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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3 -----x  
4 STATES OF NEW YORK, COLORADO,  
5 CONNECTICUT, DELAWARE, ILLINOIS,  
6 IOWA, MARYLAND, MINNESOTA,  
7 NEW JERSEY, NEW MEXICO,  
8 NORTH CAROLINA, OREGON,  
9 RHODE ISLAND, VERMONT,  
10 and WASHINGTON, *et al.*,

11 Plaintiffs,

12 v.

18 Civ. 2921 (JMF)

13 UNITED STATES DEPARTMENT OF  
14 COMMERCE, *et al.*,

Trial

15 Defendants.

16 -----x  
17 NEW YORK IMMIGRATION  
18 COALITION, *et al.*,

19 Consolidated Plaintiffs,

20 v.

18 Civ. 5025 (JMF)

21 UNITED STATES DEPARTMENT OF  
22 COMMERCE, *et al.*,

23 Defendants.

24 New York, N.Y.  
25 November 5, 2018  
9:00 a.m.

Before:

HON. JESSE M. FURMAN,

District Judge

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## APPEARANCES

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1 (In open court)

2 MR. COANGELO: Good morning, your Honor. Matthew  
3 Colangelo from the State of New York for the governmental  
4 plaintiffs. I'll state the appearances for my co-counsel who  
5 are not near a microphone this morning.

6 Danielle Fidler, Alex Finkelstein, Sania Kahn,  
7 Elizabeth Morgan, David Nachman, Ajay Saini, Laura Wood  
8 appearing for the State of New York. Attorney General Barbara  
9 Underwood is present as well. Maggie Sobota and Christie  
10 Starzec for the City of Chicago. Michael Pfautz appearing for  
11 the city of Philadelphia. Melissa Medoway appearing for the  
12 state of New Jersey. Julio Thompson appearing for the state of  
13 Vermont. Laura Clinton for the state of Washington. And Mona  
14 Siddiqui for the commonwealth of Virginia.

15 THE COURT: I would ask that you give that list to the  
16 court reporter so she can have the correct spellings in due  
17 course.

18 MR. COANGELO: Yes, your Honor.

19 MS. GOLDSTEIN: Elena Goldstein also for the State of  
20 New York and governmental plaintiffs.

21 MR. HO: Good morning, your Honor. Dale Ho from the  
22 American Civil Liberties Union above the NYIC plaintiffs. Also  
23 with me today are Sarah Brannon, Davin Rosborough, Ceridwen  
24 Cherry, and Perry Grossman of the New York Civil Liberties  
25 Union.

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1 MR. FREEDMAN: John Freedman from Arnold & Porter for  
2 the NYIC plaintiffs.

3 Other counsel who are not near microphones are Dylan  
4 Yong and Barbara Wootton.

5 MR. GERSCH: Good morning, your Honor David Gersch,  
6 also from Arnold & Porter, representing the NYIC plaintiffs.

7 THE COURT: Good morning to all of you.

8 MS. BAILEY: Good morning, your Honor. Kate Bailey  
9 with the Department of Justice. With me at counsel table is  
10 Carol Federighi, Martin Tomlinson, and Stephen Ehrlich, also of  
11 the Department of Justice, and Dr. John Abowd of the Census  
12 Bureau.

13 Counsel present not near a microphone is Carli Wells  
14 and Josh Gardner of the federal programs branch. We have  
15 Garrett Coyle of the federal programs branch. And also we have  
16 Brett Shumate, deputy associate attorney general. Joseph Hunt,  
17 assistant attorney general. John Griffith, director of the  
18 federal programs branch.

19 THE COURT: All right. Well, welcome to everybody.  
20 It came down to the wire, but here we are.

21 We have a bunch of housekeeping matters before we  
22 actually get started with trial proper.

23 Number one, let me just remind everyone, I think  
24 you've been told, those of you able to get your phones in, you  
25 had a pass to do so, make sure they are off. If they go off,

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1 that is to say if they ring in court, either you or the phone  
2 will be removed or both of you. Now, please do that.

3 Now, I got stipulations. Stipulations were filed last  
4 night, docket number 480. Those will be deemed admitted, so  
5 you don't need to do anything further on that front.

6 Second, deposition designations. I received a bunch  
7 of things, and I just want to make sure that I understand what  
8 I received and what I need to be doing, that is to say, I'm not  
9 quite sure what I am supposed to be doing.

10 Number one, there were -- sorry, designations  
11 submitted for Dr. Abowd, both his fact testimony and expert  
12 testimony. But since he'll be testifying live, is there any  
13 reason that those would be admitted or I need to review those?

14 MR. FREEDMAN: No, your Honor.

15 THE COURT: All right. I'll disregard those.

16 I take it, however, that I should review the 30(b)(6)  
17 depositions because --

18 MR. FREEDMAN: Yes, your Honor.

19 THE COURT: -- they are separately admissible?

20 Very good.

21 Second, on that front, as best I can tell, the  
22 transcripts have some yellow highlighting and some blue  
23 highlighting and annotations in the margins referencing  
24 objections.

25 Can somebody tell me what the colors signify and what

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1 exactly I should be doing?

2 MR. FREEDMAN: Unless others correct me, the yellow  
3 annotations are plaintiffs' designations. The blue are the  
4 government's, or defendant's, counter designations, and then  
5 objections were noted in the margin.

6 THE COURT: All right. Anyone?

7 MS. BAILEY: That's correct.

8 MR. HO: I'll just note, your Honor, that with at  
9 least one transcript, I believe the transcript of John Gore,  
10 there were some green highlighting, which indicates plaintiffs'  
11 designations that have been objected to by the defendants. We  
12 didn't use a third color in any of the other transcripts, as  
13 far as I know.

14 THE COURT: All right. As we discussed last week, I  
15 take it there are at least some, and maybe in fact all of these  
16 depositions, that plaintiffs believe I should watch the  
17 videotapes of rather than just relying on the transcripts, is  
18 that correct?

19 MR. FREEDMAN: Your Honor, we have rethought it, and  
20 we believe that your Honor should watch the videos of  
21 Mr. Comstock and Mr. Gore, and the rest you can rely on the  
22 written transcripts.

23 THE COURT: All right. I think that I received a link  
24 to the videotape of the Gore deposition. I'm not sure I have  
25 the Comstock one yet.

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1 Do you know if I do, or could you make sure I get it  
2 sooner rather than later?

3 MR. HO: Yes, your Honor.

4 We'll make sure you get that, and that is correct,  
5 there was a corrected link to the Gore deposition excerpts that  
6 were sent to the court with a cc to the defendants this morning  
7 for trial start. We also have it on a flash drive, if your  
8 Honor would prefer that.

9 THE COURT: I would prefer it only as a backup.  
10 Please do give that to us.

11 Yes, Ms. Bailey?

12 MS. BAILEY: Defendants have not had an opportunity to  
13 review the video designations of Mr. Gore's testimony. We  
14 received that updated link this morning, and we would like an  
15 opportunity to quickly review that and just double-check the  
16 editing and so forth.

17 THE COURT: All right. I assume -- I guess I  
18 shouldn't assume. Does the video reflect, is it only the  
19 portions that have been designated, or is it the entirety of  
20 the deposition?

21 MR. HO: It is just the portions that have been  
22 designated, your Honor.

23 THE COURT: All right. I will assume that that was  
24 accurately and faithfully done. Obviously, if there is some  
25 sort of problem, let me know, and I will be considering the

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1 objections that you have made and I assume are all listed on  
2 the transcript.

3 MS. BAILEY: Yes, your Honor. If there are any  
4 issues, we will notify the court tonight.

5 THE COURT: All right. You'll get me the Comstock  
6 link and flash drive?

7 MR. HO: We will, your Honor.

8 Your Honor, may I approach to hand the flash drive to  
9 your deputy or law clerk?

10 THE COURT: Sure.

11 I think that takes care of the designations. Let me  
12 talk for a moment about the direct testimony affidavits.

13 First, any updates on either the testimony of  
14 Ms. Teramoto or the timing of Dr. Abowd's testimony?

15 MR. COANGELO: Your Honor, as to the testimony of  
16 Ms. Teramoto, the defendants advise us that they consent to her  
17 deposition designations. We did begin the process of serving  
18 Ms. Teramoto over the weekend, but we will rest on the  
19 deposition designations if the court will let those in on the  
20 parties' consent.

21 THE COURT: Subject to the objections that are assumed  
22 listed on the transcript?

23 MR. COANGELO: Yes.

24 MS. BAILEY: We no longer object to her deposition  
25 designations on the basis that she is within the subpoena

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1 power. We maintain our 401 and 403 objections.

2 THE COURT: Understood.

3 I'll consider those in due course and timing of  
4 Dr. Abowd's testimony. Are there any remaining issues on that?

5 Have you worked that out?

6 MR. HO: I don't believe we have an update on that  
7 yet, your Honor. The parties will confer and get back to the  
8 court as soon as possible.

9 THE COURT: Very good.

10 Turning to the witnesses who were on the list to be  
11 called today. As my text order of yesterday made clear, I  
12 found the defendants' objections to that testimony to be  
13 groundless. Some hearsay objections were made to paragraphs  
14 that didn't even have out-of-court statements, and to the  
15 extent that they did have out-of-court statements, it was quite  
16 clear to me that they were not being offered for the truth, but  
17 rather for permissible non-hearsay purposes, such as the effect  
18 on the listener and state of mind.

19 As for the foundation and personal knowledge  
20 objections, I think it was debatable whether those would have  
21 had merit without the supplemental affidavits that were  
22 submitted over the weekend, but certainly with those  
23 supplemental affidavits, those objections were meritless as  
24 well.

25 In the interest of time, I'm prepared to go through

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1 the same exercise of the next few witnesses. I don't know if  
2 they are present in New York or not, or if there are any issues  
3 on that front. I think it would actually make more sense for  
4 defendants to go through their objections and revise them to  
5 eliminate further meritless objections and save everybody --  
6 more to the point, me -- the trouble of having to go through  
7 them.

8 Now, I also don't know if defendants have any  
9 objections to the supplemental affidavits which were filed over  
10 the weekend and as to which they have not yet had an  
11 opportunity to be heard.

12 Ms. Bailey?

13 MS. BAILEY: We are in the process of going through  
14 those and we will be removing some objections and reviewing the  
15 supplemental affidavits. We are prepared to file that pretty  
16 quickly.

17 THE COURT: Can you do that by eight p.m. tonight?

18 MS. BAILEY: We would prefer a little bit later, if  
19 that is OK, your Honor?

20 THE COURT: I'll give you until nine p.m.

21 Mr. Colangelo?

22 MR. COANGELO: Nothing, your Honor. Thank you.

23 THE COURT: What's the plan today with respect to  
24 Mr. Choi, Ms. Rodriguez, and Ms. Sarmiento?

25 Are they here? Are they testifying? What is the

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1 plan?

2 MR. COANGELO: Your Honor, the defendants advised us  
3 yesterday there was no need for those three witnesses to appear  
4 in court. We advised them they do not need to attend this  
5 morning.

6 THE COURT: All right. Great.

7 Then I do need a, if not the order of witnesses that  
8 you plan to call for the remainder of your case, certainly the  
9 next few, so I can be focusing on those affidavits and  
10 objections sooner rather than later. I don't know if you can  
11 tell me at least some of them now.

12 MR. COANGELO: Your Honor, we can give you our  
13 tentative lineup for tomorrow.

14 We anticipate calling Dr. Salvo, Dr. Habermann, and  
15 Arturo Vargas, to the extent his testimony is still necessary  
16 following any revisions to the defendants' objections to his  
17 affidavit testimony.

18 Obviously the information that we received from the  
19 defendants tonight by nine p.m. will inform the run of show for  
20 the remaining fact witnesses, and we're in the process of  
21 reordering the witnesses as best we're able to fill the trial  
22 calendar and to give the court as much notice and opposing  
23 counsel as much notice of our witness attendance as we can.

24 THE COURT: Of those, it looks like I have  
25 declarations for Habermann and Vargas, is that correct?

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1 MR. COANGELO: Yes, your Honor.

2 You should have Dr. Habermann's declaration,  
3 Mr. Vargas' original declaration, and his supplemental  
4 declaration lodged on Saturday evening. And Dr. Salvo is one  
5 of the witnesses that the court authorized to appear for live  
6 direct testimony, so he'll be called for direct testimony to  
7 the stand.

8 THE COURT: All right. I may start going through the  
9 objections to the Habermann and Vargas affidavits, even though  
10 defendants will be revisiting them, just to make sure that you  
11 have timely rulings on that front.

12 Now, anything else on the affidavits?

13 All right. In that case, let me turn to, there was a  
14 motion filed by defendants to exclude the supplemental opinions  
15 of two expert witnesses, Dr. Hillygus, if that is how it is  
16 pronounced, and Dr. Van Hook. That was docket number 475. It  
17 was this morning, I think, terminated by the clerk's office for  
18 technical reasons, but you can disregard that. There is no  
19 need to refile it as far as I am concerned since it is on the  
20 public record.

21 Now, that motion is denied substantially for the  
22 reasons set forth in plaintiffs' objection briefly considering  
23 the factors set forth in the Second Circuit's decision in  
24 Patterson v. Balsamico, and exercising my discretion, I  
25 conclude that exclusion would be inappropriate here.

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1           To be clear, there is no doubt to me that plaintiffs  
2 could have and probably should have made the supplemental  
3 disclosures sooner than they did. But given the unusual  
4 circumstances of the last few weeks, namely, the Supreme  
5 Court's stay that was sought and obtained by defendants, I  
6 don't think that the delay is bad enough to warrant exclusion.

7           Further, given defendants' arguments regarding  
8 standing, I am inclined to think that the evidence is  
9 potentially important, namely, the imputation and the  
10 discussion of imputation as potentially relevant to my  
11 decisions on standing, and in the interest of having a  
12 comprehensive record in this case, the exclusion is  
13 unwarranted.

14           Finally, I am unpersuaded by defendants' claims of  
15 prejudice, in part because they themselves describe the  
16 evidence as unimportant, in part because Dr. Abowd is here, and  
17 I gather will be sitting through trial as defendants'  
18 representative and can assist defendants in cross-examining  
19 those experts and respond to their testimony himself, in part  
20 because defendants have been privy to the core of the  
21 supplemental disclosures for some time.

22           Accordingly, the motion filed at docket number 475 is  
23 denied.

24           Turning to exhibits. Now, I received plaintiffs',  
25 actually, two supplemental exhibit lists yesterday, a first

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1 supplemental and a second supplemental. I think I received  
2 defendants' objections to the first, but maybe not the second.

3 Is that a correct statement of what I should have?

4 MS. BAILEY: Yes, your Honor.

5 We're working on the objections to the second  
6 supplemental exhibit list.

7 THE COURT: Great. So you should get that in, but I  
8 take it from my quick look at your objections to the first  
9 supplemental list, it didn't look like there was anything that  
10 required advanced discussion, is that correct, other than  
11 perhaps the one clawback issue, but I gather you're still  
12 talking about that amongst yourselves?

13 MS. BAILEY: I don't think it requires advanced  
14 discussion. No, your Honor.

15 THE COURT: Very good.

16 Plaintiffs, in the letter docketed at docket number  
17 478, indicated an intent to move for the admission of various  
18 exhibits subject to the 401 and 403 objections that defendants  
19 had made.

20 I take it that the list attached to that letter  
21 includes the supplemental exhibits, is that correct?

22 MR. COANGELO: Yes, your Honor.

23 The attachments to the letter that we filed at docket  
24 number 478 and corrected at docket number 481, those  
25 attachments include the exhibits identified on plaintiffs'

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1 original exhibit list dated October 26, and on the first  
2 supplemental exhibit list dated October 31. They do not  
3 include the nine exhibits included on the second supplemental  
4 exhibit list because the defendants have not yet had an  
5 opportunity to object to those.

6 THE COURT: Right. I guess that makes sense.

7 Ms. Bailey, any objection to deeming those admitted  
8 subject to the 401 and 403 objections that have been lodged?

9 MS. BAILEY: No, your Honor.

10 THE COURT: All right. Just so I understand the  
11 plaintiffs --

12 MS. WELLS: I'm sorry, your Honor. Are you talking  
13 about the exhibits attached to 481? Because we actually do  
14 have some objections to those.

15 THE COURT: I confess that I didn't see 481.

16 MS. WELLS: We didn't see it until very late last  
17 night either.

18 THE COURT: What is the objection?

19 MS. WELLS: There are four attachments, and with  
20 respect to attachment one, we had no original objection. That  
21 is we do not probably object to those being admitted.

22 Attachment two, we did object on the basis of 401,  
23 because both those -- those three documents post-date the  
24 decision, but we will -- that objection has been noted. We  
25 will not object to their being admitted into the trial now.

