and government agencies. They also promote a better understanding of the rich Arab cultural heritage by the public, policy makers, and the new generations of Arab Americans.

11. A major activity of ADCRI is the Anthony Shadid Internship Program, which annually brings undergraduate, graduate, and law students to Washington for hands-on

experience in the Nation's capital. The program provides them the opportunity to learn about issues confronting Arab Americans, to develop effective leadership skills, to gain experience in research and writing, and to develop greater knowledge and understanding of the complexities of the U.S. government and our political process.

12. ADCRI programs include the publication and distribution of educational materials to Arab Americans, educators, academic institutions, policy makers, and the public at large. The Institute has in the past and will continue to foster intergroup harmony in American society, the entry of Arab Americans into the mainstream of American life and leadership, and the abolition of prejudice, stereotyping, defamation, hate crimes, and violence directed at the Arab American and Muslim communities.

B. ADC and ADCRI's History of Census-Related Work

13. ADC and ADCRI have an ongoing commitment to promoting engagement in the Decennial Census among its members and constituents. Since the 1980s, ADC has served in numerous capacities on the Census Bureau advisory committees. In 2000, ADC reinvigorated its census campaign and policy initiatives, actively educating Arab Americans and other minority populations about the importance of the census and mobilizing participation and outreach events. In 2008, ADC actively worked with the Census Bureau to identify classification concerns of Arab Americans on the United States census.

14. In the months leading up to and during the 2010 Decennial Census, ADC and ADCRI conducted outreach and engagement work with the Arab-American community concerning census engagement. That work consisted of creating messaging about participating in the Decennial Census that was focused on the Arab-American community including launching a national campaign advocating for the completion of census forms and holding outreach events to

counter concerns of sharing of information with government and law enforcement agencies. ADC and ADCRI also engaged in efforts to “get out the count” in that community as well, including hosting town halls and symposiums in select cities across the country. ADC and ADCRI also produced and published material for distribution which encouraged participation in the 2010 Census, and highlighted its importance. ADC also served on the U.S. Census Bureau’s 2010 Census Advisory Committee.

II. Organizational Harm to ADC and ADCRI as a Result of the Citizenship Question

15. Because of the importance of having Arab Americans accurately counted in the 2020 decennial census, ADC and ADCRI had already begun preparations for outreach to the Arab-American community before the announcement of a citizenship question. Specifically, in 2017, ADC and ADCRI had begun focusing on educating community members about the Decennial Census and its importance. The announcement in late March 2018 that the 2020 Decennial Census would include a citizenship question, however, changed the plans of both ADC and ADCRI.

16. As described below, the decision stoked and continues to stoke tremendous fear in the Arab-American community and threatens to lower response rates and increase the undercount of our community. As a result, this decision has harmed part of ADC and ADCRI’s organizational missions and forced them to divert resources from other programmatic attempts to ameliorate some of the citizenship question’s impact.

A. Fear in the Arab-American Community Due to the Citizenship Question and its Impact

17. For a number of reasons, the Arab-American community has traditionally been significantly undercounted in the decennial census. Because of this, before the announcement of the citizenship question, ADC and ADCRI already saw a need to conduct census outreach.

Additionally, some outreach was already planned because of ADC members' and the Arab-American community's heightened fear of interacting with government workers due in part to the Trump Administration's persistently hostile and discriminatory actions and attitudes towards Arab Americans, Muslim Americans, and immigrants of color generally.

18. Those fears, however, and the risk of an even greater undercount in the Arab-American community, have already been greatly exacerbated by the Administration's announcement that it will add a citizenship question and will be further exacerbated if the citizenship question is ultimately included in the 2020 Census. This fear is not unique to undocumented immigrants or non-citizens with documented legal status, but also to family and household members of non-citizens and their friends and neighbors, who have expressed concern that participating in the Census might endanger their loved ones.

19. Specifically, I know based on interactions with ADC members and people in the communities they serve that some Arab Americans would be fearful of responding and may not respond to the Census questionnaire if the citizenship question is added. ADC hosted different town hall events throughout the country, and Census 2020 was covered. I learned from those sessions that many community members fear the addition of the citizenship question and are unwilling to participate in the 2020 Census out of the fear deriving from the citizenship question.

20. For example, even in Dearborn, Michigan, which has the highest concentration of Arab Americans in the United States, many community members fear responding to the Decennial Census because of the existence of the citizenship question and the improper purposes for which they believe it might be used against them and their neighbors. Even with outreach from ADC and active leaders in the organization such as Amer Zahr in Dearborn, many in that community are not able to be persuaded to participate in the 2020 Census largely because of the

citizenship question. From ADC events held at a number of locations throughout the country; interactions with individual ADC members; our various “Know Your Rights” seminars in several locations including Dearborn, Buffalo, Queens, Brooklyn, and Minnesota; and information gained at our 2018 National Convention, I am aware of similar concerns among community members in New York, Texas, Michigan, and California.

21. Specifically, Arab American communities fear that the citizenship question will cause community targeting by ICE and DHS. Community members fear that the citizenship census data would be utilized for deportation and government surveillance purposes. Similarly to how the Census Bureau utilized its data to help the government round up Japanese Americans into internment camps during World War II, Arab Americans fear that the Census Bureau would report areas with high concentrations of noncitizen Arab Americans to the government for the purposes of deportation, censorship, and surveillance. In areas like Dearborn or Orange County, California, which contain high concentrations of Arab Americans, there is a fear that the citizenship question would lead to irreversible DHS targeting of the community.

22. After meeting with community members across the country, it is clear that—due in significant part to the citizenship question and the context in which this Administration added it—the community fears that census participation will result in loss of citizenship, revocation of LPR status, or the broadening of Presidential Proclamation 9645, which implemented the travel ban on several Arab- and Muslim-majority countries. The community is hesitant to participate in the Census due to the citizenship question and the possible effects it can have on the immigration status of individuals, families, friends, and other community members.

B. Harm to ADC and ADCRI from the Citizenship Question

23. The fear and likelihood of higher non-participation in the Decennial Census by Arab Americans due to the announcement of the citizenship question and the ultimate presence

of the question on the Decennial Census questionnaire has harmed the ability of ADC and ADCRI to carry out key aspects of their missions. It has also forced them to divert resources from other programmatic areas to try to encourage Arab Americans to participate.

24. Despite these efforts, ADC is already facing a much more challenging environment for conducting outreach and encouraging Arab Americans, both citizens and noncitizens, to respond to the 2020 Census than the 2010 Census. Because of the heightened fear and suspicion created by the citizenship question, ADC has recognized the need to expand upon the census-related services, programming, and support it had already to try to reduce the negative effect of this question on the response rate in the Arab-American community.

25. The citizenship question has posed greater challenges for ADC and ADCRI to engage with the Arab American community on Census 2020 related matters. In 2010, and prior Census outreach efforts, ADC and ADCRI found it easier to work with the community on pushing the importance of Census participation. The citizenship question adds a new dynamic of fear and uncertainty. Additional outreach, meetings, and informational sessions are being planned and implemented in an effort to answer questions and address concerns. This year, ADC and ADCRI will hold focus groups to test messaging about Decennial Census participation and will follow up with polling afterwards. As the Decennial Census draws nearer, ADC and ADCRI will conduct training for census enumerators, run advertisements encouraging participation, and hold a strategy symposium, among other activities. ADC and ADCRI will also host community symposiums across the country in an effort to address concerns and answer questions. In addition, ADC and ADCRI will be working with coalition partners on issues of mutual concern relating to the 2020 Census, including the citizenship question.