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1 With respect to exhibit attachment three, those  
2 documents, your Honor, are all cumulative. All of them are in  
3 the administrative record, so we think there is no basis to  
4 admit them because they are already going to be in the record  
5 because we haven't objected and we, in fact, agreed and pushed  
6 for the admission of the AR. So that is our objection to that,  
7 which we continue to maintain.

8 THE COURT: Wait. Meaning that some of these exhibits  
9 are duplicative?

10 MS. WELLS: Yes.

11 THE COURT: Actually in the record already?

12 MS. WELLS: Yes.

13 THE COURT: OK.

14 MS. WELLS: I would also just note that we did have an  
15 objection to Plaintiffs' Exhibit 357, and we withdraw that  
16 objection.

17 I would note that Plaintiffs' Exhibits 374 and 490 are  
18 cumulative of 357. They are both the same document.

19 THE COURT: All right. Mr. Colangelo, I think it  
20 would be helpful to go through this and eliminate anything that  
21 is already in evidence, because it is part of the  
22 administrative record, so I don't need to worry myself about  
23 it. I think that point is certainly well taken.

24 MR. COANGELO: Your Honor, to a certain extent, where  
25 there is duplication or overlap, that was a function of the

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1 fact that plaintiffs had 30 witnesses who were looking at  
2 different documents, occasionally different versions of the  
3 same document, and at this point, we think it would cause more  
4 confusion to the court rather than less to go back and  
5 redesignate exhibits that are referenced in the affidavit  
6 testimony or that the witnesses have been prepared to testify  
7 about on the stand.

8 This is a bench trial, your Honor. There is no risk  
9 of prejudice or confusing the fact finder.

10 THE COURT: Tell you what, I think what would make  
11 sense is, number one, to the extent that there are  
12 modifications to these lists because, for example, the  
13 objection to 357 has been withdrawn, I think it would make  
14 sense to make sure that the list is completely accurate, and  
15 also in doing so, to cross reference and tell me which exhibits  
16 are already in the administrative record so I don't get  
17 confused and have to compare myself.

18 Otherwise, I think your point is well taken, I can  
19 sort it out, and it sounds like it will be simpler to leave  
20 things as they are.

21 Mr. Freedman?

22 MR. FREEDMAN: I was going to add, part of the reason  
23 we designated portions of the administrative record as separate  
24 exhibits is to facilitate the presentation at trial. Some of  
25 the administrative record exhibits are thousands of pages long,

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1 and to have to find the specific page would be cumbersome.

2 THE COURT: I get it.

3 Again, I have no objection to doing that. I think you  
4 should make sure I understand and the record is clear what  
5 exhibits appear elsewhere in the record and just make sure that  
6 there is no confusion on that front.

7 Now, understanding that you have a continuing  
8 objection to the extra-record evidence altogether, and subject  
9 to the 401 and 403 objections that you have lodged, any  
10 objection to admitting all of these subject to those  
11 objections?

12 MS. WELLS: No, your Honor.

13 THE COURT: All right. They are deemed admitted.

14 MS. WELLS: Now, the last attachment is attachment  
15 four, your Honor. That one actually changed somewhat  
16 significantly between the filing earlier in the evening and  
17 late in the evening between 478 and 481. We have not yet  
18 finished going through what is now on attachment four.

19 I would note that plaintiffs have said that these are  
20 exhibits to which there were only 401 and 403 objections. In  
21 fact, for many of these exhibits, we included 802 and 901, and  
22 in some instances 805 objections as well.

23 We are in the process of going through those documents  
24 one by one. In fact, as I represented to plaintiffs' counsel  
25 before we started today, we will be withdrawing our objections

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1 with respect to some of these documents, not all of them.

2 We would like to have more time to be able to complete  
3 our careful review before we inform the court about whether or  
4 not we are going to continue to object or whether or not we  
5 will agree to admit these.

6 MR. COANGELO: Your Honor, we conferred before court  
7 this morning, and we have no objection to tabling consideration  
8 of the exhibits listed on attachment four so that we can  
9 reassess and let in any withdrawn objections and make sure that  
10 the table is accurate.

11 THE COURT: All right. For present purposes, I'll  
12 reserve judgment on table four, but the exhibits listed on  
13 attachments one through three are admitted subject to the  
14 objections that defendants have already lodged.

15 Now, I think because there are a couple moving pieces  
16 here, withdrawn objections, the cross reference issue, and the  
17 review of attachment four, it would make sense at some point to  
18 just have a comprehensive complete filing so I can essentially  
19 disregard what is changing and just look at one document to  
20 know what's been admitted.

21 All right?

22 MS. WELLS: Thank you.

23 MR. COANGELO: Yes, your Honor. Thank you.

24 THE COURT: Great.

25 Let me say one word about docketing matters. I am a

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1 strong believer in public access to judicial documents, and I  
2 think it is particularly important in this case, given the  
3 public interest in it. To that end, I think there are a  
4 handful of things that have not been publicly docketed.

5 I think consistent with my rules, to be clear, I am  
6 not blaming any of you. To the extent there is any blame, it  
7 might be directed at me. But number one, I think it would make  
8 sense, in the interest of having a complete record, for the  
9 deposition designations to be docketed on ECF with the  
10 objections so that the record is clear on what portions have  
11 been designated and what portions there are objections to so  
12 that that is clear when I rule on them.

13 Second, plaintiffs submitted summaries for the  
14 depositions, and I think those two should be docketed publicly.

15 And then third, I think as witnesses are called, or  
16 that is to say as their direct testimony is admitted, the  
17 affidavits reflecting their direct testimony should also be  
18 publicly docketed.

19 To that end, you should docket the original affidavits  
20 of Mr. Choi, Ms. Rodriguez, and Ms. Sarmiento. I think you can  
21 hold off on the supplemental affidavits to see if there are any  
22 objections to those. But then as we go forward, if you could  
23 make sure that those are docketed as witnesses are called, that  
24 would be great.

25 All right?

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1 MR. COANGELO: Yes, your Honor.

2 MS. BAILEY: Your Honor, just to confirm, is it just  
3 the deposition designations that you would like docketed, or  
4 the full depositions as were provided to chambers?

5 THE COURT: I'm not planning to review the portions  
6 that were not designated. In my view, those don't actually  
7 qualify as judicial documents to which a presumption in favor  
8 of public access would apply.

9 I leave it to you guys whether there is any harm in  
10 docketing the full depositions or if those portions should be  
11 redacted. I don't know if there are confidentiality issues  
12 that haven't been vetted with respect to those. It might pay  
13 to just redact it and have the portions that I am being asked  
14 to rule upon to be a part of the public record.

15 MS. BAILEY: We would prefer to file only the  
16 designations, your Honor.

17 THE COURT: Just the designations?

18 MS. BAILEY: Yes, your Honor.

19 MR. COANGELO: Your Honor, in the interest of  
20 expediency, it will be a lot more straightforward to file them  
21 submitted to chambers rather than going through and extracting  
22 the designated passages.

23 We are happy to redact personally identifying  
24 information or protected PII, to the extent there is any in the  
25 transcripts.

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1           THE COURT: All right. Why don't you guys discuss  
2 this. See if you can sort it out. There is no harm in  
3 docketing them in their entirety, that strikes me as the more  
4 efficient course. There may be legitimate reasons that  
5 defendants have that they don't want those portions made part  
6 of the public record, and since they are not judicial  
7 documents, if I am not being asked to review them, I am not  
8 sure they need to be made part of the public record.

9           All right. One last housekeeping item. Just to avoid  
10 any confusion, I don't know if it has hit the docket yet, but I  
11 decided, in the wake of what I had to say on Thursday regarding  
12 some additional reasons, that I thought the Supreme Court was  
13 unlikely to review or revisit my July 3 decision to allow  
14 extra-record discovery. Mainly, that it was justified, in  
15 light of the equal protection claim that plaintiffs are  
16 pressing in this case, I decided to incorporate that into my  
17 October 26 opinion denying the stay application in this case.  
18 I think it better reflects my full thinking on the issue, and  
19 since, to some extent, it remains a live issue in the Supreme  
20 Court with the pending petition, I thought it made sense to  
21 just make it more comprehensive than it was.

22           You will get an amended opinion in short order, if you  
23 haven't already. I didn't want you to be confused about what  
24 that was about.

25           All right. Anything else for us to discuss before we

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1 get started with evidence?

2 MR. COANGELO: Nothing for the plaintiffs, your Honor.

3 MS. BAILEY: Nothing for defendants, your Honor.

4 THE COURT: All right. In that case, plaintiffs,  
5 please call your first witness.

6 MR. FREEDMAN: Plaintiffs call Dr. D. Sunshine  
7 Hillygus.

8 DIONE SUNSHINE HILLYGUS,

9 called as a witness by the Plaintiffs,

10 having been duly sworn, testified as follows:

11 THE DEPUTY CLERK: Please state and spell your full  
12 name for the record.

13 THE WITNESS: Dione Sunshine Hillygus. D-i-o-n-e,  
14 Sunshine, S-u-n-s-h-i-n-e, Hillygus, H-i-l-l-y-g-u-s.

15 THE COURT: You may proceed.

16 DIRECT EXAMINATION

17 BY MR. FREEDMAN:

18 Q. Dr. Hillygus, where are you presently employed?

19 A. Duke University.

20 Q. In what capacity?

21 A. Professor of political science and public policy and  
22 director of the initiative on survey methodology.

23 Q. Could you briefly describe your educational background?

24 A. Sure. I earned my Ph.D. in political science from Stanford  
25 University in 2003.

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1 Q. How long have you been at Duke?

2 A. Nine years.

3 Q. Have you taught anywhere else?

4 A. Yes. I taught for six years as a Frederick Danziger  
5 associate professor of government and founding director of the  
6 program on survey research at Harvard University.

7 Q. What classes do you teach?

8 A. You know, in a couple decades of teaching, a lot. But  
9 public opinion, survey methodology, political communication,  
10 political persuasion or are among some of them.

11 Q. What are your fields of academic expertise?

12 A. So I do research on public opinion, on survey methodology,  
13 especially focusing on data quality issues, information,  
14 campaigns, civic engagement.

15 Q. Do you have any particular background in the census?

16 A. Yes. I served for six years on the scientific advisory  
17 committee for the Census Bureau. I wrote a book called *The*  
18 *Hard Count* about census participation in the 2000 census. I am  
19 senior investigator on the Triangle Census Research Network. I  
20 have National Science Foundation funding for research related  
21 to data quality issues and census products.

22 Q. Could you just describe what your book *The Hard Count* was  
23 about?

24 A. Sure. I looked at the political and social challenges of  
25 the 2000 enumeration, the hard-to-count populations, the

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1 differential undercount, the effectiveness of the information  
2 campaign in the 2000 census.

3 THE COURT: You mentioned a triangle something entity.

4 What is that?

5 THE WITNESS: So the National Science Foundation,  
6 working with the Census Bureau, created a variety of different  
7 research nodes around the country, and the Research Triangle  
8 has one of those, and I'm one of the senior investigators  
9 there.

10 BY MR. FREEDMAN:

11 Q. Besides your book, could you describe your other academic  
12 publications?

13 A. Sure.

14 I've published dozens of academic articles in public  
15 opinions, statistics, survey methodology, political science  
16 journals. I have another book with Princeton University Press.

17 Q. Have the articles you've published been peer-reviewed?

18 A. Yes.

19 Q. Have you ever testified as an expert before?

20 A. Just once.

21 Q. In what matter?

22 A. Voting Rights Act case in North Carolina.

23 Q. Were you qualified as an expert in this case?

24 A. Yes.

25 Q. Are there other areas where you have been professionally

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1 recognized as an expert?

2 A. I serve as associate PI, and on the Board of the American  
3 National Election Study, I serve on the editorial board of  
4 dozens of academic journals. I have multiple National Science  
5 Foundation grants.

6 Q. Why did you agree to testify today?

7 A. We have an election tomorrow. I'm a political scientist.  
8 Most people tend to assume that the health of our democracy is  
9 really about elections. But the census, the decennial census,  
10 is really critical to the functioning of democracy, to the  
11 health of our economy, to economic decision making, public  
12 policy making. Every single survey that is conducted in the  
13 United States is compared against census numbers. This is just  
14 an incredibly important topic.

15 I also think that I'm fairly unique in terms of my  
16 background and experiences touch on a number of different  
17 issues related to this case. So as a former member of CSAC, I  
18 understand the procedures and processes of the Census Bureau as  
19 a public opinion scholar. I understand the factors that go  
20 into people's decision to participate in a survey or not. As  
21 a social scientist, I've studied information campaigns. As a  
22 survey nephrologist, I've done research on imputation on data  
23 quality. So I have a foot in a number of the different issues  
24 involved here.

25 THE COURT: CSAC is the Scientific Advisory Committee?

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1 THE WITNESS: Correct.

2 MR. FREEDMAN: That was going to be my next question.

3 BY MR. FREEDMAN:

4 Q. So what is your understanding of what this lawsuit is  
5 about?

6 A. The addition of the citizenship question.

7 Q. Do you understand who the parties are?

8 A. I believe it is a coalition of nonprofit organizations  
9 concerned with a citizenship question on the decennial count.

10 Q. Do you understand the nature of the claims that have been  
11 brought?

12 A. Yes.

13 Q. What are they?

14 A. That it will have a negative impact on immigrant  
15 communities and in terms of the differential undercount.

16 Q. What questions have you been asked to address?

17 A. To broadly evaluate the impact of a citizenship question on  
18 the decennial count, look at the claims that Secretary Ross  
19 made in his decision memo, review Dr. Abowd's expert report.

20 Q. How did you go about addressing these questions?

21 A. A lot of review of everything in the administrative  
22 records, Ross' memo, Abowd's memo and testimony, reviewed a lot  
23 of census research and documents, reviewed survey methodology,  
24 literature of relevance, and other academic research related to  
25 the topics.

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1 Q. How does your expertise in public opinion survey  
2 methodology and the census help you to address the questions  
3 you have been asked to address?

4 A. Again, I think that what I'm able to do is look across a  
5 number of different disciplinary bodies of research and pull  
6 together the relevant threats to be able to evaluate the impact  
7 of a citizenship question on census participation.

8 Q. What is the purpose of your testimony today?

9 A. The purpose of my testimony is to evaluate the likely  
10 impact of the citizenship question on the participation of  
11 Hispanics and noncitizen households, to evaluate the claims  
12 made by Secretary Ross in his memo, to evaluate the potential  
13 effectiveness or not of the census efforts to mitigate their  
14 predicted differential and self-response through the  
15 nonresponse follow up operations and the outreach campaign, and  
16 to evaluate the extent to which this process has, in fact,  
17 followed Census Bureau guidelines.

18 MR. FREEDMAN: At this time, plaintiffs offer  
19 Professor Hillygus as an expert in public opinion, survey  
20 methodology, and the United States Census.

21 THE COURT: Any objection?

22 MR. TOMLINSON: No objection, your Honor.

23 THE COURT: She is so received.

24 BY MR. FREEDMAN:

25 Q. Dr. Hillygus, could you explain to the court the

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Hillygus - Direct

1 conclusions -- could you tell the court the conclusions that  
2 you reached in this matter?

3 A. Yes. I think we have a slide.

4 Q. You did prepare a slide.

5 Could we see PDX 1.

6 A. OK. It is right here.

7 So to quickly summarize the large number of pages I wrote  
8 in my expert report, my key conclusions are that there are  
9 considerable evidence, some of that evidence internal to the  
10 census bureau, some external from academic work -- that  
11 indicates that adding a citizenship question to the decennial  
12 census will depress census participation among noncitizens and  
13 Hispanics, exacerbating the differential undercount.

14 Second, that the Census Outreach Campaign and the NRFU  
15 which is a nonresponse followup operations of the census  
16 enumeration are unlikely to fully address the expected  
17 differential self-response of noncitizens and Hispanics.

18 Third, that the decision to add the citizenship question  
19 without specific pretesting violates Census Bureau guidelines  
20 and survey methodology standard practices.

21 Finally, that the addition of a citizenship question  
22 undermines not only the accuracy and completeness of the  
23 census, but also other dimensions of Census Bureau data quality  
24 standards, that is, the utility of the data and the integrity  
25 of the data.

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1 Q. Did you prepare a report in this matter?

2 A. I did.

3 Q. Do you have a curriculum vitae?

4 A. I do.

5 Q. Lets mark for identification Plaintiffs' Exhibit 363.

6 Can you identify Exhibit 363?

7 A. Yes. That is my c.v.

8 Q. How can you identify it?

9 A. I wrote it.

10 MR. FREEDMAN: Plaintiffs move for 363 into admission.

11 THE COURT: Any objection?

12 MR. TOMLINSON: Your Honor, we have lodged objections  
13 to this as cumulative and hearsay.

14 THE COURT: I think, strictly speaking, it is hearsay,  
15 Mr. Freedman.

16 If you want to hit the highlights and use this as a  
17 demonstrative, that is fine with me. But since the witness is  
18 here, she can testify as to the key points on her resume, and I  
19 think she has already largely done that.

20 MR. FREEDMAN: Fair enough. Withdrawn.

21 THE COURT: All right.

22 BY MR. FREEDMAN:

23 Q. Why don't we start with some basics.

24 Can you explain to the court, what is the census?

25 A. Sure.

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1           The census sounds really straightforward. You just count  
2 every person living in the U.S., as mandated by the U.S.  
3 Constitutions, the Constitution, every ten years for the sake  
4 of reapportionment.

5 Q. Beyond reapportioning seats, can you explain to the court  
6 how census data is used?

7 A. I mean, there is so many uses, but the distribution of  
8 federal funding, it is used for public policy decision making,  
9 deciding where schools and hospitals are placed, it is used for  
10 us to understand society by academics. And, again, it is used  
11 as the standard against which all surveys conducted are  
12 evaluated for quality.

13 Q. Can you just explain that last point, how census data is  
14 used as a basis for other surveys?

15 A. Because of the quality of the census, every other survey,  
16 so take all the political surveys going on right now for the  
17 election, how they tell if they drew an accurate sample or not  
18 is to look at, you know, how many men or women they have in  
19 their survey relative to what we know about the population from  
20 the Census Bureau.

21 Q. Can you explain to the court what an enumeration is?

22 A. Sure. It is just the process of counting.

23 Q. How does the Census Bureau go about conducting an  
24 enumeration?

25           What are the basic phases?

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1 A. It is a very specific and detailed process, but at the very  
2 broad level, you know, after a decade of testing, there is two  
3 phases. The first is the self-response phase in which  
4 individual households are completing the census form themselves  
5 and sending it to the Census Bureau for the first time. That  
6 will be online. After households have had a chance to  
7 self-respond, there will be the NRFU response, the nonresponse  
8 followup, to enumerate those households who did not  
9 self-respond.

10 Q. Could you speak to the importance of the self-response  
11 phase?

12 A. Well, the number one thing, it is a heck of a lot cheaper  
13 to get people to mail in or complete a survey form online  
14 rather than sending out a census enumerator to knock on their  
15 door.

16 But census research also shows that the self-response  
17 is also much more accurate than what you get when you rely on  
18 NRFU operations.

19 Q. Just to break down what NRFU represents, just what does  
20 nonresponse represent?

21 A. So people failing to self-respond.

22 Q. Then we'll get into this in more detail, but what are,  
23 broadly speaking, nonresponse followup operations?

24 A. So the nonresponse followup operations, at the basic level,  
25 are sending census numerators to the door to knock on the door,

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Hillygus - Direct

1 to get households to complete the response for the first time.  
2 If that first visit doesn't result in a completion,  
3 administrative records will be used to help figure out if a  
4 household is occupied or not occupied. Additional visits will  
5 be made, and eventually if a household is not responding, then  
6 proxy respondents will be used. This is where the enumerator  
7 will ask a neighbor or a landlord or the postal worker to share  
8 information about the household. And finally, there is a stage  
9 of imputation.

10 Q. Earlier, when you were describing some of the concepts  
11 related to your book, you used the term undercount.

12 What does that mean?

13 A. So actually, with the very first census, George Washington  
14 said, We have a census number, but we think it is an  
15 undercount. So there has been recognition from the get-go that  
16 some people are missed by the census.

17 Really, since the 1940s, there has been research about and  
18 documentation about the undercount, which is those who should  
19 have been counted and weren't.

20 THE COURT: Mr. Freedman, I would be particularly  
21 interested, Dr. Hillygus mentioned that the self-response  
22 portion is more accurate, quote-unquote, than the NRFU stage.  
23 I don't know if you're going to get to that, but I want to just  
24 flag it.

25 MR. FREEDMAN: We can certainly have her give an

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1 overview now, if the court is interested.

2 THE COURT: Sure.

3 BY MR. FREEDMAN:

4 Q. Dr. Hillygus, can you explain why self-response is more  
5 accurate?

6 A. Sure.

7 I mean, there are several different pieces of that, but  
8 part of it is that if you have a member of a household filling  
9 out information about that household, they are more likely to  
10 have the right information. Particularly, once you move to  
11 proxy respondents, proxy respondents and nonrelatives are less  
12 likely to know about the household.

13 You keep in mind too, that even at the first stage, at  
14 the NRFU stage, where it is the household themselves that is  
15 responding, that is still far more accurate than the proxy  
16 respondents, but these are people who have been reluctant to  
17 answer at the first stage.

18 Then finally, imputation, as we will certainly get to, is  
19 certainly a guess as to how to fill in the information, and  
20 that guess is never as good as just getting it straight from  
21 the horse's mouth.

22 THE COURT: Thank you.

23 Q. So just back to some basic building block concepts to help  
24 the court understand the framework with which you're  
25 approaching this.

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1           You used the phrase hard-to-count population. What does  
2           that mean?

3           A. These are just sub groups of the population that are  
4           difficult to count. The Census Bureau recognizes these groups  
5           as hard-to-count populations. There is a variety of different  
6           reasons that have been studied as to why exactly they are hard  
7           to count. Sometimes broken down into they are hard to locate,  
8           they are hard to interview, they are hard to persuade to get  
9           them to cooperate.

10          Q. We were talking about what an undercount is.

11                   What is an overcount?

12          A. There are some households that are counted twice. And so,  
13          for example, you will have college students that might be  
14          counted at their parents' house as well as at a school.  
15          Individuals who have vacation homes are also more likely to be  
16          double counted.

17          Q. What does the term differential undercount mean?

18          A. The differential undercount refers to a sub group of the  
19          population being undercounted relative to whites. What we know  
20          is that there has been disproportionately and consistently an  
21          undercount of ethnic and racial minorities in recent censuses,  
22          and so the differential undercount allows us to figure out  
23          exactly the number relative to the count of whites.

24                   What is important here is because so much of what the  
25          census is used for comes zero sum for political power and

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1 money, it matters not just the overall undercount, but the  
2 undercount relative to people who might be getting too much of  
3 the goods.

4 Q. Could you explain what the term net undercount means?

5 A. Sure.

6 That is just, you know, the evaluation of accuracy of  
7 the census takes into account both the overcount minus the  
8 undercount.

9 Q. Now, with regard to differential undercount and net  
10 undercount, are you familiar with what the Census Bureau found  
11 regarding the 2010 census?

12 A. Yes. I believe I have a slide for that.

13 Q. Why don't we start -- we'll start with the exhibit.

14 Could we see Plaintiffs' Exhibit 267.

15 Professor Hillygus, do you recognize this document?

16 A. I do.

17 Q. What is it?

18 A. Dr. Mule's analysis of the coverage measurement estimation  
19 of the 2010 census. This is what allows us, where we see the  
20 analysis of the differential undercount.

21 Q. Is this a document you considered in forming your opinions  
22 in this case?

23 A. Yes.

24 MR. FREEDMAN: Plaintiffs' move admission of  
25 Exhibit 267.

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1 THE COURT: Any objection?

2 MR. TOMLINSON: Your Honor, we do have 401 and 403  
3 objections to this. If it goes in, it should be limited as a  
4 basis for her opinion under 703.

5 THE COURT: The 403 objection, what is the basis  
6 there?

7 What's the nature of the 403 problem?

8 MR. TOMLINSON: Your Honor, we just think this is  
9 cumulative to her testimony. She can testify as to what she  
10 believed.

11 THE COURT: Overruled as to its relevance. I'll  
12 consider that in rendering a decision. It is admitted subject  
13 to that caveat.

14 You may proceed.

15 (Plaintiffs' Exhibit 267 received in evidence)

16 MR. FREEDMAN: Thank you, your Honor.

17 BY MR. FREEDMAN:

18 Q. If we can turn to page 18, table seven.

19 Dr. Hillygus, are you familiar with this table?

20 A. Yes.

21 Q. What does it show?

22 A. It is summarizing the final conclusions of Mule, as well as  
23 reporting on the undercount by race and origin, not only for  
24 2010, but also from the earlier post enumeration surveys in  
25 2000 and 1990, so that we can do a comparison over time.

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1 Q. Just for the court's benefit, who is Dr. Mule?

2 A. He is the person that the Census Bureau, who was  
3 responsible for producing the analysis of the coverage.

4 THE COURT: Can you spell that name, please?

5 MR. FREEDMAN: It is M-u-l-e.

6 THE COURT: Thank you.

7 Q. Now, this has a lot of data on it. We have prepared a  
8 demonstrative that has a simpler version. Could we see PDX 2.

9 Dr. Hillygus, what is PDX 2?

10 A. These are just some numbers from that table with a slight  
11 typo here in 2000. This should be 2000, not 200.

12 Q. Did they conduct a census in 200?

13 Withdrawn.

14 Could you just walk us through this, could you just walk us  
15 through this table?

16 A. Sure.

17 Let me start with the very top row where it says U.S.  
18 total. So this is the total net undercount for the entire  
19 population. I would just signify that those things where there  
20 are stars next to them indicate that the value is statistically  
21 different from zero.

22 2010, at the population total level, the net  
23 undercount was actually a little bit of an overcount. If it is  
24 a negative number, it represents an overcount. There is not a  
25 star. It means that it was a really accurate census in 2010 at

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1 the total population level.

2 That compares to 2000, where there was a statistically  
3 significant but small net overcount of .49 percentage points.  
4 And in 1990, an undercount of 1.61 percentage points.

5 THE COURT: Can you just explain, in a 30,000 foot  
6 level, how is the determination made that there is an  
7 undercount or an overcount writ large. If the count is what is  
8 supposed to tell us how many people there are, how do you  
9 measure that relative to what it is supposed to reveal?

10 THE WITNESS: Right.

11 These results are based on an independent  
12 post-enumeration survey. This runs separate from the count  
13 itself with the explicit purpose of trying to measure the  
14 accuracy of the count.

15 Now, there is another way that you can measure the  
16 accuracy of the count, and that is with comparisons,  
17 demographic analysis by comparison to some administrative  
18 records. It was in the 1940s when they first noticed that the  
19 census numbers didn't match up to draft numbers. They realized  
20 they needed to do this independent assessment.

21 THE COURT: It is based on a comparison both to  
22 administrative records, but also --

23 MR. FREEDMAN: No. This is just the post-enumeration  
24 survey.

25 THE COURT: That survey uses a statistical sampling

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1 technique to get what would, in theory, be a more accurate  
2 total count?

3 THE WITNESS: And because the purpose there is to  
4 evaluate the accuracy of the census enumeration, there is just,  
5 you know, drill-down effort to be able to evaluate, you know,  
6 who had lived there on April 1, on census day, who was missed,  
7 was there an erroneous enumeration. And so -- but it has to  
8 be -- it is an entirely independent survey.

9 THE COURT: And that method of calculating the  
10 differential is well accepted in the field, I take it?

11 THE WITNESS: It is.

12 THE COURT: That is done by the Census Bureau as well?

13 THE WITNESS: It is.

14 THE COURT: All right. These numbers, these come from  
15 the Census Bureau itself, I take it?

16 THE WITNESS: It does.

17 THE COURT: OK.

18 BY MR. FREEDMAN:

19 Q. It is fair to say that the source for these is Exhibit 267,  
20 Plaintiffs' Exhibit 267?

21 A. Yes. This was just an attempt to condense down from that  
22 table the most relevant information.

23 So that top row is the net undercount for the entire  
24 population, and the key point here is that we can have an  
25 accurate census nationally for the entire population and yet

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1 have inaccurate or biased incomplete census for sub groups.

2 Q. I think that is the rest of the chart.

3 Do you want to explain what the non-Hispanic white and  
4 the differential undercount lines are?

5 A. Sure.

6 The non-Hispanic white row represents the net  
7 undercount for non-Hispanic whites. Again, you'll see in 2010,  
8 a negative number, negative .84 percentage points. There was  
9 an overcount of non-Hispanic whites in 2010 and in 2000, a  
10 small undercount in 1990 of non-Hispanic whites. In contrast,  
11 Hispanics had a net undercount of 1.54 percentage points in  
12 2010, .71 percentage points in 2000, 4.99 percentage points in  
13 1990.

14 The differential represents the non-Hispanic whites minus  
15 Hispanics. So the differential undercount of Hispanics in 2010  
16 was 2.38 percentage points. In 2000 was 1.84 percentage  
17 points. In 1990, 4.31 percentage points.

18 Q. Thank you. I'm going to switch gears a little bit.

19 Could you, just taking a step back, what are some of the  
20 factors that are most relevant in the decision to participate  
21 or not participate in the census?

22 A. First, I would just say that survey methodology is an  
23 academic field of study. There are decades of research that  
24 have been conducted and focused on understanding the decision  
25 for -- that if people participate in a survey or not.

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1 We know that there is a lot of different factors that are  
2 in play. Broadly, we group those into three camps. One are  
3 the individual characteristics of the respondent. Second are  
4 the design features of the survey. And finally, the macro  
5 sociopolitical environment in which the survey is being  
6 conducted.

7 Q. I want to focus on the design features.

8 What design features matter?

9 A. Again, their survey nephrologist have studied a number of  
10 different design features. The mode matters, the question  
11 order matters, the question wording matters, the survey sponsor  
12 matters.

13 But broadly, the one that kind of captures a lot of  
14 those, and we'll spend a lot of time talking about, is the  
15 burden of the survey.

16 Q. What do you mean by burden of the survey?

17 A. That is just the effort that is being asked of a respondent  
18 to fill it out, and critically, survey methodologists recognize  
19 that that is not simply the length of a survey, but also the  
20 complexity, the intrusiveness of the survey, the sensitivity of  
21 the items being asked. So that it is really about not just how  
22 much time and effort, but also the stress created by a survey.  
23 This is a definition of burden that is used within survey  
24 methodology and also adopted by the Census Bureau.

25 Q. Could you just explain to the court what you meant by

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Hillygus - Direct

1 sensitivity?

2 A. So sensitive items are people -- ones that people don't  
3 want to answer, right. These tend to be things that are  
4 socially undesirable items. You know, drug use and illegal  
5 behaviors, for instance. It is also things that people fear  
6 that there might be harm associated with the revealing the  
7 answer.

8 Q. How can burden impact the results?

9 A. It can have an impact on data quality a number of different  
10 ways. I think this is a spot I have a slide.

11 Q. Right. You have a slide.

12 Could we see PDX 3.

13 What is PDX 3?

14 A. These are just some of the ways that a burdensome survey  
15 can have an impact on data quality. There is extensive  
16 research. This gets a little jargony, but I thought it would  
17 be helpful to talk them through.

18 Q. Why don't we take them one by one.

19 Could you explain to the court what you mean by  
20 decreasing unit response?

21 A. Sure.

22 There is significant research that shows that when it  
23 is a burdensome survey, that respondents are less likely to  
24 participate in the survey. That is called unit nonresponse or  
25 unit response, and this is just people deciding to participate

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1 in the survey at all or not.

2 Q. OK. The next item, increasing item nonresponse, what does  
3 that mean?

4 A. Item nonresponse refers to skipping individual questions.  
5 So if an individual item is sensitive, respondents are more  
6 likely to skip that individual item.

7 Q. The next line, increasing breakoffs, what does that mean?

8 A. So breakoffs refers to somebody starting a survey, but  
9 leaving before completing it. Again, that can happen from  
10 high-burden surveys. People get fatigue in answering a very  
11 long survey, for instance, are more likely to break off, or it  
12 can happen when they encounter a particularly sensitive item  
13 on a survey.

14 Q. The next line, decreasing response accuracy. What does  
15 that mean?

16 A. When you have a sensitive item, people might be less likely  
17 to answer truthfully.

18 Q. The final line, increasing negative evaluations of survey,  
19 what does that mean?

20 A. When somebody has a bad experience with a burdensome  
21 survey, it creates negative attitudes about surveys generally,  
22 but also about the survey sponsor.

23 Q. Now, how do these concepts relate to the undercount?

24 A. So we're going to talk about, I think, all of these in  
25 terms of potential impacts of a citizenship question on the

IB5sNYS1

Hillygus - Direct

1 decennial, but the issue of the undercount is really about unit  
2 nonresponse.

3 Q. Just turning back to sensitivity, can sensitivity vary  
4 across respondents?

5 A. Absolutely. It is widely recognized that some items are  
6 going to be -- that sensitivity depends not only, again, on the  
7 individual characteristics of the respondent, but also the  
8 context.

9 The example I give to my students is if I survey them  
10 about their marijuana use. They might be happy to answer that  
11 question to an academic researcher, less likely to answer it if  
12 it is their employer asking the question, less likely to answer  
13 it if their parent is sitting in the room at the same time.