26. Specifically, ADC and ADCRI have put additional resources toward a number of census-related efforts in large part because of the need to try to counteract the expected effects of the citizenship question on Arab Americans. As one example, on October 12, 2018, as part of its annual National Convention, ADC hosted a panel titled: “We Count Too! A Look at the 2020 Census.” *See* PX-251.30. One of the primary purposes of, and topics covered during, that Panel was the addition of the citizenship question to the Decennial census form. In addition to offering their own thoughts about the citizenship question, the three panelists fielded questions from ADC members in the audience that reflected fears and concerns about the role of this question on the census.

27. ADC and ADCRI have also put an increased amount of time and effort into work with members of multiple coalitions to address the likely impact of the citizenship question, including the Leadership Conference on Civil and Human Rights and the Funders’ Committee for Civic Participation’s Census Initiative 2020. This work includes advocacy on Capitol Hill, with the Census Department, Commerce Department, and the Office of Management and Budget. Additionally, we have worked to put together new strategies to educate and communicate with our community.

28. ADC and ADCRI expects that they will need to interact with its constituents multiple times to answer questions and try to convince them to participate in the 2020 census, spending more resources to reach the same number of people. Despite this, they expect that it will be less successful in convincing its constituents to participate in the 2020 Census than in 2010 due in large part to the presence of the citizenship question. Collectively, ADC and ADCRI anticipate spending at least \$150,000 more on 2020 Census education and outreach than the

organization spent on its efforts to encourage participation in the 2010 Census as a result largely of the presence of the citizenship question.

29. Because of the need to increase the time and money spent on Census outreach due to the addition of the citizenship question, ADC and ADCRI will need to divert resources from other areas critical to its mission including organizing, issue advocacy efforts and educational initiatives. ADC and ADCRI have already diverted resources from these other areas in order to address concerns from their constituents stemming from the announcement of the citizenship question. As the largest Department in ADC, resources will be diverted from legal work to Census related matters. The diverting of resources means ADC will have less money to use towards assisting victims of hate crimes, and providing pro bono legal services. The ADC Legal Department is pro bono, thus the resources committed to the department are essential in providing services to community members across the country.

III. Associational Harm to ADC through Harm to its Members as a Result of the Citizenship Question

30. ADC has members in all 50 states plus Washington, DC, as well as a national network of chapters.

31. ADC has a national network of chapters with members in all 50 states. PX-252. ADC has Board of Directors, most of whom membership elects, and all of whom are also ADC members and represent a cross-section of the United States, including: Los Angeles County, California (Dr. Souhail Toubia and Dr. Diane Shammas); San Diego, California (George Majeed Khoury); Brooklyn, New York (Dr. Debbie AlMontaser); Miami, Florida (Shatha Atiya); Washington, DC (Dr. Safa Rifka and Dr. Doo'a Taha); and Wayne, New Jersey (Abed Awad), among other cities and states. PX-253.6.

32. ADC also has 28 local chapters, which are located in 20 states and the District of Columbia. These include active chapters with members leading local efforts, including in Tucson and Phoenix, Arizona, Los Angeles and Orange County, California, Miami and Orlando, Florida, New York, New York, and Austin and Dallas, Texas.

33. For example, ADC member and Austin, Texas chapter President Ahmad Zamer has helped reinvigorate the Austin Chapter in recent years. In 2016 and 2017, the Austin chapter held a number of events, including a “know your rights” event, film screening, gala, and Iftar dinner for Austin’s Arab, Muslim, and Latino communities. PX-251.38, 39. Similarly, ADC has several active California chapters with dozens of members. The Orange County and San Diego chapters hosted a number of events, including a refugee empowerment event, a letter-writing event, and a memorial banquet. PX-251.38, 40.

34. These documents, as well as my personal knowledge, establish that ADC has members in all fifty states plus the District of Columbia. I have personal knowledge of each of these documents and attest to their authenticity.

35. Many of ADC’s dues-paying members reside in states and localities in which the percentage of immigrants of color exceeds state and national averages. This includes: 172 in Arizona; 1,441 in California; 1,296 in D.C.; 551 in Florida; 437 in Illinois; 612 in Maryland; 819 in New York; 341 in Ohio; 1,341 in Pennsylvania; 30 in Rhode Island; 408 in Texas; and 186 in Washington State. In terms of local communities, ADC has members in communities with large concentrations of Arab-Americans such as Wayne County, Michigan, and Orange County, California, as well as communities with large Latino and noncitizen populations, including New York, New York, Los Angeles County, California, Houston, Texas, Miami, Florida, Prince George’s County, Maryland, Phoenix, Arizona, and Chicago, Illinois. A disproportionate

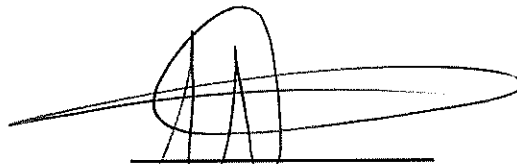
undercount of those populations will deprive ADC members in those states and communities of political power by diluting the amount of state and congressional representatives to their areas.

36. ADC members across the nation rely on a number of facilities and services whose funding allocation relates to population and demographic data derived from the Decennial Census including parents with children enrolled in schools that receive funding under Title I of the Elementary and Secondary Education Act and drivers who use interstate highways and mass transit on a daily basis and thus depend on federal funds to perform their jobs.

I declare under penalty of perjury that the foregoing is true and correct.

Executed: October 26, 2018

Washington, DC



Samer E. Khalaf

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

STATE OF NEW YORK, et al.,

Plaintiffs,

NEW YORK IMMIGRATION
COALITION, et al.,

Consolidated Plaintiffs

v.

UNITED STATES DEPARTMENT OF
COMMERCE, et al.,

Defendants.

Civil Action No. 1:18-cv-2921-JMF

SUPPLEMENTAL DECLARATION OF SAMER E. KHALAF

I, Samer E. Khalaf, pursuant to the provisions of 28 U.S.C. § 1746, declare under penalty of perjury that the foregoing is true and correct:

1. As explained in my October 26 Declaration, I am the National President of the American-Arab Anti-Discrimination Committee (“ADC”) and ADC Research Institute (“ADCRI”) and my responsibilities include overseeing all of the work of both organizations, and leading our efforts regarding the 2020 Decennial Census.

2. All of the statements made in my October 26 Declaration and in this Declaration are made based on my personal knowledge, acquired after several years as ADC and ADCRI President. During that time period, I have familiarized myself with ADC’s internal records and processes, our membership, including where they live, and the Arab-American community nationwide and in specific areas in which many Arab Americans and ADC members live.