14 So there is variation across individuals, but we have to  
15 take into account all of those factors in terms of determining  
16 if someone is likely to answer a question or participate in a  
17 survey.

18 Q. Thank you.

19 Could you explain to the court concepts of privacy concerns  
20 and confidentiality concerns?

21 A. Sure.

22 So in terms of sensitivity, privacy and confidentiality are  
23 key issues.

24 Q. I think you had a slide on this as well.

25 Could we see PDX 4.

IB5sNYS1

Hillygus - Direct

1           Could you tell the court, what is PDX 4?

2       A.   Sure.

3           So a lot of people consider privacy, they say privacy  
4   and confidentiality in the same breath and treat them as  
5   synonymous, but they are not. They have different implications  
6   for survey participation and for the census specifically.

7           Ken Prewitt, the former director of the census, spent a lot  
8   of time talking about the difference between privacy and  
9   confidentiality, and I think he does a brilliant job of kind of  
10   making this distinction that privacy is like don't ask,  
11   confidentiality is don't tell.

12          So, again, privacy is like it is none of the government's  
13   business to ask those questions. Confidentiality is, I don't  
14   trust that the information is not going to be shared with  
15   others and those are two different issues in 2000, when we were  
16   looking at the census controversy in 2000, it was largely about  
17   privacy.

18          The issues that we are talking about here with the  
19   citizenship question are largely about confidentiality.

20       Q.   Are you familiar with what Secretary Ross wrote relative to  
21   the concepts of burden?

22       A.   Yes.

23       Q.   Can we see Plaintiffs' Exhibit 26.

24           Dr. Hillygus, could you recognize Plaintiffs' Exhibit 26?

25       A.   Yes.

IB5sNYS1

Hillygus - Direct

1 Q. What is it?

2 A. Secretary Ross' decision memo.

3 MR. FREEDMAN: I believe, per the agreement of the  
4 parties this morning, this is now admitted into evidence.

5 THE COURT: Subject to the 403 objection, but I take  
6 it this is one of those things that is in the record. I think  
7 you can proceed.

8 Go ahead.

9 BY MR. FREEDMAN:

10 Q. I want to ask you about some of the language in this memo  
11 on page five.

12 The language that says the reinstatement of a citizenship  
13 question will not decrease the response rate of residents who  
14 already decided not to respond.

15 Are you familiar with that language?

16 A. Yes.

17 Q. Do you have a reaction to that?

18 A. Yes.

19 Q. What is it?

20 A. Secretary Ross' statement contradicts the scientific survey  
21 methodology research about the decision to participate in a  
22 survey. We don't think of respondents as being inherent  
23 responders or not responders. The survey methodology research,  
24 as well the Census Bureau itself, recognizes that the  
25 individuals' decision to participate in the census or a survey

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Hillygus - Direct

1 depends not only on their characteristics, but also the design  
2 of the survey and the macro climate.

3 Q. I want to ask you about some of this other language  
4 concerning burden. Can we see the language on page six,  
5 recipients are generally less likely.

6 So are you familiar with the language that is highlighted  
7 here: Recipients are generally less likely to respond to a  
8 survey that contained more questions than one that contained  
9 fewer?

10 A. Yes.

11 Q. Do you have a view about that?

12 A. Yes.

13 Q. What is it?

14 A. Secretary Ross' statement contradicts the scientific survey  
15 methodology literature, which recognizes that survey burden is  
16 not just about the number of questions, but also about the  
17 sensitivity of the questions being asked and the stress it  
18 causes of the respondent.

19 Q. If we can turn back to page five.

20 There is one more passage I wanted to ask you about  
21 that is relevant to these topics are, the language that talks  
22 about no additional imposition.

23 The sentence reads: And for the approximately  
24 70 percent of noncitizens who already answered this question  
25 accurately on the ACS, the question is no additional imposition

IB5sNYS1

Hillygus - Direct

1 since census responses by law may only be used anonymously and  
2 for statistical purposes.

3 Are you familiar with that language?

4 A. Yes.

5 Q. Do you have a view about that?

6 A. The statement that a citizenship question is no additional  
7 imposition contradicts the survey methodology research and the  
8 Census Bureau opinion about a citizenship question.

9 Q. OK. While we're on Secretary Ross' memo, I want to look  
10 at some of his language on page three.

11 The language says: However, neither the Census Bureau  
12 nor the concerned stakeholders could document that the response  
13 rate would, in fact, decline materially.

14 Are you familiar with that language?

15 A. Yes.

16 Q. Do you have a view about that?

17 A. It is incorrect. That is my first conclusion.

18 Q. OK. Why don't we go back to PDX 1 and we can talk about  
19 your first conclusion.

20 Could you summarize your first conclusion for the court?

21 A. Sure.

22 I reviewed a lot of research. I reviewed a wide range of  
23 different types of research. Some of it internal to the  
24 census, some of it external to the census. Some of it general  
25 about survey methodology, some something specific to census

IB5sNYS1

Hillygus - Direct

1 participation. Some using surveys of self-reports, some  
2 looking at behavioral responses. All of it points to a  
3 negative impact on the participation of noncitizen and Hispanic  
4 households.

5 Q. Can you summarize the evidence that you reviewed?

6 A. Sure.

7 So the key pieces are that noncitizens and Hispanics  
8 are differentially concerned about the confidentiality of a  
9 citizenship question, so it would be less likely to  
10 participate, which will contribute to a give recommend under  
11 count.

12 Q. Is there any evidence to suggest that the citizenship  
13 question is a sensitive question?

14 A. Yes. The Census Bureau itself designates it as a sensitive  
15 question.

16 Q. Now, are you saying that both noncitizens and Hispanics  
17 will be affected by the addition of a citizenship question?

18 A. Yes. In the analysis in the Census Bureau, sometimes the  
19 analysis focuses on Hispanics and sometimes on noncitizens.  
20 The justification there seems to be that there is an overlap,  
21 that noncitizens, a large percentage, are Hispanics.

22 But in review of the research, it is also the case  
23 that there is a reason that I conclude that Hispanics will also  
24 be affected, including Hispanic citizens, because there is  
25 empirical evidence suggesting as much.

IB5sNYS1

Hillygus - Direct

1 Q. Could you describe some of that empirical evidence that  
2 both noncitizens and Hispanics will be impacted?

3 A. Sure.

4 I believe I have a number of slides here.

5 Q. Have you looked at any recent opinion survey work?

6 A. Yes.

7 Q. Why don't we look at PDX 5.

8 Dr. Hillygus, can you tell us what demonstrative five is?

9 A. Sure.

10 Just starting in a very intuitive and high-level,  
11 public opinion polls show that there is concern about  
12 deportation among both noncitizens and among Hispanic citizens.  
13 So the Pew Research Center public opinion poll -- there are  
14 many, many others out there -- finds that percentage of  
15 Hispanics that say, regardless of their own immigration or  
16 citizenship status, they worry a lot or some that they, a  
17 family, or close member could be deported. 47 percent among  
18 all Hispanics, 52 percent among foreign-born U.S. citizens,  
19 and 66 percent knowledge noncitizens. I should add that just  
20 last week, I think, Pew came out with an updated study, and  
21 these numbers have gotten even worse.

22 Q. What do you mean worse?

23 A. That a greater percentage of Hispanic citizens and a  
24 greater percentage of noncitizens fear deportation.

25 Q. What is the Pew Research Center?

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Hillygus - Direct

1 A. It is a nonpartisan independent research center. I like to  
2 use them in particular because they adhere to all the American  
3 public opinion research transparency standards and conduct  
4 high-quality polling.

5 Q. Are you aware of other research beyond the Pew study that  
6 shows impact on both Hispanics and noncitizens?

7 A. Yes. I believe I have another slide.

8 Q. Why don't we look at PDX 10.

9 A. Again, these are just a sample.

10 Q. So why don't you describe what PDX 10 is?

11 A. Sure.

12 These are a few of the pieces of evidence that show  
13 the spillover effects where citizens, as well as noncitizens,  
14 both in looking at attitudes relevant to the confidentiality  
15 concerns, but also looking at behaviors that will be related --  
16 that are related to census participation.

17 The UCLA is another survey, but it is of both Latinos  
18 and whites, and we see this large gapping. The 56 percent of  
19 Latinos are concerned about deportation in this particular  
20 survey, but just 19 percent of whites.

21 The other pieces of evidence are really about the impact of  
22 these fears on the engagement with government and other realms  
23 beyond the census. So health advocacy organizations have  
24 reported that legal immigrants are less likely to use public  
25 health services since Trump's election. There is empirical

IB5sNYS1

Hillygus - Direct

1 research that finds that noncitizen parents are failing to sign  
2 their children up for fear of revealing themselves. There is  
3 also empirical research showing that those who are not even  
4 eligible for deportation are, you know, failing to use food  
5 stamps or ACA because of concerns about deportation.

6 Q. Now, in the explanation you just gave, you distinguish  
7 between survey evidence and impact evidence.

8 Can you just explain for the court what the difference is  
9 and why each is impactful?

10 A. Well, self-reports, you know, some might say are cheap  
11 talk, right. That in talking to a pollster, it is easy to  
12 just give your opinion. We know that those attitudes are  
13 predicative of behaviors, but it is also compelling when you  
14 can see impacts on actual behaviors as well.

15 (Continued on next page)  
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Ib5Wnys2

Hillygus - Direct

1 BY MR. FREEDMAN:

2 Q. Just with regard to the impact, just kind of walk us  
3 through more slowly where the impact has been exhibited?

4 A. I think I had two academic studies that I had slides on.

5 Q. We can discuss those. Why don't we look at PDX 7. What is  
6 PDX 7?

7 A. So, it's just an academic article that has looked at the  
8 impact of, you know, risk of deportation on the use of WIC and  
9 found that the risk of deportation is negatively predictive of  
10 use of WIC among mixed-status families. Their conclusion is  
11 that the risk of being deported is having a chilling effect in  
12 preventing U.S. children from receiving aid and even, I think,  
13 more direct study is the next slide.

14 Q. Before we move on from this one, just for the record, who  
15 wrote this?

16 A. Vargas and Pirog.

17 Q. And where was it published?

18 A. Social Science Quarterly.

19 Q. Is that a well-respected journal?

20 A. It's a peer-reviewed journal, Social Science, yeah.

21 Q. By WIC, what is WIC, for the record?

22 A. I know the exact --

23 Q. Is it women --

24 A. Women --

25 Q. -- infants, and children?

Ib5Wnys2

Hillygus - Direct

1 A. Thank you.

2 Q. Does that sound right?

3 MR. FREEDMAN: Let's look at another study.

4 A. Yes.

5 MR. FREEDMAN: Could we look at PDX 6.

6 Q. What is PDX 6?

7 A. So, this particular study looks at those Hispanic citizens  
8 who are -- so they're not at risk of deportation, are  
9 nonetheless less likely to use SNAP, less likely to enroll with  
10 ACA, and they have a clever design where they are helping to  
11 show that it's, in fact, about fear of deportation, so they  
12 find that these effects are higher in mixed-citizenship status  
13 households and in those geographic areas where there have been  
14 more deportations.

15 Q. Experience would suggest that I'm asking for trouble if I  
16 ask you to explain what SNAP and ACA are, so I'm not going to  
17 ask that question, but who wrote this article?

18 A. Alsan and Yang.

19 Q. And where was it published?

20 A. It's a National Bureau of Economic Research working paper.

21 Q. What is that organization, National Bureau of Economic  
22 Research?

23 A. Economic researchers put their latest pieces there.

24 Q. Is it well regarded?

25 A. Yes.

Ib5Wnys2

Hillygus - Direct

1 Q. So why are these articles important for the conclusions  
2 which you've reached?

3 A. So, although these are not specifically about census  
4 participation, you know, what they do is they indicate --  
5 right -- that if we had to make a hypothesis about the likely  
6 effect, that we are going to likely see an impact not only  
7 among noncitizens but also the spillover effects on Hispanics.

8 Q. OK. So we've been looking at outside academic research.  
9 Is there Census Bureau evidence about sensitivity or  
10 confidentiality concerns?

11 A. Yes.

12 Q. I think you put together a slide on that.

13 MR. FREEDMAN: Could we look at PDX 8.

14 Q. Could you tell us what PDX 8 is?

15 A. Sure. As has been covered quite a bit in the media, there  
16 has been internal research and concern among census researchers  
17 about confidentiality concerns among some segments of the  
18 population.

19 Q. So, could you just summarize this research for us or walk  
20 more through the procedure?

21 A. Sure. So, in September 2017, the center for survey  
22 measurement, a group within the Census Bureau, sent a memo  
23 titled "respondent confidentiality concerns," in which they  
24 were documenting the phenomenon that was being observed in the  
25 field about respondent fears among immigrant respondents. What

Ib5Wnys2

Hillygus - Direct

1 it -- and they subsequently presented presentations to the  
2 national advisory committee, to the American Association of  
3 Public Opinion Researchers, and reported on results of  
4 qualitative interviews when they were focused not on talking  
5 about a citizenship question, not on talking about whether  
6 people were even going to participate, but these were  
7 qualitative interviews for language testing in which  
8 spontaneously the respondents were bringing up these issues of  
9 confidentiality, which I think is especially striking, that  
10 these are things that -- it was not the hypothesis they were  
11 going out to test but something that was just being observed  
12 within the field spontaneously.

13 Q. OK. I want to walk through some of the underlying  
14 documents that you're describing here.

15 MR. FREEDMAN: Could we see Exhibit 656.

16 Q. Dr. Hillygus, do you recognize Exhibit 656?

17 A. Yes, this is the memo from the center for survey  
18 measurement documenting these concerns.

19 Q. Where did this come from? Did it come from the Census  
20 Bureau?

21 A. Yes.

22 Q. Is this the type of material you'd normally consider in  
23 rendering an opinion?

24 A. Yes.

25 Q. What is the center for survey measurement?

Ib5Wnys2

Hillygus - Direct

1 A. It's a group of researchers within the Census Bureau. I  
2 have a tremendous amount of respect for them. They are  
3 contributing knowledge not only to the Census Bureau and their  
4 practices but also more broadly in the academic community.  
5 They're very involved and interact within the academic  
6 community as well.

7 Q. And did you consider this analysis in your opinion?

8 A. I did.

9 MR. FREEDMAN: Plaintiffs move Exhibit 656 into  
10 evidence.

11 THE COURT: Any objection?

12 MR. TOMLINSON: Your Honor, we object to the extent it  
13 comes in as anything more than 703. It is hearsay. She's not  
14 the proper witness to authenticate this document. They will  
15 have access to Dr. Abowd later, if they want to get it in for  
16 any other purpose.

17 THE COURT: All right.

18 Yes.

19 MR. FREEDMAN: It's a statement of party opponent, and  
20 it's self-authenticating under 901 as a government publication.

21 THE COURT: Both fair points.

22 MR. TOMLINSON: Again, your Honor, they'll have a  
23 chance to get it in. I just don't understand what her role is  
24 given that it's anything other than something she relied on in  
25 her expert opinion.

Ib5Wnys2

Hillygus - Direct

1 THE COURT: Do you dispute that this is a document  
2 from the Census Bureau?

3 MR. TOMLINSON: We do not, your Honor.

4 THE COURT: All right. It's admitted. Thank you.

5 (Plaintiffs' Exhibit 656 received in evidence)

6 MR. FREEDMAN: I want to take a look at Exhibit 136.

7 Q. Dr. Hillygus, do you recognize Exhibit 136?

8 A. Yes.

9 Q. What is it?

10 A. It's a memo.

11 Q. How does Exhibit 136 relate to Exhibit 656, if you can  
12 tell?

13 A. This one has things blocked out.

14 Q. Right. And Exhibit 136, do you see the number in the lower  
15 right-hand corner above the 136?

16 A. Yes.

17 Q. Do you know whether that signifies whether it was part of  
18 the administrative record?

19 A. I believe it does.

20 MR. FREEDMAN: I believe that this one has already  
21 been admitted into evidence.

22 THE COURT: If it's part of the administrative record,  
23 it has been, yes.

24 MR. TOMLINSON: That's right, your Honor. Our  
25 objection is only to 403.

Ib5Wnys2

Hillygus - Direct

1 THE COURT: All right.

2 MR. FREEDMAN: Can we see Exhibit 160.

3 Q. Dr. Hillygus, do you recognize this exhibit?

4 A. Yes. This is the PowerPoint presentation presenting these  
5 results, the respondent confidentiality concerns in the  
6 multilingual pretesting studies and the effects on response  
7 rates and data quality for the 2020 census that was presented  
8 at the American Association of Public Opinion Research.

9 Q. Do you know who the authors are?

10 A. They are Census Bureau researchers.

11 Q. Did you consider this exhibit in forming your opinions?

12 A. Yes.

13 Q. How did you consider it in forming your opinions?

14 A. I reviewed it. It offers evidence directly relevant to  
15 showing that Hispanics and immigrants are concerned about the  
16 confidentiality of the census.

17 MR. FREEDMAN: Plaintiffs move Exhibit 160 into  
18 evidence.

19 MR. TOMLINSON: Your Honor, we have the same  
20 objections as we did to the previous document, two documents,  
21 but we also, especially besides our 802 objection here, because  
22 of this disclaimer we have on the first page here. It does  
23 specifically talk about limiting the purpose and disclosure of  
24 this, and so she's just not the proper custodian witness.

25 THE COURT: Is this part of the administrative record?

Ib5Wnys2

Hillygus - Direct

1 MR. TOMLINSON: This is part of the administrative  
2 record, I believe.

3 THE COURT: So it's already in evidence.

4 MR. TOMLINSON: It is not. It is not. I'm sorry. I  
5 misspoke.

6 THE COURT: All right.

7 MR. FREEDMAN: I don't believe it is, your Honor.

8 THE COURT: Mr. Freedman, your response.

9 MR. FREEDMAN: Let me, if I could, build a little more  
10 foundation.

11 Q. Dr. Hillygus, do you have an understanding of the Census  
12 Bureau's practices as part of publishing information?

13 A. It's part of their duties, that they engage with the  
14 academic community and publish research, is my understanding.

15 Q. And is it your understanding that's part of their duties  
16 while they work for the Census Bureau?

17 A. Yes.

18 MR. FREEDMAN: Your Honor, our position is that this  
19 is still a statement of a party opponent. It's labeled Census  
20 Bureau. Census Bureau employees regularly publish materials  
21 regardless of the disclaimers.

22 THE COURT: All right. It's admitted.

23 (Plaintiffs' Exhibit 160 received in evidence)

24 THE COURT: Go ahead.

25 MR. FREEDMAN: Could we see Plaintiffs' Exhibit 448.

Ib5Wnys2

Hillygus - Direct

1 Q. Dr. Hillygus, what is 448?

2 A. The presentation of the national advisory committee  
3 regarding the respondent confidentiality concerns.

4 Q. And how do you recognize this?

5 A. I've reviewed it. It's available on the Census Bureau  
6 website, and gave some of the details referenced in that memo.

7 Q. Did you consider this in forming your opinions?

8 A. Yes.

9 Q. How did this support your opinions?

10 A. Again, it offered the details regarding confidentiality  
11 concerns among Hispanic and immigrants spontaneously offered  
12 and identified by survey researchers at the Census Bureau.

13 MR. FREEDMAN: Plaintiffs move the admission of  
14 Exhibit 448.

15 THE COURT: Any objection?

16 MR. TOMLINSON: The same objections, your Honor.

17 THE COURT: Same ruling.

18 (Plaintiffs' Exhibit 448 received in evidence)

19 BY MR. FREEDMAN:

20 Q. Are you familiar with the census barriers, attitudes, and  
21 motivators survey?

22 A. Yes.

23 Q. What is it?

24 A. So, this is a set of national surveys that were conducted  
25 initially before 2010 as well as focus groups. The intent is

Ib5Wnys2

Hillygus - Direct

1 to identify the attitudinal barriers and the motivations to  
2 help it, the outreach campaign to figure out what the Census  
3 Bureau might be facing in terms of negative attitudes.

4 I looked quite a bit at the CBAMS findings and research  
5 related to 2010 and eagerly anticipated seeing what the results  
6 look like in this round while I was working on my report.

7 Q. I want to show you Exhibit 152. Do you recognize this?

8 A. Yes. We finally got it.

9 Q. What is it?

10 A. Results from the -- Team Y&R is the partner that will doing  
11 the census outreach, the integrated communications campaign for  
12 the Census Bureau, and so these are results from their work.

13 Q. Did you consider this in forming your opinions?

14 A. For later rounds, so I didn't get this particular study  
15 until after my initial expert report, but yes, in, I believe,  
16 the rebuttal and supplement.

17 MR. FREEDMAN: OK. I want to just focus -- before we  
18 talk about admissibility, I just want to focus on the language  
19 from the Spanish-language CBAM. I think the summary.

20 Q. Dr. Hillygus, are you familiar with the language that's  
21 highlighted, "These participants honestly expressed fears of  
22 participating in the census, given their or others' immigration  
23 status. Even if they personally are citizens or legal  
24 residents, they said that filling out the census form can  
25 adversely affect their relatives, people in their community who

Ib5Wnys2

Hillygus - Direct

1 did not have a secure immigration status"? Are you familiar  
2 with that language?

3 A. Yes, and what's so significant about this is that post the  
4 addition of a citizenship question, this offers one of the only  
5 kind of attempts by the Census Bureau to evaluate the impact of  
6 that citizenship question, and so these focus groups, I think,  
7 offer some especially direct evidence about what can be  
8 expected.

9 Q. Do you have an understanding how this, what this is, who  
10 prepared this?

11 A. I mean, it's a Census Bureau document, but these are focus  
12 groups as part of CBAMS, and they did a variety of different  
13 focus groups on different hard-to-count population groups.

14 Q. Is there other language in this summary that we want to  
15 focus on?

16 A. Yes.

17 Q. I just want to ask your reaction, and I'll take these one  
18 by one. The language -- let me start, are you familiar with  
19 the language, "Participants were highly suspicious of how the  
20 data will be used once collected. Particularly as it related  
21 to immigration, they said that while their data might be  
22 protected now, there is no guarantee that it will not be used  
23 against them in the future"? Are you familiar with that  
24 language?

25 A. Yes, it confirms my interpretation of the data outside of

Ib5Wnys2

Hillygus - Direct

1 the Census Bureau.

2 Q. OK. And then the next quote, are you familiar with the  
3 language, "Additionally, while there were suggestions of  
4 trusted voices, there did not seem to be a single trusted voice  
5 that could mitigate the distrust of the government to uphold  
6 the promise of confidentiality"? Are you familiar with that  
7 language?

8 A. Yes.

9 Q. And does that support your conclusions?

10 A. Yes.

11 THE COURT: And just so that I understand, this  
12 document is from the recent census barriers, attitudes, and  
13 motivators study?

14 THE WITNESS: Yes.

15 THE COURT: And that's conducted at the request of the  
16 Census Bureau?

17 THE WITNESS: Yes.

18 MR. FREEDMAN: Plaintiffs move Exhibit 152 into  
19 evidence.

20 THE COURT: I take it it's already in evidence as part  
21 of the administrative record. Is that correct?

22 MR. TOMLINSON: It is not, your Honor. I believe it  
23 was stamped, but I think there was some dispute about that.  
24 That was one of the documents that we had some dispute over,  
25 and we would object to this testimony. This is essentially

Ib5Wnys2

Hillygus - Direct

1 hearsay within hearsay, talking about a summary of statements  
2 made about focus group respondents, as well as the other 901  
3 and 401 objections.

4 THE COURT: All right. That is overruled. It's  
5 admitted.

6 (Plaintiffs' Exhibit 152 received in evidence)

7 THE COURT: Go ahead.

8 BY MR. FREEDMAN:

9 Q. Dr. Hillygus, what is the takeaway from the CBAM study?

10 A. A citizenship question is going to make conducting the  
11 census a heck of a lot more difficult because of concerns about  
12 confidentiality among noncitizens and Hispanics.

13 Q. Are you aware of any more recent information from the  
14 Census Bureau about the CBAM results?

15 A. Yes.

16 Q. I think you put together a demonstrative on this.

17 MR. FREEDMAN: Could we see PDX 9.

18 Q. Dr. Hillygus, what's PDX 9?

19 A. So, this is just the interpretation of those results as  
20 presented to the national advisory committee.

21 Q. When did that presentation take place?

22 A. November 1, 2018.

23 The key conclusion here being the citizenship question may  
24 be a major barrier, and because of this, research suggests its  
25 purpose is to find undocumented immigrants and the political

Ib5Wnys2

Hillygus - Direct

1 discord is targeting their ethnic group, residents and citizens  
2 may feel endangered.

3 Q. What's the national advisory committee?

4 A. It's one of two advisory committees in the Census Bureau.

5 Q. The one you didn't serve on?

6 A. Correct.

7 Q. And where did this image come from?

8 A. Off the Census Bureau website. Everything is public record  
9 for these advisory committee meetings.

10 Q. Is there further analysis the Census Bureau did that  
11 addresses the sensitivity of the citizenship question?

12 A. Yes.

13 Q. Are you aware of the analyses in the administrative record  
14 on that issue?

15 A. Yes.

16 Q. Where were they found? Do you remember where in the  
17 administrative record they were?

18 A. Where? I guess I'm not following.

19 Q. OK. Are you familiar with --

20 A. Breakoff --

21 THE COURT: Hold on. One at a time.

22 Mr. Freedman.

23 Q. Earlier when you were describing materials you reviewed,  
24 you described a memo by Dr. Abowd. Do you remember that?

25 A. Yes.

Ib5Wnys2

Hillygus - Direct

1 MR. FREEDMAN: Why don't we look at Dr. Abowd's memo.  
2 Could we see PX 22. My understanding is PX22 was admitted by  
3 the agreement of the parties this morning.

4 THE COURT: That's correct, I think, subject to a 403  
5 objection.

6 MR. TOMLINSON: That's correct.

7 THE COURT: But otherwise correct.

8 MR. TOMLINSON: That's correct, your Honor.

9 BY MR. FREEDMAN:

10 Q. Dr. Hillygus, what is PX 22?

11 A. Dr. Abowd's memo about the requested added citizenship  
12 question.

13 Q. How did Dr. Abowd go about looking at that issue?

14 A. So, he reported on a variety of different pieces of  
15 evidence from the American Community Survey.

16 Q. What is the American Community Survey?

17 A. The American Community Survey is what -- the census long  
18 form was phased out and the American Community Survey replaced  
19 it, so like the decennial census, it is a mandatory survey,  
20 very large sample survey.

21 Q. What does a mandatory survey mean?

22 A. Meaning that it is required by law to, for citizens -- for  
23 the public to complete it.

24 Q. How does the sample size of the American Community Survey  
25 compare to other surveys?

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Hillygus - Direct

1 A. I mean, it's, it's huge.

2 Q. Do you have any sense of the sample size?

3 A. Off the top of my head, I'll probably make a mistake in  
4 saying the exact number, but it's very large. It is --

5 THE COURT: I think it's in the stipulation.

6 THE WITNESS: Thank you.

7 MR. FREEDMAN: Thank you, your Honor.

8 Q. What does PX 22, this analysis, show that's relevant to  
9 your conclusions?

10 A. It offers evidence from the American Community Survey that  
11 suggests, No. 1, that a citizenship question is, in fact,  
12 sensitive for Hispanics and noncitizens and offers estimates of  
13 a likely negative impact on the self-response of noncitizen  
14 households.

15 MR. FREEDMAN: Why don't we walk through some of  
16 Dr. Abowd's analysis. Could we start with item 9 response,  
17 section B1 on page 4.

18 Q. Dr. Hillygus, are you familiar with this analysis?

19 A. Yes.

20 Q. Could you describe, in your own words, what is being  
21 described here?

22 A. Sure. Remember the item nonresponse is when individuals  
23 fail to answer an individual question. Again, the differential  
24 undercount is about unit nonresponse, not item nonresponse, but  
25 what this does indicate is that Hispanics were more likely than

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Hillygus - Direct

1 non-Hispanic whites to skip the citizenship question on the  
2 American Community Survey, and there was an increase in that  
3 skip rate over time.

4 THE COURT: You've said a couple times that the  
5 differential undercount is more a function of the unit  
6 nonresponse rather than the item nonresponse. Can you explain  
7 why that would be. If there's a sensitive question and it's  
8 sensitive for a particular portion of the population, why  
9 wouldn't the item nonresponse also reflect the differential?

10 THE WITNESS: Sure. So the item nonresponse -- if  
11 somebody skips an individual question --

12 THE COURT: They would still count in the census.

13 THE WITNESS: They would still count, yes.

14 THE COURT: All right.

15 THE WITNESS: Now, there is a little bit of a gray  
16 area when you go from, if somebody breaks off do they provide  
17 enough information for you to be able to actually count the  
18 number of people in the household or not. So there is this  
19 kind of little bit of gray area, but fundamentally,  
20 differential undercount is about people not being counted.

21 Now, item nonresponse is very important for the  
22 accuracy of the overall data and the characteristics of the  
23 population, but in terms of the undercount, the focus is really  
24 on --

25 THE COURT: All right. So it might cause a

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Hillygus - Direct

1 differential in the accuracy of the response to that particular  
2 question, but that wouldn't affect the enumeration of those  
3 different populations.

4 THE WITNESS: Correct. What it does is it indicates  
5 that this is a sensitive item.

6 THE COURT: Thank you.

7 BY MR. FREEDMAN:

8 Q. Could you summarize in your words what Dr. Abowd found?

9 A. Sure, that 15.5 percent of the Hispanics skipped the  
10 citizenship question in 2016 compared to 6.2 percent of  
11 non-Hispanic whites; that 15.5 percent was a 2.5 percentage  
12 point increase compared to, I believe, 2013.

13 Q. And how did that compare to the item nonresponse for other  
14 items?

15 A. So, in my own analysis and also in some Census Bureau  
16 analysis, when you look at the other items that are on this  
17 census short form, that there's very little difference at all  
18 between whites and Hispanics in the item nonresponse rates.

19 MR. FREEDMAN: Why don't we turn to the Census  
20 Bureau's description of the breakoff rates. Could we look at  
21 section B3 on page 5.

22 Q. Dr. Hillygus, are you familiar with this analysis?

23 A. Yes.

24 Q. Could you, in your own words, describe what Dr. Abowd is  
25 discussing here?

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Hillygus - Direct

1 A. Sure. Again, breakoff rates are another way that we can  
2 look at the potential impact of a sensitive item or burdensome  
3 item. What Dr. Abowd found was that Hispanics were nine times  
4 more likely than non-Hispanic whites to break off from the ACS  
5 survey at the point of the citizenship question.

6 Q. And what did Dr. Abowd find in that regard?

7 A. So, only 0.04 percent of non-Hispanic whites broke off of  
8 the citizenship question whereas .36 percent of Hispanics did.

9 Q. Nine times as many?

10 A. Yes.

11 Additionally, you know, so you have a citizenship question,  
12 but you also have year of naturalization and place of birth all  
13 being asked together on the ACS, and so, because those are  
14 essentially a grouped set of questions, he also reported the  
15 breakoff across those set of items, and again, Hispanics had a  
16 higher breakoff rate across those set of items compared to  
17 non-Hispanic whites.

18 THE COURT: Would a differential breakoff rate affect  
19 or have an impact on the differential with respect to an  
20 undercount or here, too, it would just affect what questions  
21 were answered and not whether the person counts as part of the  
22 enumeration?

23 THE WITNESS: Because of the point at which the  
24 citizenship question is in the survey, these households would  
25 be counted, so you would have -- you wouldn't have unit

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Hillygus - Direct

1 nonresponse, you would only have lower quality data about those  
2 households.

3 BY MR. FREEDMAN:

4 Q. Did you review these breakoff rates yourself?

5 A. Yes.

6 MR. FREEDMAN: Can we see Plaintiffs' Exhibit 69.

7 Q. Dr. Hillygus, what is this?

8 A. These are the breakoff rates from 2016.

9 MR. FREEDMAN: And these are from the administrative  
10 record, so I think per the discussion this morning, these are  
11 admitted subject to the 403 objection.

12 MR. TOMLINSON: That's correct.

13 THE COURT: All right. Thank you.

14 BY MR. FREEDMAN:

15 Q. Were your observations about Plaintiffs' Exhibit 22  
16 consistent with those done by the Census Bureau?

17 A. Yes.

18 Q. Why is that significant?

19 A. Well, it was -- it was useful to be able to both confirm  
20 those numbers, but also, I was able to compare across other  
21 breakoff -- breakoff points.

22 THE COURT: And this is from the ACS survey from 2016?

23 THE WITNESS: Yes.

24 BY MR. FREEDMAN:

25 Q. Do you know whether there's been any analysis done on the

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Hillygus - Direct

1 2017?

2 A. Yes.

3 Q. Do you know what has been done in that regard?

4 A. The numbers got worse. I don't remember the exact numbers,  
5 but they did get worse in terms of that difference between  
6 Hispanics and whites.

7 Q. Have you looked at the 2017 data yourself?

8 A. Yes.

9 MR. FREEDMAN: Can we see Plaintiffs' Exhibit 151.

10 Q. Dr. Hillygus, what is Plaintiff's Exhibit 151?

11 A. The 2017 compared data that allows you to calculate those  
12 breakoff numbers.

13 THE COURT: Is that in the administrative record?

14 MR. FREEDMAN: I believe it's an issue of current  
15 dispute.

16 MR. TOMLINSON: Yes, that is currently disputed, your  
17 Honor, and we would renew our hearsay objection as to whether  
18 she's the proper custodian to get those in.