3. I have also spent a good deal of time traveling the country and meeting with both our members and other members of the Arab-American community. Through this process, I have familiarized myself with prevailing views in the community concerning a number of issues, including the Trump Administration's treatment of Arab and Muslim Americans and immigration-related policies, and fears in the community about the policies of this Administration. As part of this process, I have gained personal knowledge about the prevailing feeling of fear among Arab Americans concerning the Trump Administration and, specifically, its intent in adding a citizenship question to the decennial census and potential use of the information gleaned from this question.

4. The fears of Arab-American community members concerning the citizenship question and its effect on their willingness to answer the Decennial Census therefore reflect my knowledge as the leader of ADC/ADCRI and a leader in the Arab-American community rather than a restatement of a particular individual's views. Similarly, in expressing my views about the likely effect of the citizenship question on the Arab-American community, I do not intend to offer any specific predications about non-response rate or percentage undercount, but merely my observations based on my knowledge as a community leader and ADC/ADCRI President.

5. Additionally, my observations in Paragraph 35 of the October 26 Declaration about dilution of political power based on an undercount are not meant to express any precise estimate, but rather reflect the common-sense principle that when members of the Arab American and other communities are undercounted relative to other groups—which I believe to be the case based on my observations and personal knowledge as ADC/ADCRI President—they will lose political power they otherwise would have had with a proper count.

6. I also wish to clarify several specific statements and provide more context for certain documents referenced in my October 26 Declaration. First, when discussing areas in which ADC members live, I have personal knowledge that many of those communities have larger-than-average Arab-American populations, such as Dearborn, Michigan and Orange County, California. Additionally, because of my role as ADC/ADCRI President and my interactions with other civil rights organizations as well as from review of publicly available population records from the Census Bureau including the American Community Survey, I am aware that certain cities and states in which ADC has members have larger-than-average populations of immigrants of color, as well as Latinos, including the States, cities, and counties I cited in Paragraph 35 of my October 26 Declaration.

7. As to the specific documents I authenticated in my October 26 Declaration, I wish to provide some additional context. In citing PX-251, 252, and 253, I referred to these exhibits to provide additional detail for statements of which I already have personal knowledge—namely, the states and cities in which certain ADC members and board members live, the locations of our members and chapters, and events our members and chapters have conducted over the past few years.

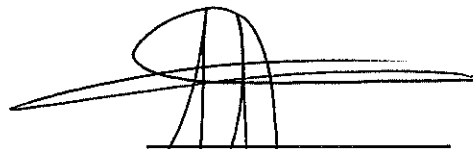
8. Moreover, ADC employees with knowledge of the information contained in each of these three documents created those documents. As for PX-251 and PX-253, these are books created in the regular course of ADC's business for its 2017 and 2018 National Conventions. For many years, ADC has held an annual National Convention and has made these books for the convention every year as a regular practice. As for PX-252, this is an ADC brochure created by an ADC employee in 2017 as part of a regular course of ADC's business of creating and updating

public information brochures and pamphlets. Updating these brochures is thus a regular practice for ADC.

I declare under penalty of perjury that the foregoing is true and correct.

Executed: November 2, 2018

Washington, DC



Samer E. Khalaf

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

STATE OF NEW YORK, et al.,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF
COMMERCE, et al.,

Defendants.

CIVIL ACTION NO. 1:18-cv-2921 (JMF)

**AFFIDAVIT OF CHRISTINE
PIERCE**

Pursuant to 28 U.S.C. § 1746(2), I, Christine Pierce, hereby declare as follows:

1. I am over the age of eighteen and have personal knowledge of all the facts stated herein.

2. I am the Senior Vice President of Data Science for The Nielsen Company (US) LLC (“Nielsen”). I am a social scientist by training and worked as a demographer for Nielsen prior to my current role leading a team of scientists who support Nielsen’s audience measurement products. I earned a Master of Public Policy from the University of Minnesota and a graduate certificate in Applied Statistics from Pennsylvania State University. I frequently represent Nielsen at research conferences and have authored papers and presentations for the American Association of Public Opinion Research, the Advertising Research Foundation, and the Population Association of America. In the fall of 2018, the New York State Office of the Attorney General requested that I submit a voluntary affidavit in this case describing my communications with the Department of Commerce in lieu of potentially receiving a trial subpoena.

3. I am submitting this affidavit in order to ensure that the record accurately reflects my communications with the Department of Commerce.

4. In the spring of 2018, Nielsen received a request from an assistant to Secretary Ross asking to set up a meeting with someone at Nielsen who is familiar with Nielsen's use of Census data. At the time, I was under the impression that the phone call would be to discuss the importance of the Census generally, the need for Nielsen and its commercial clients to have as complete and accurate a count as possible, and to advocate for full funding for Census operations. Nielsen's SVP Community Engagement (Don Lowery) received this request. When Don Lowery sent the email connecting me to the Secretary's office he included a statement that said "Christine looks forward to speaking to the Secretary regarding the importance of the 2020 Census to Nielsen." *See* PX-532 (a true and accurate copy of email communications with Department of Commerce).

5. Prior to the phone call, Brian Lenihan from Secretary Ross's staff asked me via email for a "copy of my biography (paragraph) along with a description of Data Science/Nielsen and how Census data comes into play." I indicated that "For Nielsen, these public data sources such as the Decennial Census and ACS serve a crucial role in planning samples and consumer panels. Accurate population estimates enhances the sample design and ensures the most accurate coverage of households and persons with various demographic characteristics. Additionally, these public data sources are used to adjust the unweighted input to reflect the entire population." *See id.*

6. I exchanged several emails with the staff regarding the date/time for the call. The staff did not mention the citizenship question in any of these emails. Other than the aforementioned biography and description, Secretary Ross's staff did not ask me to provide any

other documents or data nor did I provide any other data or documents to the Department of Commerce in Spring 2018.

7. On the evening of March 23, 2018, I had a telephone call with Secretary Ross and Michael Walsh, a lawyer from the Commerce Department. This telephone call lasted approximately 10-20 minutes. This was the only time that I spoke with Secretary Ross. I understand that three days after our conversation, Secretary Ross wrote a memo in which he discussed our conversation (the “Ross Memo”).

8. Prior to speaking to the Secretary, I was not aware that the citizenship question was going to be a topic of conversation. However, it immediately became apparent that the citizenship question was the only topic of conversation. Secretary Ross and Mr. Walsh told me that they needed to make a recommendation about whether to include a citizenship question on the Decennial Census and were reaching out to experts and stakeholders to gather information.

9. During this conversation, I told Secretary Ross unequivocally that I was concerned that a citizenship question would negatively impact self-response rates. I explained that people are less likely to respond to a survey that contains sensitive questions. I also added that increasing the length of a survey can reduce response rates. I discussed the impact that lower response rates have on survey costs. I emphasized that Census non-response follow up operations are expensive because they require a full count and non-response follow up operations for the Decennial Census include in-person data collection.

10. The Ross Memo states that I “confirmed that, to the best of [my] knowledge, no empirical data existed on the impact of a citizenship question on responses.” (Ross Memo at 3). I did not say “to the best of [my] knowledge no empirical data existed on the impact of a citizenship question on responses.” I did discuss the importance of testing questions to

understand any impacts to response and I explained that a lack of testing could lead to poor survey results. I confirmed that I was not aware of any such test of a citizenship question by the Census Bureau. I cannot and did not attempt to quantify the extent of the reduction in self response.

11. During our conversation, Secretary Ross and Mr. Walsh asked me if Nielsen asked any sensitive questions. I told them that Nielsen does not ask about citizenship status on its surveys but that we do have surveys that occasionally include sensitive questions.

12. The Ross Memo explains that Nielsen “stated that it had added questions from the ACS on sensitive topics” including “immigration status to certain short survey forms without any appreciable decrease in response rates.” (Ross Memo at 3). I did not state that Nielsen had added “questions concerning immigration status to short survey forms without any appreciable decrease in response rates.”

13. I did explain to Secretary Ross and Mr. Walsh that Nielsen does ask certain questions from the ACS in our surveys and of our panelists, including place of birth and year of entry to the United States. I stressed the importance of specifically testing changes to questionnaires and that Nielsen had done such testing specifically because we anticipated these sensitive questions could have a negative impact on response rates. I did confirm that these place of birth and year of entry questions had not caused a significant decline in response rates on Nielsen surveys or in our panels. But I did not suggest that Secretary Ross could draw parallels between the surveys conducted by Nielsen and the Decennial Census.

14. Nielsen’s survey and panel operations are entirely different from the Decennial Census operations. Nielsen surveys are not conducted by a government agency and are not required by law. Nielsen studies are intended to understand consumer purchases and media

usage. Response rates to the Nielsen surveys and panels in my purview generally range from 5% to 40%. If individuals do not answer a Nielsen survey or decline to participate in a panel, Nielsen will select and recruit different respondents to ensure we have the desired reporting sample size. While we strive for an accurate representation of the population, we are not required to count all people. And unlike the Census, Nielsen provides incentives – usually cash – for filling out our surveys.

15. To my knowledge, the Department of Commerce has not asked for any documents related to Nielsen's survey work or questionnaire testing. To my knowledge, no one else at Nielsen has been asked for, or provided, any additional data, documents, or surveys to the Department of Commerce in response to the discussions around the citizenship question.

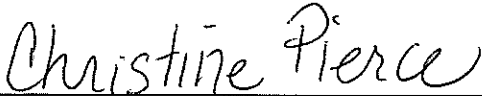
16. I have reviewed a copy of the Commerce Department's notes of my March 23, 2018 conversation, marked as page 1276 in the Administrative Record ("AR 1276") for this case.

17. AR 1276 states that "Ms. Pierce stated that including a question on citizenship could make people less likely to respond, but that there is no data to predict how much lower the response rate might be." I do not recall making this statement as worded here. Any statement like this would have been in the context of stressing the importance of conducting specific tests for the purpose of predicting the response rates. Adding a citizenship question to the Decennial Census introduces risk specifically because the impacts have not been tested.

18. AR 1276 states that I "noted that in the only specific situation she was aware of that sensitive questions were tested on a short questionnaire, there was no impact on response rates." I did not state that "in the only specific situation that I was aware of that sensitive questions were tested on a short questionnaire, that there was no impact on response rates." However, I did discuss Nielsen's use of certain ACS questions and how Nielsen has tested those

questions specifically to understand any impact to response. I did not provide any written reports with testing results nor did I provide Nielsen data in an attempt to estimate the impact of adding a citizenship question to the Decennial Census.

Executed on October 25, 2018.


Christine Pierce

Christine Pierce

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

NEW YORK IMMIGRATION
COALITION, CASA DE MARYLAND,
AMERICAN-ARAB ANTI-
DISCRIMINATION COMMITTEE,
ADC RESEARCH INSTITUTE, and
MAKE THE ROAD NEW YORK,

Plaintiffs,

v.

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

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

Defendants.

Civil Action No. 1:18-cv-05025-JMF

DECLARATION OF ELIZABETH PLUM

Elizabeth Plum, pursuant to the provisions of 28 U.S.C. § 1746, declares under penalty of perjury as follows:

1. I am the Vice-President of Policy for Plaintiff the New York Immigration Coalition ("NYIC"). In that capacity, I am responsible in part for NYIC's education and outreach efforts around the 2020 Census. I am also one of the NYIC executives responsible for the organization's budgeting, fundraising, and policy priorities. I have been on staff at NYIC for over five years.

2. NYIC is an umbrella policy and advocacy organization for nearly 200 groups in New York State, representing the collective interests of New York's diverse immigrant communities and organizations. NYIC is headquartered at 131 West 33rd St, New York, NY 10001.

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

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

5. Many of NYIC's member organizations receive funding from a variety of local, state, and federal government sources to carry out social service, health, and education programs. Many of the programs from which NYIC member organizations receive money allocate funding based on population and demographic data generated by the Decennial Census. Among other Census-guided programs, NYIC member organizations receive funding through the Medical Assistance Program, also known as Medicaid; the Special Supplemental Nutrition Program for Women,

Infants, and Children; the State Children's Health Insurance Program; programs authorized under the Workforce Innovation and Opportunity Act; English Language Acquisition Grants; the Corporation for Community & National Service, which operates the AmeriCorps program; and formula grants authorized by the Violence Against Women Act.

6. For example, several NYIC members, including Chhaya Community Development Corporation ("Chhaya"), receive funding through the Community Development Block Grant program.

7. For another example, NYIC members Family Health Centers at NYU Langone, Little Sisters of the Assumption Family Health Services ("LSA"), Korean Community Services of Metropolitan New York, and Planned Parenthood of New York City receive funding through Medicaid to provide community health services.

8. For a third example, NYIC member Chinese-American Planning Council ("CPC") receives funding through the Workforce Innovation and Opportunity Act to provide education, training, and other services to aid job seekers in securing employment.

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

10. As an organization, NYIC has an ongoing commitment to promoting engagement in the Decennial Census among individuals served by its member organizations—in large part because of how critical the population count determined by the Census is for our members' level of

governmental funding and their level of political representation at the federal, state, and local levels. For example, NYIC partnered with the New York Community Media Alliance to launch an outreach campaign to boost immigrant participation in the 2010 Census. As part of that effort, NYIC coordinated public service announcements in 24 languages that appeared in 69 newspapers. NYIC also held press briefings with elected officials. These efforts helped to increase New York City's mail-in 2010 Census participation rate by approximately 3%.

11. For the 2020 Census, NYIC has already begun its outreach efforts. Since the beginning of 2018, it has helped form "New York Counts 2020," a growing, non-partisan coalition of more than 50 diverse organizational stakeholders across New York to advocate for a fair and complete enumeration. This broad-based coalition, which was formally launched in March 2018, is composed of racial, ethnic, immigrant, religious, health, education, labor, housing, social services, and business groups working in partnership with state and local government officials.

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

13. In its already extensive 2020 Census outreach, NYIC has faced, and will continue to face, a more difficult Census-response environment. NYIC was already facing more significant challenges in its Census outreach even before the decision to institute the citizenship question because New York immigrant communities are more skeptical and fearful of interacting with the government due to the Trump Administration's persistently hostile and discriminatory actions and attitudes toward immigrants of color. Now, New York immigrant communities' heightened fear of interacting with government workers has increased even further due to the decision to add the citizenship question. This fear extends not only to undocumented immigrants or non-citizens with legal status, but also to family and household members of non-citizens who will be concerned that participating might endanger their loved ones.