19 THE COURT: All right. Subject to connection, it's  
20 admitted, but I assume the connection will be made later.

21 MR. FREEDMAN: Sure.

22 THE COURT: Go ahead.

23 BY MR. FREEDMAN:

24 Q. Dr. Hillygus, what is this?

25 A. So, 2017 is useful for comparison, because this is the ACS

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Hillygus - Direct

1 that was conducted after Trump was elected, and there was the  
2 increases in the differential breakoff rates between Hispanics  
3 and whites.

4 THE COURT: What time of year is the ACS conducted,  
5 and over what period of time?

6 THE WITNESS: Yeah, it's rolling. So it's -- yeah, in  
7 terms of when these exactly were in the field, I'm not sure  
8 exactly.

9 MR. FREEDMAN: I believe Dr. Van Hook may be able to  
10 answer those questions, your Honor.

11 THE COURT: All right.

12 BY MR. FREEDMAN:

13 Q. And just to summarize, what did you observe with regard to  
14 the 2017 breakoff data compared to the 2016 breakoff data?

15 A. There was, again, the differential between Hispanics and  
16 whites, and it had gotten larger.

17 MR. FREEDMAN: Why don't we go back to Plaintiffs'  
18 Exhibit 22, Dr. Abowd's memo and I want to talk about the unit  
19 nonresponse analysis, section B2, page 4.

20 Q. Dr. Hillygus, are you familiar with this analysis in  
21 Dr. Abowd's memo?

22 A. Yes.

23 Q. What is he analyzing here?

24 A. So, I think we will get into it in a lot more detail; I'm  
25 happy to really get into the weeds, but using ACS and the

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Hillygus - Direct

1 two -- 2010 census, you can compare the same households to see  
2 if those households were less likely to respond to the ACS,  
3 which included the citizenship question, compared to the  
4 decennial, and comparing citizen and noncitizen households,  
5 this reports on an analysis that is their estimate of the  
6 impact of a citizenship question on self-response of noncitizen  
7 households and found the 5.1 percentage point differential.  
8 That was subsequently revised.

9 Q. And what was it revised to?

10 A. 5.8 percent, but the Brown memo has a variety of different  
11 model specifications and estimates.

12 Q. Just in your own words, what does that differential mean,  
13 the 5.1 or 5.8 percentage? What does that mean?

14 A. So, it's a result of a difference in difference comparison.  
15 So, 20 -- so, what you have is you have individuals who  
16 answered -- the same households answered the ACS and the 2010  
17 census, and from administrative records, you could designate  
18 those household as citizen or noncitizen households. And so,  
19 by comparing the unit response -- so this is key, because now  
20 we're talking specifically about unit response -- you can get  
21 an estimate of how a citizenship question, which is on the ACS  
22 but not the decennial census, what that difference is.

23 THE COURT: You mentioned the Brown memo, I think.  
24 Can you either tell me or remind me what that is.

25 THE WITNESS: So, that's the Census Bureau's estimate

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Hillygus - Direct

1 of the impact of a citizenship question on self-response.

2 MR. FREEDMAN: Your Honor, I'll be getting there in  
3 one minute.

4 THE COURT: All right.

5 BY MR. FREEDMAN:

6 Q. At Dr. Abowd's analysis, because this is the analysis that  
7 was in the administrative record, do you view this finding as  
8 significant?

9 A. Yes. I mean, this is documenting that there's going to be  
10 a negative impact, and as I think we'll get to later, there's  
11 lots of reasons I think this is too conservative of an  
12 estimate, but this is a Census Bureau research predicting a  
13 negative impact of a citizenship question on the self-response  
14 of noncitizen households.

15 THE COURT: And can you opine on the size of the 5.8  
16 percent estimated differential, how significant that is in the  
17 context of a sampling methodology?

18 THE WITNESS: So, is it in the sense, like,  
19 statistically significant? Yes, and of course, what is tricky  
20 but is meaningful is the fact that there is, of course, the  
21 5.-- you know, noncitizen households are not evenly distributed  
22 across the nation, and so this -- this negative impact is, to  
23 me, really clear evidence -- right -- that the Census Bureau  
24 itself predicts that adding a citizenship question is going to  
25 depress participation of noncitizen households.

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Hillygus - Direct

1 BY MR. FREEDMAN:

2 Q. Now, you mentioned that there's discussion that this was  
3 conservative. I want to turn to the Brown memo because the  
4 Court asked about it.

5 MR. FREEDMAN: Could we see Plaintiffs' Exhibit 162.

6 Q. Dr. Hillygus, what is Plaintiffs' Exhibit 162?

7 A. This is the memo that reports the Census Bureau's analysis  
8 of the likely impact of a citizenship question on the 2020  
9 census.

10 Q. And when we refer to the Brown memo, are we referring to  
11 this?

12 A. Yes.

13 MR. FREEDMAN: I believe that there was no objections  
14 on this one.

15 MR. TOMLINSON: That's correct, your Honor.

16 THE COURT: Then it is admitted without objection.

17 (Plaintiffs' Exhibit 162 received in evidence)

18 MR. FREEDMAN: I want to take a look at page 39, the  
19 discussion of the conservative.

20 Q. So, I just want to read for the record: "The level of  
21 concern about using citizenship data for enforcement purposes  
22 may be very different in 2020 than it was in 2000 or 2010, so a  
23 more recent test would be preferable. These factors suggest  
24 that the estimated effect on self-response from the exercise in  
25 table 9 is conservative." Are you familiar with that language?

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Hillygus - Direct

1 A. Yes.

2 Q. Do you have a reaction to that?

3 A. Yes, Brown identifies some reasons why the estimate is  
4 conservative. I think there are also a number of other reasons  
5 that the estimate is likely conservative.

6 Q. And just so we're clear, what level did Dr. Brown find?  
7 What did he measure, or what did he estimate?

8 A. So, depending on the particular model, you know, 5.1 to  
9 11.9 were all estimated potential effects.

10 Q. And do you have any views as to the significance of that  
11 range of numbers?

12 A. Well, I mean, even 5.1 is -- is a significant and important  
13 finding, so I don't -- I don't want to diminish how important  
14 that finding is in and of itself while I would also say that if  
15 we were going to make a judgment, it is that this is, you know,  
16 likely too small of an estimate, and as Brown *et al.* also  
17 concluded.

18 Q. So, I want to walk through the reasons you view this as  
19 conservative, and you prepared a slide on this.

20 MR. FREEDMAN: Could we see Plaintiffs' Exhibit 11,  
21 demonstrative 11. 11. PDX 11. Sorry.

22 Q. Dr. Hillygus, what is PDX 11?

23 A. These are just some of the reasons that I considered the  
24 estimate, while still incredibly important and significant, if  
25 anything, to be too small.

Ib5Wnys2

Hillygus - Direct

1 Q. I want to skip over the first, because we need to talk  
2 about some other documents for that one, but I want to walk  
3 through the rest of them. Could you, starting with the second  
4 point, the citizenship question is more salient in 2020 than in  
5 2010, what does that mean?

6 A. The comparisons that are being made in the Brown *et al.*  
7 analysis rely on the 2010 ACS and decennial, and you know, you  
8 didn't have all the controversy and hubbub surrounding the  
9 citizenship question on the ACS in 2010. I mean, you now have  
10 on Twitter hashtag campaigns about skipping the citizenship  
11 question. You have the GOP sending out fund-raising mailers.  
12 Like, this is just a far more salient and prominent issue not  
13 only because of the addition onto a short form but also because  
14 of the process that led to the addition on the short form, so  
15 it's a far more salient issue.

16 It is also the case that confidentiality concerns about a  
17 citizenship question can be especially difficult to move in  
18 terms of any outreach that happens.

19 Q. Are you aware of any Census Bureau research on that point?

20 A. Yes. Nancy Bates and some coauthors had been looking at  
21 attitudes towards the use of administrative records and found  
22 that people who had concerns about confidentiality, you  
23 couldn't kind of message your way out of those concerns,  
24 whereas privacy concerns were more able to be moved. And it  
25 completely makes sense, right? So, privacy -- remember that

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Hillygus - Direct

1 distinction that Ken Prewitt made, privacy is it's none of your  
2 business, and if you can say, OK, your community's going to  
3 benefit from you giving up a little bit of your personal  
4 privacy, then that can be an effective message, whereas  
5 confidentiality concerns is I'm worried about the harm that's  
6 going to come to me from sharing this information, the message  
7 of, "But come on, your community's going to benefit," it  
8 doesn't resonate as much, and that's what the Bates research  
9 suggested.

10 MR. FREEDMAN: Since you mentioned Dr. Bates, why  
11 don't we look at Plaintiffs' Exhibit 365.

12 Q. Dr. Hillygus, do you recognize Exhibit 365?

13 A. I do.

14 Q. What is it?

15 A. It's the research that I referenced.

16 Q. Who are the authors?

17 A. They're researchers for the center for survey measurement.

18 Q. And is that part of the Census Bureau?

19 A. Yes.

20 Q. Did you consider this work in forming your opinions in this  
21 case?

22 A. Yes.

23 MR. FREEDMAN: Plaintiffs move Exhibit 365.

24 THE COURT: Any objection?

25 MR. TOMLINSON: We would object, your Honor, on the

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Hillygus - Direct

1 same basis as some of our previous objections, but especially  
2 in light of -- you can't see it right now, but there's a  
3 specific disclaimer on this that, again, specifically notes  
4 that this is not -- these are the views of the authors and not  
5 the Census Bureau. And so this again is hearsay. Again, she's  
6 not the appropriate custodian for introducing it.

7 THE COURT: Do you have authority for the proposition  
8 that adding a disclaimer takes you out of the land of this  
9 being a statement of an agent or employee of the defendant?

10 MR. TOMLINSON: Well, certainly -- I don't have  
11 anything in front of me, your Honor, and certainly we're not  
12 disputing that these statements were made by an employee of the  
13 Census Bureau.

14 THE COURT: Within the scope of their employment and  
15 within the scope of what they're authorized to opine upon, I  
16 take it.

17 MR. TOMLINSON: I think that's right, your Honor.

18 THE COURT: All right. Then it's admitted. Thank  
19 you.

20 (Plaintiffs' Exhibit 365 received in evidence)

21 BY MR. FREEDMAN:

22 Q. You gave a brief overview of this, but what did Dr. Bates  
23 and her coauthors find?

24 A. Just that confidentiality concerns are difficult to  
25 address.

Ib5Wnys2

Hillygus - Direct

1 Q. Let's go back to PDX 11. I just want to walk through some  
2 of these other reasons. The third reason, "matched data sets  
3 were each more likely to omit noncitizens," could you explain  
4 what that's referring to?

5 A. The leverage for doing this analysis came from matching  
6 administrative records about citizenship status to  
7 respondents -- to households that responded to the ACS and to  
8 the decennial short form. The problem, and the Brown authors  
9 recognized this, is that noncitizens are more likely to be  
10 missed by both of those sets of data. So administrative  
11 records, these were largely from Social Security  
12 Administration, you are more likely to miss noncitizens and not  
13 have administrative records available. As is being discussed  
14 in this case, you're more likely to miss noncitizens in the  
15 ACS.

16 Now, they go through a variety of ways to try and create a  
17 pool, you know, a set of comparisons that will allow for, you  
18 know, calculating estimates of the impact -- the differences  
19 between noncitizen households and citizen households, but they  
20 are likely to underestimate differences between the observed  
21 groups because you're missing a set of noncitizens.

22 Q. Why don't we go on to the next reason. The fourth reason  
23 also has to do with administrative records. Could you just  
24 explain that?

25 A. Sure. And again, this is a very detailed analysis, and so

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Hillygus - Direct

1 I know this gets, you know, into some of the technical details,  
2 but in the course of doing their analysis, they have to make  
3 some assumptions about some of the respondents who are missing  
4 citizenship status, and in some of their analyses -- not all of  
5 them, but in some of them they make an assumption that those  
6 individuals who are missing citizenship status are citizens.

7 Q. Could you discuss your fifth reason why the estimate is  
8 conservative?

9 A. Sure. So, what we're ultimately talking about in terms of  
10 the case is the differential undercount between whites and  
11 Hispanics or whites and noncitizens. The estimate that was  
12 done here is a comparison of noncitizen households to citizen  
13 households or else known citizen households to all other  
14 households. But we have seen evidence already that it's not  
15 just going to be noncitizens who are going to be affected but  
16 also Hispanics, and then it's also the case that that  
17 comparison includes -- right -- some, you know, citizen  
18 households in that pool that include people who are going to  
19 be -- consider citizenship to be sensitive. And so those are  
20 things that are just biasing downward, the estimated  
21 differences.

22 You know, they had to do it, right? Like, it's not -- I  
23 don't -- I still think that it is compelling evidence, but  
24 there are things that point to it being a conservative  
25 estimate.

Ib5Wnys2

Hillygus - Direct

1 Q. OK. Could you discuss your sixth reason?

2 A. Sure. This is, you know, similar, and that is, is just  
3 that by looking only at citizen and noncitizen households, you  
4 miss the pool of people who might be sensitive to a citizenship  
5 question, especially Hispanics.

6 Q. You used the phrase a little bit earlier "bias downward."  
7 What did you mean by that?

8 A. Just that these are things that if we are going to  
9 estimate -- you know, if we are going to make an estimation of,  
10 we had, you know, somewhat better data or more precise  
11 estimates, it is likely to be a bigger number rather than  
12 smaller.

13 Q. Let's discuss the seventh reason, and we'll circle back up  
14 to the first. Could you explain the seventh reason?

15 A. Sure. Again, this is a very lengthy set of statistical  
16 analyses, and they run through a number of different modeling  
17 assumptions. Some of those assumptions are more justified than  
18 others, and just one example I give is just that they have a  
19 model in which, I think, they have overcontrolled for  
20 estimating the impact of a citizenship question.

21 Q. And just to explain, because the Court will have the Brown  
22 memo -- why don't we just take a step back. What is the  
23 Blinder-Oaxaca decomposition?

24 A. That's just the statistical approach they took for  
25 estimating the impact of a citizenship question, trying to

Ib5Wnys2

Hillygus - Direct

1 account for those factors that might also create differences  
2 between the rates of participation among citizen and noncitizen  
3 households that are not about confidentiality concerns.

4 Q. And your specific criticism of what they did, could you  
5 just explain that?

6 A. So, they include some controls in the model, but one of the  
7 things that they controlled for was English-language ability,  
8 which I consider to be something that's probably a proxy for,  
9 you know, getting close to, you know, the pool of people who  
10 are likely to have confidentiality concerns. And it's --  
11 mechanism testing is very difficult with observational data.

12 As the Brown memo notes, you know, they're doing the best  
13 they can with the data they have available. They would prefer  
14 to have randomized controlled trial but in terms of the various  
15 modeling assumptions that were made that, you know, again, like  
16 they conclude, this is a conservative estimate.

17 Q. OK. I want to go back to the first point, the question's  
18 more prominent on the short form than on ACS. What does that  
19 mean?

20 A. Their estimate is based on leveraging differences between  
21 citizen and noncitizen households responding to the ACS  
22 compared to the short form, but once you add a citizenship  
23 question to the short form, you are talking about a citizenship  
24 question being added -- being one of 11 questions, whereas the  
25 ACS has something like 75. So just the extent to which it

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Hillygus - Direct

1 sticks out like a sore thumb, certainly it's more prominent in  
2 the short form compared to the ACS. That prominence could have  
3 an impact on, you know, people's willingness to respond to the  
4 question or to the survey.

5 MR. FREEDMAN: Why don't we take a look at the ACS  
6 form. Could we see Plaintiffs' Exhibit 255.

7 Q. Dr. Hillygus, do you recognize Plaintiffs' Exhibit 255?

8 A. Yes. This is the printed ACS form.

9 MR. FREEDMAN: I want to scroll forward.

10 Q. Do you know offhand where the citizenship question appears  
11 in this?

12 A. Pretty deep into the survey.

13 MR. FREEDMAN: Why don't we flip through. I believe  
14 it's on 8, but why don't we -- yeah, the eighth page.

15 THE COURT: Are you offering this exhibit?

16 MR. FREEDMAN: Yeah, we should. Plaintiffs move 255  
17 into evidence.

18 THE COURT: Any objection?

19 MR. TOMLINSON: No objection, your Honor.

20 THE COURT: Admitted.

21 (Plaintiffs' Exhibit 255 received in evidence)

22 MR. FREEDMAN: And just to contrast it, John, could we  
23 get a side-by-side and look at 665.

24 Q. Dr. Hillygus, do you recognize Plaintiffs' Exhibit 665?

25 A. Yes, this is the printed 2010 decennial short form.

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Hillygus - Direct

1 MR. FREEDMAN: Plaintiffs move 665 into evidence.

2 THE COURT: Any objection?

3 MR. TOMLINSON: Your Honor, I don't think we have any  
4 objection.

5 THE COURT: It's admitted.

6 (Plaintiffs' Exhibit 665 received in evidence)

7 BY MR. FREEDMAN:

8 Q. Dr. Hillygus, could you just explain sort of how these  
9 forms illustrate the point?

10 A. Yeah. So, what you have with the short form -- right -- is  
11 you've got all the questions right there, whereas with the ACS  
12 you have a large number of questions that are covering a large  
13 range of different topics, and so citizenship doesn't stand out  
14 as, as being something that is as central to the survey.