14. The decision to add a citizenship question to the 2020 Decennial Census has required NYIC to make substantial and additional investments to achieve Census participation rates comparable to what we what would have achieved absent this decision. Over the next three years, NYIC is planning to spend approximately \$1 million on community education and outreach efforts to work towards a complete and accurate count within the communities that NYIC and its member organizations serve. To the best of my knowledge, the \$1 million that NYIC anticipates spending on Census-related work represents an increase of approximately 60% over what the organization would have spent in the absence of a citizenship question.

15. This additional spending is partially a response to reports NYIC has received from its member organizations that some of their members have expressed an unwillingness to participate in the Census as a result of the citizenship question. NYIC has heard such reports from many of its member organizations, including CPC, Arab-American Association of New York

(“AAANY”), Masa, Chinese Progressive Association, MinKwon Center for Community Action, and Chhaya.

16. For example, in CPC’s Childhood Development Programs, parents who are immigrants of color have been asking CPC staff members whether or not it is “the law” to fill out the Census form and if or how they would be penalized if they chose not to respond. They also ask what will happen if they don’t answer a question during an in-person visit. Some have expressed concern that they may receive a visit from Immigration and Customs Enforcement if they indicate that there are noncitizens in their household. They have expressed reluctance to participate in the Census at all. In CPC’s Senior Centers, some seniors who are immigrants of color have been asking whether an incomplete mail-in form would be enough to trigger an in-person visit from ICE or another government official. In CPC’s Brooklyn Community Center, the senior services program has received an unusually high number of inquiries from community members on how to apply for citizenship. Some seniors and some younger generation Asian-Americans have also expressed concern because they are aware that Census data was used to identify Japanese-Americans and place them in internment camps during World War II.

17. For another example, AAANY has reported that many members of the Arab and Arab-American community they serve in and around the Bay Ridge section of Brooklyn have been reaching out to ask if they can refuse to fill out the Census because those community members are worried about the impact it will have on them or members of their households who have uncertain legal status. AAANY’s Adult Education Program Manager Somia Elrowmeim shared the fearful sentiments expressed by her students, many of whom said that they were apprehensive about having their names disclosed because of their legal status. AAANY’s adult

education program consists of 110 women who are recent immigrants, primarily from Yemen and Egypt and between the ages of 18-68. According to Ms. Elrowmeim:

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

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

19. For a fourth example, Desis Rising Up and Moving, a member of the New York Immigration Coalition, reported that a man who emigrated to the United States from Guyana in

the 1970s said that even as a citizen, he would not complete the Census if it contains a citizenship question because many people in his family and community are not citizens. This individual believed that this information could be used to target his family members who are non-citizens for deportation based on his understanding that Census data was used to target Japanese-American citizens for internment camps during the second World War.

20. For a fifth example, Little Sisters of the Assumption Family Health Service, a community-based organization and health services provider in East Harlem and a member of the New York Immigration Coalition, reported to NYIC a conversation with a community member about the Census and the fear about what a citizenship question could mean for his family and the community they serve. The community member is a 30-year-old male resident of East Harlem and is originally from Mexico. He is a DACA recipient and lives in a household with persons of mixed immigration status. He reported that he was afraid to answer a citizenship question on the Census because he is concerned that the Trump Administration may use that data to hurt his family and community.

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

22. One of the central concerns of NYIC and its members organizations with respect to the citizenship question is the loss of privacy that members of the immigrant communities we serve would suffer by the publication of citizenship data on the neighborhood or even city block level. With citizenship data at that level of granularity available, especially when combined with

similarly granular data on race and Hispanic origin, it would be possible to determine where there are a high level of non-citizens of color, and for law enforcement agencies, particularly immigration authorities, to engage in the profiling of immigrant communities of color.

23. Because of the heightened fear and suspicion created by the citizenship question, NYIC and its member organizations will be forced to expend more resources on their outreach efforts to try to reduce the effect of this question on the response rate in the immigrant communities they serve. Due to this strain on resources, NYIC is already fundraising to try to support its 2020 Census work. NYIC will need to apply for additional grants to sustain the increased need for 2020 Census outreach, further diverting its resources that would otherwise be spent on trying to obtain grants for other areas. Further, NYIC has already, and will continue to, divert resources from its other organizational priorities, including its work on health care and language access issues. For example, NYIC was undertaking a study and publication on adult English literacy and workforce development, which examines the critical role of English language acquisition in integrating immigrants into the workforce and preparing them to earn higher wages; however, that project has been postponed indefinitely because of the resources required to perform additional Census outreach and education work. Additionally, based on information reported by the Communications Committee of New York Counts 2020, NYIC and some of its member organizations will have to divert resources that would have been spent on education and outreach efforts to increase Census response rates among immigrant communities of color towards addressing the heightened fear generated by the citizenship question.

I, Elizabeth Plum, declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and recollections.

Dated: New York, New York

October 26, 2018



Elizabeth Plum

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

STATE OF NEW YORK, et al.,

Plaintiffs,

NEW YORK IMMIGRATION
COALITION, et al.,

Consolidated Plaintiffs

v.

UNITED STATES DEPARTMENT OF
COMMERCE, et al.,

Defendants.

Civil Action No. 1:18-cv-02921-JMF

SUPPLEMENTAL DECLARATION OF ELIZABETH PLUM

I, Elizabeth Plum, pursuant to the provisions of 28 U.S.C. § 1746, declare under penalty of perjury that the foregoing is true and correct:

1. As explained in my October 26, 2018 Declaration, I am the Vice President of Policy for the New York Immigration Coalition (“NYIC”). In that capacity, I am responsible in part for NYIC’s education and outreach efforts around the 2020 Decennial Census. I am also one of the NYIC executives responsible for the organization’s budgeting, fundraising, and policy priorities. I have been on staff at NYIC for over five years.

2. All of the statements made in my October 26 Declaration and in this Declaration are made based on my personal knowledge, acquired after more than five years on staff at NYIC. During that time period, I have familiarized myself with NYIC’s internal records and processes; our staff and their responsibilities; our programs and program areas; our member organizations

including their missions, the communities they serve, and their participation in activities with NYIC.

3. As Vice President of Policy for NYIC, a critical part of my job is to ensure that NYIC's policies and programs, including our Census education and outreach programs, address the needs of our member organizations and reflect their values. To that end, I have spent significant time traveling around New York State and meeting with both our member organizations and the immigrant communities that we all serve. Through this process, I have familiarized myself with prevailing views in the community concerning a range of issues affecting immigrant communities, including the Trump Administration's treatment of immigrant communities and immigration-related policies, and fears in immigrant communities about the policies of this Administration. As part of this process, I have observed a pattern of expressions of fear among immigrant communities in New York State concerning the Trump Administration's rhetoric and actions against immigrants and, specifically, the decision to add a citizenship question to the 2020 Decennial Census and potential use of the information gleaned from this question. I have also been working with immigrant communities in New York in one form or another since 2007 and have developed a thorough understanding of prevailing views in the communities I've worked with.

4. My statements concerning the fears of members of New York's immigrant community concerning the citizenship question and its effect on their willingness to answer the Decennial Census therefore reflect my knowledge as both the Vice President of Policy for NYIC and someone who has worked personally with immigrant communities in this state for over a decade, rather than a restatement of any particular individual's views. Similarly, in expressing my views about the likely effect of the citizenship question on New York's immigrant

community, I do not intend to offer any specific predictions about non-response rate or percentage undercount, but merely my observations based on my knowledge as a community leader and my work as Vice President of Policy for NYIC.

5. I have also been extensively and personally involved in the research, development, and implementation of NYIC's Census education and outreach programs, including the organization's work in the New York Counts 2020 coalition, which is dedicated to ensuring that New Yorkers across the state—particularly marginalized communities in hard-to-count districts—can maximize their participation in the 2020 Census. Because NYIC's Census education and outreach programs have been researched and developed to address the concerns of its members and the immigrant communities they serve, I have also familiarized myself with how those organizations and communities will be impacted by an undercount, including the kinds of government funding streams they receive.

6. Regarding statements made in Paragraphs 6, 7, and 8 of my October 26 Declaration about the Census-guided funding programs through which several NYIC member organizations receive funding, those statements are based on my work in the research, development, and implementation of NYIC's Census education and outreach programs, including the organization's work in the New York Counts 2020 coalition, as well as my regular and direct involvement with our member organizations in forming organizational policy. For example, I know that some of our member organization receive funding through the Workforce Innovation and Opportunity Act through my management of NYIC's education policy program. For another example, I know that some member organizations receive funding through Medicaid through my management of NYIC's health policy program. This research has informed my work in developing and implementing NYIC's communications, policy, and programming

regarding the 2020 Census, including NYIC's decision to increase its investment in education and outreach concerning the 2020 Census.

7. Regarding statements made in Paragraph 13 of my October 26 Declaration, those statements regarding the challenging environment for Census outreach as a result of the climate of fear among immigrant communities created by the Trump Administration and the incremental fear of participating in the Census due to the decision to add a citizenship question, those statements are based on my work in researching, developing, and implementing NYIC's Census education and outreach efforts, including work performed both before and after the disclosure of the decision to add a citizenship question. These statements are also based on my regular and extensive contact with our member organizations and the immigrant communities we serve on a variety of policy and programmatic areas, during which I have observed a pattern of fearful expressions concerning the citizenship question from immigrants in New York and their families, many of whom are part of mixed-status households.

8. Regarding statements made in Paragraphs 14 of my October 26 Declaration concerning the increased investments in Census education and outreach that NYIC has made to achieve similar Census participation rates among the immigrant communities we serve, those statements are based on my work in researching, developing, and implementing of NYIC's Census education and outreach programs that meet our member organizations' needs and reflect their values—both before and after the decision to add a citizenship question became public. Those statements are also based on my observation of a pattern of expressions of fear and confusion concerning the addition of a citizenship question to the 2020 Census among the immigrant communities that NYIC and its member organizations serve. My observation of this pattern of fear, confusion, and reluctance to participate in the 2020 Census due to the addition of

a citizenship question has informed NYIC's decisions to accelerate its 2020 Census education and outreach programs from 2019 to 2018 and to increase our investment in those programs. In expressing my views about the likely effect of the citizenship question on New York's immigrant community, I do not intend to offer any specific predictions about non-response rates, but only my observations based on my knowledge through my work as Vice President of Policy for the NYIC, and my participation in researching, developing, and implementing NYIC's for the 2020 Decennial Census, including my regular contact with the immigrant communities we serve towards the purpose of designing NYIC policies and programs that meet their needs and reflect their values.

9. Regarding statements made in paragraph 15 of my October 26 Declaration, the reports that NYIC has heard, including the pattern of reports that I have personally received and observed, have informed my own work and NYIC's decisions about policy, programming, and communications around the 2020 Census, including our decision to increase our investments in our 2020 Census education and outreach towards the purpose of encouraging immigrant participation in the 2020 Census.

10. Regarding statements made in paragraphs 16, 17, 18, 19, 20, and 21 of my October 26 Declaration, my statements regarding reports from our members are only some examples of the pattern of fear, confusion, and reluctance on the part of immigrant communities in New York to participate in the 2020 Census as a result of the citizenship question that I have observed in the course of my work. I have observed this pattern of fear, confusion, and reluctance in researching, developing, and implementing our 2020 Census education and outreach efforts, as well as during my community engagement work with our member organizations and the immigrant communities we serve. The pattern of reports I have received,

including these examples and other observations, have caused NYIC to divert resources from other organizational programs to increase our investments in education and outreach efforts for the 2020 Census.

11. Regarding statements made in paragraph 22 of my October 26 Declaration, my statements regarding NYIC's concerns about the loss of privacy that immigrant communities will suffer as a result of the publication of data derived from a citizenship question on the 2020 Census are based on my observation of a pattern of such concerns expressed by immigrants in New York during my work researching, developing, and implementing our education and outreach efforts around the 2020 Census with our member organizations and the immigrant communities we serve. My statements regarding the use of Census data are informed by research I have performed to inform my work in developing and implementing programming and communications for NYIC's education and outreach efforts around the 2020 Census. These statements have informed my participation in NYIC's decision to hire staff and to place greater outreach and communications emphasis on addressing the privacy and confidentiality issues surrounding the collection of Census data.

12. Regarding statements I made in paragraph 23 of my October 26 Declaration concerning NYIC's diversion of resources from the organizations other programs and policy priorities in order to bolster our 2020 Census education and outreach, those statements are based on my participation in NYIC's decisions to divert resources from program areas including health care and language access in order to increase the resources expended on our Census programming and communications, which were based in part on our repeated observations of reports of fear, confusion, and reluctance to participate in the Census due to the citizenship question among the immigrant communities we serve.

I declare under penalty of perjury that the foregoing is true and correct.

Executed: November 2, 2018

New York, NY

A handwritten signature in black ink, appearing to read 'Elizabeth Plum', written over a horizontal line.

Elizabeth Plum

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

STATE OF NEW YORK, et al.,

Plaintiffs,

v.

UNITED STATES DEPARTMENT
OF COMMERCE, et al.,

Defendants.

CIVIL ACTION NO. 1:18-cv-2921 (JMF)

**AFFIDAVIT OF
ARTURO VARGAS**

Pursuant to 28 U.S.C. § 1746(2), I, Arturo Vargas, hereby declare as follows:

I. Introduction:

1. I am over the age of eighteen and have personal knowledge of all the facts stated herein.

2. I serve as Chief Executive Officer of the NALEO Educational Fund. The NALEO Educational Fund is a nonprofit, nonpartisan organization that promotes full Latino participation in the American political process, from citizenship to public service. NALEO Board members and its constituency encompass the nation's more than 6,600 Latino elected and appointed officials, and include Republicans, Democrats and Independents.

3. NALEO has several decades of experience working closely with its Latino elected official constituency, the Census Bureau, other government officials, and partner organizations, to promote public policies to achieve the most accurate count possible of the nation's population. NALEO Educational Fund has served as a member of the U.S. Census Bureau's national advisory committees since 2000.