15 Q. Thank you.

16 MR. FREEDMAN: Your Honor, I was about to switch  
17 gears. I'm not sure if the Court and the parties need a break  
18 or if the Court needs a break.

19 THE COURT: Well, I was going to break in about five  
20 minutes, but if you think this is a better stopping point, we  
21 can break now. It's 11:10. Let's take a ten-minute break.  
22 I'd like the witness back on the stand and ready to go at  
23 11:20. We are adjourned until then. Thank you.

24 MR. FREEDMAN: Thank you, your Honor.

25 (Recess)

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Hillygus - Direct

1 THE COURT: You may be seated.

2 Dr. Hillygus, you remain under oath.

3 Mr. Freedman, you may continue.

4 MR. FREEDMAN: Thank you, your Honor.

5 Can we pull up PDX 1. I want to turn to your second  
6 conclusion.

7 Q. Dr. Hillygus, could you explain in your own words what your  
8 second conclusion is?

9 A. Sure. So, according to the Census Bureau's own estimates,  
10 they are predicting a differential self-response of noncitizen  
11 households, and my second conclusion is that their outreach  
12 campaign, and I'm going to use the term "NRFU," nonresponse  
13 follow-up, operations are unlikely to fully address that  
14 predicted differential.

15 Q. Let's walk through what that means, starting with the  
16 census outreach campaign. What do you mean by census outreach  
17 campaign?

18 A. So, as part of the decennial, the Census Bureau undertakes  
19 a pretty massive, you know, marketing campaign and work with  
20 community partners to try and encourage the public to  
21 self-respond and then cooperate with an enumerator if they come  
22 to the door?

23 Q. Are you familiar with the Census Bureau's plans for its  
24 outreach campaign for 2020?

25 A. Yes. I'm pretty familiar with the plans. I would say that

Ib5Wnys2

Hillygus - Direct

1 I'm also familiar with their plans to do research about the  
2 plans that all got cancelled over the course of the decades  
3 because of budgetary constraints.

4 Q. Could you just describe, sort of broadly speaking, what are  
5 the components of the public outreach campaign?

6 A. So, there is both media outreach as well as the use of --  
7 we've already seen the phrase used today, but "trusted voices."  
8 These are community organizations, many of whom are part of  
9 this lawsuit, who are responsible for work with the Census  
10 Bureau to try and encourage their communities to participate.

11 Q. Do you have any view on the efficacy of the Census Bureau's  
12 planned 2020 outreach campaign to address the reduction in  
13 self-response rates among noncitizens and Hispanics?

14 A. I think it would be incredibly difficult for this outreach  
15 campaign to be effective at overcoming their predicted  
16 differential self-response. There is, in addition to the  
17 evidence talked about in CBAMS -- I mean, that is why Team Y&R  
18 are the ones doing their outreach, and they are documenting the  
19 challenge they have with respect to the citizenship question,  
20 but even more broadly, communication scholars recognize that  
21 reaching the public is incredibly difficult and more difficult  
22 today than it was in 2010. We have a fragmented media  
23 environment, so simply even getting the message out is more  
24 complicated today than it was in previous censuses.

25 It is also the case that they had planned to do

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Hillygus - Direct

1 considerable research to be able to have a more effective  
2 communication campaign, and that was eliminated, including  
3 being eliminated from the 2018 end-to-end test, and so they're  
4 going in without kind of a -- the -- what they had hoped would  
5 be a robust set of evidence backing up their communications  
6 campaign.

7 THE COURT: Sorry.

8 THE WITNESS: Sorry.

9 THE COURT: Go ahead.

10 THE WITNESS: And then finally, as we've kind of  
11 mentioned before, their -- the confidentiality concerns are  
12 especially difficult to try and address.

13 THE COURT: You mentioned the end-to-end campaign.  
14 Can you tell me what that is.

15 THE WITNESS: So the end-to-end census test is their  
16 dress rehearsal, so over the course of a decade, the Census  
17 Bureau has a number of large-scale tests to pretest before the  
18 decennial count. The end-to-end test which, in 2018, did not  
19 include a citizenship question; it also did not include the  
20 coordinated communications efforts as had been planned.

21 BY MR. FREEDMAN:

22 Q. You also referred to Team Y&R. Can you explain to the  
23 Court who they are?

24 A. They're the marketing firm that they're working with on the  
25 integrated communications.

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Hillygus - Direct

1 THE COURT: Is that Young & Rubicam?

2 THE WITNESS: Yes.

3 BY MR. FREEDMAN:

4 Q. I want to turn and we'll focus for a while on the  
5 nonresponse follow-up efforts. What are nonresponse follow-up  
6 operations?

7 A. So, the nonresponse follow-up operations, what they're  
8 starting with -- right -- is the pool of people who have not  
9 self-responded to the questionnaire. Again, in this  
10 election -- or, in this census that is going to largely going  
11 to be through Internet self-completion, those households that  
12 are in what is called the master address file -- that's the set  
13 of addresses that the Census Bureau puts together that they're  
14 going to attempt to enumerate for the census. Those that did  
15 not self-respond will receive a visit from an enumerator. If  
16 the household does not -- is not there or does not respond with  
17 that first visit, the Census Bureau will leave a notice that  
18 they visited and encourage the household to still self-respond.  
19 They will also use administrative records to try and determine  
20 if the household is occupied or vacant or should be deleted  
21 from the master address file. They will continue to send  
22 enumerators out to the household.

23 If they are not getting the response, they eventually turn  
24 to proxy respondents. Again, proxy respondents are neighbors,  
25 landlords, postal workers, anyone who is willing to share

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Hillygus - Direct

1 information about the household that didn't respond.

2 At the end, the final stage is imputation.

3 Q. I think you put together a slide that explained this.

4 MR. FREEDMAN: Could we look at PDX 12.

5 Q. What is PDX 12?

6 A. So, this is just those stages that are relevant here.

7 Q. That you just described?

8 A. Yeah.

9 Q. OK. Just before, we're going to talk about the efficacy of  
10 each of these in a second and walk through, but before we do  
11 that, I just want to establish clearly, how does decreased  
12 response relate to the NRFU workload?

13 A. So, the fewer people, fewer households that respond, the  
14 more cases that are sent to NRFU to be completed through the  
15 NRFU operations.

16 Q. Do you know how many households Census Bureau estimates,  
17 how many additional cases will be sent over to NRFU because of  
18 the citizenship question?

19 A. My recollection is, like, 10 million-ish, but I should  
20 probably have that looked up. I mean, it's an estimate based  
21 on the expected self-response rates and then the likely impact  
22 that was already estimated, and that's in the Abowd memo.

23 Q. I just want to walk, looking at these, the five steps that  
24 you described, were these -- we can take them one by one. Were  
25 these used in prior censuses?

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Hillygus - Direct

1 A. The administrative records is a new part of the census, but  
2 yes, the in-person visits, the use of proxies and the use of  
3 imputation were part of previous NRFU operations.

4 THE COURT: So the use of the administrative records  
5 is new in 2020.

6 THE WITNESS: Uh-huh.

7 THE COURT: That's a yes.

8 THE WITNESS: It is, yes.

9 THE COURT: OK.

10 BY MR. FREEDMAN:

11 Q. And how did NRFU do in prior censuses as far as addressing  
12 the undercount?

13 A. Well, we know from the Mellett report and the graphic went  
14 up that there was a differential undercount even with NRFU  
15 operations in previous censuses.

16 MR. FREEDMAN: Why don't we pull up PDX 2 again.

17 Q. Just so it's clear, do the numbers on PDX 2 that you  
18 testified about earlier, do those reflect NRFU operations?

19 A. They are the numbers calculated after NRFU operations are  
20 complete.

21 Q. Again, so the record's clear, what were the differential  
22 undercounts of Hispanics versus whites in each of the last  
23 three censuses?

24 A. In 2010, 2.38 percentage points. In 2000, 1.84 percentage  
25 points. In 1990, 4.31 percentage points.

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Hillygus - Direct

1 Q. Do you have a view as to the efficacy of planned NRFU  
2 efforts with regard to the 2020 census to address decline of  
3 self-response?

4 A. As I detail in my report, there are lots of reasons to  
5 think that the NRFU operations will fail to correct what is  
6 predicted to be a differential self-response rate among  
7 noncitizen households, and there are parts of the operation  
8 that potentially could even exacerbate things.

9 THE COURT: I don't know if this data is available,  
10 but is it possible to determine how much of the differential,  
11 how much of the gap was closed, if you will, as a result of  
12 NRFU operations; that is to say, what the differential was  
13 prior to the NRFU operations as opposed to after, or do we just  
14 have the final number?

15 THE WITNESS: So, we -- they're separate, and it's one  
16 of the things that makes this a somewhat tricky exercise.  
17 All -- I have some things I think show the link, but we know  
18 there's a differential self-response rate. We also know that  
19 there's a differential undercount. But the process used to  
20 calculate the undercount as opposed to enumeration survey is  
21 independent, and so establishing the link between the two is  
22 tricky.

23 THE COURT: Tricky is different than impossible. Do  
24 we have data estimate?

25 THE WITNESS: I think there is evidence. I believe

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Hillygus - Direct

1 there is evidence that connects the two.

2 THE COURT: All right.

3 BY MR. FREEDMAN:

4 Q. Just in terms of your views on the efficacy of NRFU, you  
5 put together a slide just to summarize.

6 MR. FREEDMAN: Can we see PDX 13.

7 Q. OK. Could you just explain to the Court what PDX 13 is?

8 A. These are the various reasons why we should anticipate that  
9 NRFU will fail to correct the differential self-response.

10 Q. OK. I want to walk through each of these, starting with  
11 the first one. Could you explain what you mean by "NRFU could  
12 not eliminate undercount in past"?

13 A. Yes. I mean, that's just as shown in the previous table.  
14 We had a differential self-response in the past and we had a  
15 differential undercount. This is an empirical pattern that we  
16 have seen in the past. There's nothing to suggest that, that  
17 we wouldn't see that same pattern this time.

18 Q. This second reason, "respondent sensitivity impacts  
19 cooperation with NRFU," what do you mean by that?

20 A. All of the issues that have been talked about with respect  
21 to confidentiality concerns associated with the citizenship  
22 question that the Census Bureau acknowledges and has shown to  
23 have an impact on the self-response, all matter for cooperation  
24 with a census enumerator. And in fact, in the Brown memo,  
25 there is a number of points where they make that point, that

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Hillygus - Direct

1 these issues are going to matter for the NRFU operations as  
2 well.

3 Q. We can look at that language in the Brown memo now, if  
4 you'd like.

5 A. Yeah.

6 MR. FREEDMAN: Why don't we pull up 162. If we could  
7 go to page 41, there's language on there, "households deciding  
8 not to self-respond."

9 Q. Dr. Hillygus, are you familiar with the language in  
10 Dr. Brown's memo that says, "Households deciding not to  
11 self-respond because of the citizenship question are likely to  
12 refuse to cooperate with enumerators coming to their door in  
13 NRFU, resulting in the use of neighbors as proxy respondents on  
14 their behalf"?

15 A. Yes, and in fact, one of the things I would suggest is that  
16 neighbors might be more reluctant to serve as proxy respondents  
17 as well.

18 Q. We'll come to that point.

19 A. OK.

20 MR. FREEDMAN: I also want to take a look at footnote  
21 59, the language there.

22 Q. Dr. Hillygus, are you familiar with the language that says,  
23 "If a household declines to self-respond due to the citizenship  
24 question, we suspect it would also refuse to cooperate with an  
25 enumerator coming to their door, resulting in a need to use a

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Hillygus - Direct

1 proxy"? Are you familiar with that?

2 A. Yes.

3 Q. Do you have any reactions to that?

4 A. That, again, confirms this point, shows the Census Bureau  
5 also agrees that the concerns raised will affect NRFU  
6 operations.

7 MR. FREEDMAN: And could we take a look at footnote  
8 60.

9 Q. Footnote 60 says -- we should look at the whole thing:  
10 "These enumerators" -- strike that. "These enumeration errors  
11 may not be avoidable simply by spending more money on field  
12 work. Once a household decides not to cooperate, it may not be  
13 possible to obtain an accurate enumeration no matter how many  
14 times an enumerator knocks on their door." Are you familiar  
15 with that language?

16 A. Yes.

17 Q. What is your view of that?

18 A. That, again, indicates the Census Bureau recognizes that  
19 the concerns about confidentiality are going to reduce  
20 cooperation not only through self-response but also cooperation  
21 with NRFU operations.

22 MR. FREEDMAN: Let's go back to PDX 13.

23 Q. Could you discuss -- I think we stopped at two. Can you  
24 discuss your third reason, the macro environment; what do you  
25 mean about that?

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Hillygus - Direct

1 A. Sure. We've talked a lot today about how the data the  
2 Census Bureau has brought to bear in trying to estimate the  
3 impact of the citizenship question on the cooperation of  
4 noncitizen households comes from 2010. We're in a different  
5 macro and political environment, but I would also emphasize  
6 this is going to be occurring during a presidential election.  
7 Right? I've been telling the Census Bureau, you know, talking  
8 to the Census Bureau about this over the decade, is that the  
9 potential for this to be politicized and for the salience of  
10 this to be even more means that the NRFU challenge is even  
11 greater in 20 -- likely to be greater in 2020 than even today  
12 with respect to a citizenship question.

13 Q. Your next reason, "interviewer effects," could you explain  
14 what you mean by that?

15 A. Sure. There's an extensive research and survey methodology  
16 that emphasizes that there's an interaction between  
17 somebody's -- how they respond and willingness to respond  
18 depends on the interviewer, and we are now no longer -- you  
19 know, so with NRFU, you're no longer having somebody  
20 self-respond about their household; they're now going to be  
21 talking to an enumerator. And the survey methodology research  
22 indicates that people are less likely to reveal sensitive  
23 information when they have to reveal it to a person as opposed  
24 to write it on a form or share it online.

25 The other thing about interviewers is we know that there's

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Hillygus - Direct

1 an interaction between the characteristics of the interviewer  
2 and the characteristics of the respondent. The Census Bureau  
3 does try and pull enumerators from the neighborhood to perform  
4 the enumeration, because they recognize this would ensure --  
5 shows that that increases cooperation. However, in 2020,  
6 they've made the decision to not hire noncitizens as  
7 enumerators, which could reduce the potential for that match  
8 between household and interviewer to be able to get that  
9 cooperation needed.

10 And finally, the GAO has raised concerns about the pool of  
11 interviewers. We're in a stronger economy. Getting a pool of  
12 interviewers could be more difficult. Certainly one of the  
13 things that census researchers have pointed out is that  
14 interviewers for the 2020 census have far less experience than  
15 interviewers, say, for the ACS, who are doing this as a  
16 full-time job.

17 And so that interviewer experience has been shown to have  
18 an impact on ability to elicit cooperation. And so all of  
19 those things, again, just indicate that the NRFU operation, as  
20 recognized by census researchers, is unlikely to eliminate  
21 their predicted differential self-response.

22 Q. You mentioned the GAO. What is that?

23 A. Government accounting office? Yeah. They're the ones that  
24 oversee the Census Bureau.

25 THE COURT: I think it's accountability, actually.

Ib5Wnys2

Hillygus - Direct

1 THE WITNESS: OK. Thank you.

2 BY MR. FREEDMAN:

3 Q. Since you referred to it, let's take a look at Exhibit 367,  
4 because that will probably answer the question.

5 MR. FREEDMAN: Your Honor is right.

6 Q. Dr. Hillygus, do you recognize Exhibit 367?

7 A. I do.

8 Q. What is it?

9 A. One of the many GAO reports that has talked about  
10 challenges facing the Census Bureau in 2020.

11 Q. Did you consider this in forming your opinions in this  
12 case?

13 A. I did.

14 MR. FREEDMAN: Plaintiffs move 367 into evidence.

15 THE COURT: Any objection?

16 MR. TOMLINSON: Your Honor, we would object under 401,  
17 403 and 802. It's hearsay. It's not relevant to anything  
18 other than 703 basis.