4. I represent NALEO Educational Fund on the U.S. Census Bureau's National Advisory Committee on Racial, Ethnic, and Other Populations ("NAC"). I have served in this capacity, or on predecessor Committees, for the past two decennial censuses, under both Republican and Democrat administrations. As a member of the NAC, I attend the semi-annual meetings of the Committee and periodic webinars where the Census Bureau staff present updates to all aspects of its work, including preparations and progress for the decennial census, the American Community Survey, and other functions. The Census Bureau solicits the advice and recommendations from the Committee members on its work.

II. History and Role of Advisory Committees:

5. For the 2000 Census, the Commerce Secretary had a Census Advisory Committee. For the 2010 Census, another committee called the National Advisory Committee replaced that Advisory Committee.

6. In 2012, the Secretary of Commerce re-chartered the National Advisory Committee as the Census Bureau National Advisory Committee on Racial, Ethnic, and Other Populations ("NAC"). NAC is a channel of communication between the Census Bureau and race, ethnic, and other communities, focusing "on the identification of new strategies for improved census operations, survey and data collection methods, including identifying cost-efficient ways to increase census participation and reduce the undercount."¹

7. The purpose of the NAC is to provide expert resources to the Census Bureau. Specifically, the charter of the NAC charges NAC with providing the Census Bureau its insight, perspective, and expertise in the following areas: "developing appropriate research and methodologies, operations, communications, and strategies to reduce program/survey costs;

¹ <https://www.census.gov/about/cac/nac.html>

improving coverage and operational efficiency; improving the quality of data collected; protecting the public's and business units' privacy; enhancing public participation and awareness of Census Bureau programs and surveys; improving the dissemination of data products; and the use of administrative records and third party data in the decennial census.”² The Census Bureau selects members of the NAC based on their expertise related to the above-mentioned areas, as well as expertise related to hard to count populations, race and ethnicity, language, aging populations, American Indian and Alaska Native tribal considerations, new immigrant populations, populations affected by natural disasters, highly mobile and migrant populations, complex households, rural populations, population segments with limited access to technology, data privacy, and confidentiality.

8. The NAC consists of up to 32 members appointed by the Director of the Census Bureau. Some members serve in their individual capacity as content experts, other members are organizations who represent a key stakeholder community, such as NALEO Educational Fund.

9. Beginning in 2017, I observed that the Census Bureau staffing support for the NAC reduced from six people to one person.

10. There are currently several vacancies on the NAC, which the current Director has not filled. The seats became vacant after the June 2018 meeting of the NAC because the members – one with expertise on privacy issues, and another with expertise on issues of young children – were termed out. Normal course has been that the Director would fill any vacant seats on the NAC before any upcoming meeting; the next meeting for the NAC is November 1-2, 2018.

11. The Census Bureau and the NAC officially meet twice a year, and at working groups, which are essentially sub-committees of the NAC. A typical meeting of the NAC is held at the

² <https://www2.census.gov/cac/nac/nac-charter.pdf>

Suitland headquarters of the Census Bureau and presided by the Designated Federal Officer and the Chair and Co-Chair of the NAC. The agenda is set by the leadership of the Census Bureau in consultation with the Chair and Co-Chair. The meetings typically consist of presentations by Census Bureau staff, prepared reactions by a NAC member, and discussion by the full Committee. The NAC members then develop and agree on recommendations to the Census Bureau on the matters discussed. The Bureau responds to the NAC's recommendations in writing, indicating whether the recommendations are accepted or rejected, and the reasons for doing so. In addition, for the decennial census, there are working groups on issues such as language, the undercount of young children, and partnerships and communications. I sit on the working groups for the undercount of young children and for partnerships and communications.

12. The Census Bureau provides members of the NAC with periodic updates on its progress for the decennial Census, and its work on other surveys including the American Community Survey. On something as fundamental as adding or changing a question, it is normal course for the Census Bureau to consult the NAC before making the decision to add the question. Prior to the citizenship question, the Census Bureau consulted regularly on significant issues relating to the census. To have not been consulted on the addition of the citizenship question to the decennial census was a departure from previous practice.

III. Typical Involvement of NAC in Census Questionnaire:

13. When contemplating the addition of a race/ethnicity question to the census, the Census Bureau engaged with the NAC and several stakeholder organizations over a period of approximately 10 years as part of the research and testing of a revised question on race and ethnicity. Beginning in 2009, the Census Bureau began considering a change to the race and ethnicity question on the decennial census. The Bureau first identified research areas to explore before engaging in testing to

add the question, and embedded alternative questions on how to ask race/ethnicity in the 2010 census. At the conclusion of the 2010 Census, the Bureau then prepared an analysis on how individuals answered different versions of the questions. The Bureau then engaged in more research using the results of the analysis, this included focus groups, consultations, and more tests.

14. The NAC played a major consulting role in this process. The Bureau provided NAC with detailed briefings on the results of the Alternative Question Experiment that was embedded in the 2010 Census and subsequent focus groups, which were the largest and most detailed research ever undertaken by the Census Bureau to develop a new question for the decennial census. The Census Bureau also participated in two briefings organized by NALEO Educational Fund, which I led, to explain the Bureau's research and findings to key stakeholders in the Latino community and solicit their feedback. None of this occurred with the citizenship question.

IV. Advisory Committees Excluded From Consultation On Citizenship Question:

15. The NAC was never advised by the Census Bureau that it was considering adding a question on citizenship.

16. The NAC was not consulted before the decision to add the citizenship question and the addition of the question was not included as an agenda matter when the NAC met in June 2018, the first meeting after Secretary Ross issued his decision memorandum. The decision to add the citizenship question was undoubtedly rushed and made outside of the window between NAC meetings. This timeline prevented any meaningful input from NAC; a fact that was and still is alarming.

17. On December 20, 2017 – approximately one week after the Department of Justice requested the addition of the citizenship question – I met with Undersecretary Karen Dunn Kelley at the Department of Commerce. At no point during this meeting did she or anyone else present at

the meeting bring up the addition of the citizenship question to the decennial census. Also present at the meeting were Dr. Ron Jarmin, Enrique Lamas, and a representative of the Department of Commerce. The purpose of the meeting was for me to meet the Undersecretary and to share with her NALEO's primary concerns about the progress toward the Decennial Census, and the issues I believed she should direct her attention.

18. No one from the Department of Commerce or Census Bureau raised the subject of a citizenship question with the NAC. Most NAC members learned of the issue through media reports that first emerged in late December 2017.

19. On December 29, 2017, I learned about the Department of Justice's request to add a citizenship question after a reporter called me asking for my reaction. I then reached out via email to Undersecretary Kelley to express my concerns about the addition of the question. I received an email reply from Dr. Jarmin who indicated that the Census Bureau was looking at developing options other than adding a question to meet the needs of the Department of Justice.

20. On March 12, 2018, I received an email from Dr. Ron Jarmin requesting that I schedule a telephone conversation with Secretary Ross so that he could hear my concerns about adding a citizenship question on the decennial Census.

21. On March 13, 2018, I spoke via telephone with Secretary Ross and the Deputy General Counsel. Secretary Ross said that he was gathering information to respond to the request from the Department of Justice to add a citizenship question and that he was in a "listening only mode." I expressed my concerns about adding the question, reminding the Secretary that in November the Census Bureau's Center for Survey Measurement had issued a memorandum, which documented the recent challenges Census Bureau staff had in securing the participation and trust of immigrants in surveys. I also told him that several NALEO members who are elected officials

expressed that they would not encourage their constituents to complete their census forms if a citizenship question is added for fear that the Trump Administration would use the information against them.

22. On March 26, 2018, just three months after receiving the DOJ letter, Secretary Ross announced that he was putting the citizenship question on the decennial census. As mentioned above, this unusual and rushed timeline meant that the NAC was not consulted on the topic of the citizenship question, a significant deviation from prior practice on a topic of such importance.

23. In June 2018, the NAC strongly recommended that the Census Bureau not include a question on citizenship because of the impact it would have on response rates. The NAC also recommended that if the question is included on the 2020 questionnaire, that the Census Bureau not conduct Non Response Follow Up for returned questionnaires that leave the citizenship question unanswered to limit fear in hard to count communities. The Census Bureau rejected both recommendations.


24. The process by which the Census Bureau decided to add the citizenship question was unique, as it did not include consultation with the NAC before the decision was made – a deviation from past practice. For a decision as significant as this, the decision has never been this rushed, left this many unanswered questions about its implementation, or gone without meaningful consultation from key committees.

25. Both NALEO and I are “trusted messengers,” for the Census Bureau, i.e., organizations or community leaders that the Bureau relies on to relay assurances to the public on issues such as the confidentiality of census information, and the overall safety in filling out the census. Both NALEO and I will cooperate with the Census Bureau in this context; however, currently it is not clear how we should advise our members in terms of messaging and processes

related to non-response follow up, as we have received no direction on this from the Census Bureau. And any research NALEO has done to anticipate messaging strategies has shown that individuals are scared to answer the citizenship question for fear of disclosure of that information to other government entities.

I declare under penalty of perjury that, to the best of my knowledge, the foregoing is true and correct.

Executed on the 23rd day of October, 2018.


ARTURO VARGAS
Executive Director, NALEO Educational Fund

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

STATE OF NEW YORK, et al.,

Plaintiffs,

v.

UNITED STATES DEPARTMENT
OF COMMERCE, et al.,

Defendants.

CIVIL ACTION NO. 1:18-cv-2921 (JMF)

SUPPLEMENTAL AFFIDAVIT OF ARTURO VARGAS

Pursuant to 28 U.S.C. § 1746, I, Arturo Vargas, hereby declare as follows:

1. As explained in my October 23 Affidavit, I am the Chief Executive Officer (“CEO”) of the NALEO Educational Fund, and my responsibilities include representing NALEO on the U.S. Census Bureau’s National Advisory Committee on Racial, Ethnic, and other Populations (“NAC”).

2. All of the statements made in my October 23 Affidavit and in this Affidavit are made based on my personal knowledge, acquired through decades of service on the National Advisory Committee (“NAC”) and its predecessor committees. As I stated in paragraph 4 of my original affidavit, I have been on the NAC and its predecessor committees for over 15 years, and have had frequent occasion to know the purpose, history, charter, practices, and composition of the NAC. *See* PX-227; PX-229. This knowledge is the basis for my knowledge throughout my October 23 affidavit, especially in paragraphs 5-11.

3. As part of my service as a member of the NAC, I have read and familiarized myself with NAC's Charter. *See* PX-227. I have also read and familiarized myself with NAC's Standard Operating Procedures. *See* PX-229.

4. I have also interacted frequently with Census Bureau officials across multiple administrations in a wide variety of contexts. My assessments in paragraphs 12-13, 16, 22, and 24 of my October 23 Affidavit are based on my knowledge of how more recent encounters regarding the citizenship question were different than past interactions with Census Bureau officials. The assessments are also based on my knowledge of the NAC's purpose, history, charter, practices, and composition. *See* PX-227; PX-229.

5. The recommendations that I describe in paragraph 23 of my October 23 Affidavit are part of NAC and the Census Bureau's process of consultation, which I am familiar with through my more than 15 years of experience on the NAC, and my knowledge of the NAC's purpose, history, charter, practices, and composition, which I described in paragraph 11 of my October 23 Affidavit.

6. The summary of NALEO's research that I reference in paragraph 25 of my October 23 affidavit reflects my personal knowledge as the Chief Executive Officer of NALEO and observations as an attendee of various focus groups and community events regarding the 2020 Census.

7. On November 1 and 2, 2018, the NAC had its Fall 2018 Meeting in Suitland, Maryland. Despite the fact that the citizenship question was not on the official agenda for the meeting, the challenge presented by the citizenship question permeated conversations concerning the challenges faced by the 2020 Census. As a member of the NAC, I attended the Fall 2018 Meeting. *See* Ex. XX (NAC Official Agenda for Nov. 1-2, 2018 Meeting).

8. On Friday, November 2, 2018, Ron Jarmin, Director of the Census Bureau, stated in front of a room full of attendees – including myself – that the Census Bureau acknowledged the new challenges that are presented by the addition of the citizenship question. Dr. Jarmin also stated that the current 9 vacancies on the NAC would not be filled until the Spring or Fall of 2019.

9. Also at this meeting, the Census Bureau invited presenters associated with Young and Rubicam (Y&R), the firm employed by the Census Bureau to run the 2018 Census Barriers Attitudes and Motivators Study (CBAMS) to present the results of the study on behalf of the Census Bureau. Of note, this study began before the Census Bureau announced the addition of the question, and therefore at first did not include any testing related to the citizenship question. After the Bureau announced the question, Y&R incorporated testing on the citizenship question. As part of the CBAMS, Y&R conducted 42 focus groups with participants representative of hard-to-count populations from across the country, including those from the Latino, Asian and Middle Eastern communities. As described in the presentation that I attended, the conclusion from the CBAMS data was that the citizenship question may be a major barrier to participation in the 2020 Census. The presenters also stated that focus group participants expressed their concern that the purpose of the citizenship question was to target certain ethnic groups for purposes of fear and immigration enforcement. One Latino participant stated that they thought the addition of the citizenship question was “practically a hunt [for us]...Latinos are going to be afraid to be counted because of the retaliation that could happen.” Ex. XX (“2020 Census Barriers, Attitudes, and Motivators Study (CBAMS) Survey and Focus Groups: Key Findings for Creative Strategy,” Oct. 21, 2018). These concerns extended to residents and citizens who “may also feel endangered” by the question. Ex. XX (“2020 Census Barriers, Attitudes, and Motivators Study (CBAMS) Survey and Focus

Groups: Key Findings for Creative Strategy,” Oct. 21, 2018). These sentiments are consistent with NALEO’s research as described in paragraph 25 of my October 23 Affidavit.

10. Also at this meeting, I along with the other members of the NAC presented the NAC’s new recommendations to the Census Bureau. The most prominent recommendation that the NAC made was to state that based on our expertise and professional judgment, there was no value in the citizenship question to the decennial census, and leaving the question on the census would undermine its very purpose – to provide a complete and accurate count. Members of the NAC also submitted individual commentary to the Bureau, which provided information on the research and science underpinning this recommendation.

I declare under penalty of perjury that the foregoing is true and correct.

Executed: November 3, 2018
Los Angeles, CA



Arturo Vargas