19 THE COURT: Isn't it admissible as a public report?

20 MR. TOMLINSON: Your Honor, again, she's testified to  
21 it being a basis for her opinion, and it shouldn't -- if it's  
22 going to come in not authenticated by anybody else, it should  
23 be somebody else.

24 THE COURT: Overruled. It's admitted.

25 (Plaintiffs' Exhibit 367 received in evidence)

Ib5Wnys2

Hillygus - Direct

1 MR. FREEDMAN: Let's go back to PDX 13.

2 Q. Actually, sorry. What's the significance of the GAO  
3 finding again?

4 A. Just that they were calling attention to the likely  
5 difficulties of hiring interviewers in 2020. That was among  
6 the many challenges the GAO has raised about the 2020 census.

7 MR. FREEDMAN: Now let's go back to PDX 13. I just  
8 want to, before we keep going down, I just have one more  
9 follow-up question about the macro environment.

10 Q. Are you aware of any Census Bureau studies that you relied  
11 on as evidence in reaching your views about the macro  
12 environment?

13 A. I mean, there's -- there's lots. I mean, there's the CBAMS  
14 that I looked at. I mean, all of the things that we have  
15 talked about in terms of the attitudes of the public regarding  
16 the citizenship question and regarding census attitudes are  
17 relevant to this point.

18 Q. Were there particular points in the CBAMS analysis that you  
19 think are important to this conclusion?

20 A. Pretty much the entire CBAMS, but yes.

21 Q. All right. Let's go down to No. 5, the "limitations of the  
22 master address file." What do you mean by that?

23 A. The master address file is the set of addresses on which  
24 the census enumeration is based, so when the Census Bureau  
25 contacts households to self-complete the census online, they're

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Hillygus - Direct

1 relying on the master address file. When they compare those  
2 houses that self-respond to figure out where they need to go  
3 knock on doors, they're relying on the master address file.  
4 There is recognition by the Census Bureau that the master  
5 address file is likely to miss exactly the pool of people that  
6 we are focused on.

7 Q. Are you aware, in addition -- what are you referring to  
8 from the Census Bureau in this regard?

9 A. I mean, Census Bureau research acknowledges, you know, that  
10 the master address file is not perfect and is -- can miss  
11 noncitizens in particular.

12 Q. Are you aware of any evidence outside the Census Bureau  
13 that corroborates that?

14 A. There is evidence outside the Census Bureau as well. I  
15 don't recall which specific thing I relied on in my report.

16 Q. Why don't we go to the next point, "quality of  
17 administrative records for hard-to-count populations." What do  
18 you mean by that?

19 A. Again, as recognized by the Census Bureau as well as  
20 outside research, administrative records are, not surprisingly,  
21 higher quality, you know, for some groups compared to others,  
22 and it is noncitizen households and Hispanics who are less  
23 likely to have administrative records or quality administrative  
24 records.

25 Q. Are you familiar with Census Bureau research on this topic?

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Hillygus - Direct

1 A. Yes.

2 MR. FREEDMAN: Could we see Plaintiffs' Exhibit 399.

3 Q. Dr. Hillygus, do you recognize 399?

4 A. Yes, and again, this is just one of -- you know, Ron  
5 Jarmin, Dr. Abowd, the Brown memo. There are many examples in  
6 which census research has acknowledged that administrative  
7 records are incomplete and are more likely to not be available  
8 for noncitizen and Hispanic households.

9 Q. Just taking a step back so we can build a foundation for  
10 this, do you know who the authors are of this?

11 A. So, this is the same Brown, I believe, as the Brown memo.  
12 Dr. Childs is in the center for survey measurement.

13 Q. Are these employees of the Census Bureau?

14 A. Yes.

15 Q. And did you consider this memo and this article in forming  
16 your opinions in this case?

17 A. Yes.

18 MR. FREEDMAN: Plaintiffs move Exhibit 399.

19 THE COURT: Any objection?

20 MR. TOMLINSON: Yes, your Honor. We have the same  
21 401, 403(b) and 802 objections that we've lodged to support  
22 other documents.

23 THE COURT: All right. Overruled. It's admitted.

24 (Plaintiffs' Exhibit 399 received in evidence)

25 BY MR. FREEDMAN:

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Hillygus - Direct

1 Q. Dr. Hillygus, anything else you want to add about this  
2 memo?

3 A. Just again, I would say all of these things are pointing to  
4 the same pattern, that the subgroups of the population who are  
5 more likely to be missed are exactly the ones that we see and  
6 verify the differential undercount are being undercounted.

7 MR. FREEDMAN: Let's go back to PDX 13.

8 Q. I believe we're on No. 7, "proxy bias." Could you explain  
9 what you mean by that?

10 A. Sure. As mentioned, as part of the NRFU operation that if  
11 a household does not respond, the interviewer turns to a  
12 neighbor or a landlord or a postal worker to try and complete  
13 the census enumeration. Again, the Census Bureau's own  
14 research recognizes that proxy respondents provide less  
15 accurate information.

16 There is also evidence that suggests that proxy respondents  
17 are particularly likely to underestimate household size for the  
18 groups, again, that we are talking about.

19 Q. OK. I want to take those points one by one. Just on the  
20 less accurate information, is there particular Census Bureau  
21 evidence you're aware of on that point?

22 A. Yes. Again, like it is acknowledged in the, in Dr. Abowd's  
23 memo, in the Brown research, there are a number of Census  
24 Bureau studies that, that provide evidence of this.

25 MR. FREEDMAN: Why don't we take a look at Dr. Brown's

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Hillygus - Direct

1 memo again, 162, page 41.

2 Q. The language at the end, discussing other studies, says,  
3 "Both these studies provide suggested evidence that proxies  
4 supply poor-quality individual demographic and socioeconomic  
5 characteristic information about the person on behalf of whom  
6 they are responding." Are you familiar with that language?

7 A. Yes.

8 Q. Is that what you're referring to?

9 A. Yes. One of many, yeah.

10 Q. Just tell us in your own words why are proxies less  
11 accurate.

12 A. They have less information about the household than a  
13 member of the household. It has impact both on the  
14 characteristics and, as I think we'll soon talk about, also the  
15 count.

16 Q. Let's turn to the count. I think the language on your  
17 slide is "proxy bias." What do you mean by bias?

18 A. That for noncitizen households and Hispanics, that proxy  
19 respondents are likely underestimating household size.

20 Q. And you prepared a slide on this point as well.

21 MR. FREEDMAN: Could we see PDX 15.

22 Q. What is PDX 15?

23 A. So, this is just some of the evidence behind the conclusion  
24 that proxy respondents are contributing to an undercount of  
25 Hispanic and noncitizen households.

Ib5Wnys2

Hillygus - Direct

1 Q. Let's start with the points and just walk through them.

2 The first one, "census research shows proxy responses are less  
3 accurate"; I feel like we just discussed that.

4 A. Yes, Brown and his colleagues, along with many others, have  
5 shown -- like, for instance, a really low rate of matching to  
6 administrative records when you're using proxy responses  
7 compared to self-responses.

8 Q. The second point is, "Proxy respondents (nonrelatives) are  
9 less likely to have knowledge about a person's living  
10 arrangements, such as when landlords are unaware of the number  
11 of individuals occupying a residence in the case of  
12 overoccupancy." What do you mean by that?

13 A. So, again, that when you're relying on proxy respondents  
14 for households that are larger and more complex, proxy  
15 respondents do not have accurate information, and we know from  
16 other research that noncitizen households in particular are  
17 likely to have more -- they might have more people living in  
18 the household than known by a landlord.

19 Q. And is there any particular evidence you have in mind for  
20 that?

21 A. Elizabeth Martin has a 1999 study. Again, the key point  
22 is, is that it's not just about getting inaccurate  
23 characteristics of the household; they're actually  
24 underestimating the size, and that's where you get that link to  
25 the undercount, the link to the differential undercount,

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Hillygus - Direct

1 because the households that are complex and getting  
2 underestimated are those that have overoccupancy.

3 MR. FREEDMAN: Could we, since you referred to  
4 Dr. Martin, pull up 386.

5 Q. Dr. Hillygus, do you recognize Plaintiffs' Exhibit 386?

6 A. I do.

7 Q. What is it?

8 A. It's a publication of Dr. Martin's research, looking at the  
9 household size issue that we're talking about.

10 Q. Do you know where Dr. Martin was employed at the time she  
11 wrote this article?

12 A. The U.S. Census Bureau.

13 Q. Did you consider this article in forming your opinions in  
14 this case?

15 A. Yes.

16 MR. FREEDMAN: Plaintiffs move Exhibit 386 into  
17 evidence.

18 THE COURT: Any objection?

19 MR. TOMLINSON: Your Honor, substantially the same,  
20 401, 403 and 802 objections.

21 THE COURT: I think, without further foundation, this  
22 was written within the scope of and pursuant to her duties as a  
23 Census Bureau employee, I'll accept it as part of this  
24 witness's reliance materials but not necessarily for its truth.  
25 If you are able to lay that foundation, I might admit it for

Ib5Wnys2

Hillygus - Direct

1 more purposes. But that's where I stand.

2 MR. FREEDMAN: I'm not sure. We probably can't  
3 establish a further foundation through this witness. We have  
4 other witnesses who can probably establish more of a  
5 foundation.

6 THE COURT: All right. It's admitted subject to  
7 connection, but certainly as one of her reliance materials.

8 (Plaintiffs' Exhibit 386 received in evidence)

9 THE COURT: You may proceed.

10 MR. FREEDMAN: Let's go back to PDX 15.

11 Q. The third bullet, "Survey methodology research also shows  
12 that those with tenuous residential arrangements are more  
13 likely to be omitted from a household roster, especially by  
14 proxy respondents," what do you mean by that?

15 A. Again, this is just another research study that shows that  
16 the households that are more complex -- right -- are more  
17 likely to have proxy respondents omitting members of the  
18 household. Again, this is that key link between proxy  
19 respondents not just giving less accurate information, but they  
20 are underestimating the size of noncitizen and Hispanic  
21 households at a higher rate than they would do for other  
22 households.

23 Q. Turning to your fourth bullet, "Given broad deportation  
24 concerns shown in public opinion polls, we might expect  
25 reluctance from neighbors," what do you mean by that?

Ib5Wnys2

Hillygus - Direct

1 A. Yeah, this just gets to -- I wish the Census Bureau had  
2 directly studied it, but certainly the evidence points to the  
3 likelihood that the neighbors are also going to be reluctant to  
4 share information, particularly about citizenship status, of  
5 their neighbors. And what the consequence, the potential  
6 consequence of that is that that your proxy respondents --  
7 you'll either have more difficulty finding a proxy respondent  
8 or you're going to find proxy respondents who have less  
9 information about the household, and so again -- the Census  
10 Bureau recognizes that a citizenship question is going to  
11 decrease the accuracy of the count.

12 What I think the evidence is suggest -- is showing is that  
13 it's systematically going to underestimate household size  
14 because of the use of proxy respondents.

15 (Continued on next page)

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Hillygus - Direct

1 BY MR. FREEDMAN:

2 Q. What is the source for this proposition?

3 A. So, I mean --

4 Q. What's the evidence? I'm sorry.

5 A. Various public opinion polls, as well as CBAMs all are  
6 suggestive of this conclusion.

7 Again, it would be nice if we had kind of direct  
8 testing, which is what I think should have happened, but,  
9 again, there certainly is suggestive evidence of this concern.

10 Q. Now, the last bullet is your conclusion.

11 Could you, just in your own words, state your  
12 conclusion regarding proxy bias?

13 A. Sure.

14 The Census Bureau recognizes that the use of proxy  
15 respondents will result in less accurate census data. That's  
16 not a question at all.

17 What the evidence, I think, indicates is that the expected  
18 increase in proxy respondents in the NRFU operations will  
19 contribute to a systemic underestimation of the size of  
20 noncitizen and Hispanic households.

21 Q. Great. Lets go back to PDX 13.

22 Your eighth reason to think NRFU will not eliminate  
23 undercount in imputation bias.

24 What do you mean by that?

25 A. After proxy respondents are done, they are finished

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1 knocking on all the doors, there are still some households in  
2 the master address file that have not been enumerated. So the  
3 Census Bureau undertakes imputation procedure.

4 Q. What is imputation?

5 A. Imputation is essentially just using a guess to fill in the  
6 numbers.

7 Q. What are the basic types of imputation?

8 A. Well, I mean, there is a whole range of different  
9 imputation techniques. Broadly of relevance to my conclusion  
10 is the difference between ignorable and non-ignorable  
11 imputation procedures.

12 Q. If I use the phrase count imputation or whole certain  
13 characteristic, do you --

14 A. Right.

15 So in terms of the Census Bureau process, they are  
16 trying to impute the size of the household, and that is going  
17 to contribute to total population, like the total estimate of  
18 the population. They also impute the characteristics of the  
19 household. But those are separate imputation processes.

20 Q. OK. What do we know about how the Census Bureau conducts  
21 imputation?

22 A. So now this is the ignorable versus non-ignorable  
23 imputation.

24 So the count imputation, again, is used to get to total  
25 population estimates. The characteristic imputation tells us

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1 about who is in the household.

2 I have a slide.

3 Q. Why don't we look at PDX 16.

4 Just before we dive into this, just so the judge  
5 understands or the court understands, how do imputations  
6 contribute to the undercount?

7 MR. TOMLINSON: Your Honor, just briefly, we filed  
8 a written objection to this. We assume that preserves the  
9 objection. I believe you overruled it earlier, but ...

10 THE COURT: This being the demonstrative?

11 MR. TOMLINSON: This specific demonstrative.

12 The material that is cited in the demonstrative.

13 MR. FREEDMAN: I think it was subject to the letter  
14 motion that your Honor denied at the start of court today.

15 THE COURT: Then I, indeed, have ruled on it. That  
16 ruling stands.

17 Mr. Freedman, if I could just ask you to keep your  
18 voice up and speak into the microphone a little more directly,  
19 that would be great.

20 MR. FREEDMAN: Absolutely, your Honor.

21 BY MR. FREEDMAN:

22 Q. I believe your question was, can you explain the  
23 relationship between imputation and undercount?

24 A. Yes. So the count imputation is contributing to the total  
25 population count, and what I conclude is that the imputation is

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1 going to contribute to the undercount because the imputation  
2 procedure is likely to under estimate household size in  
3 noncitizen and Hispanic households.

4 Q. Just in terms of magnitude, do you know how many count  
5 imputations were done in the 2010 census?

6 A. It is a small number, but I don't recall off the top of my  
7 head.

8 Q. There is an exhibit we'll discuss with Dr. Abowd that has  
9 that. We'll come back to that.

10 A. What is critical is that it is expected that there is going  
11 to be more in 2020.

12 Q. OK. Just taking this point by point, because this is  
13 probably one of the more technical areas of the whole case, why  
14 don't we just take this point by point.

15 Can you explain what you mean by the first bullet,  
16 ignorable versus non-ignorable missing data?

17 A. Sure.

18 So fundamentally what I would say is that, I mean, number  
19 one is the information about the imputation procedures used by  
20 the Census Bureau are not widely available for scrutiny, but  
21 what is important is that they use what is called ignorable  
22 missing data assumption.

23 So ignorable missing data versus non-ignorable is critical  
24 here. Ignorable just means that you have an imputation  
25 procedure in which you're assuming that the people that you

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1 have observed provide sufficient information to fill in the  
2 people that you don't have observed.

3 Non-ignorable means that there is a relationship between  
4 those who have not responded and the information that should be  
5 in there.

6 So the key here is that if those households that are not  
7 responding to the census are larger, then using the information  
8 about those households that did respond is going to  
9 systematically underestimates the size of the imputed  
10 households.

11 So that is the kind of key link here. The assumption is  
12 just one of ignorability versus non-ignorability. This  
13 question of is it, do we have sufficient information in the  
14 data that among those people who did cooperate to fill in about  
15 those who did not.

16 And, you know, if you assume that you do have sufficient  
17 information, then it is ignorable. So conditional on the  
18 observed data, the missing data are missing at random. It is  
19 -- it is not possible to know if the missing data are ignorable  
20 or non-ignorable based on who basically responded. They are  
21 missing.

22 What that relies, what you can do to test for  
23 ignorability is look at external sources of data, which the  
24 Census Bureau has done before. They just don't do it in terms  
25 of their imputation procedures here. I think there is

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1 recognition that ignorable missing imputation procedures, you  
2 know, are not cutting edge, that they are probably not  
3 appropriate, but they are also likely to systematically  
4 undercount the household size of those imputed households.

5 THE COURT: Did I understand your testimony a moment  
6 ago to state that the Census Bureau's imputation procedures are  
7 not publicly available, they are not disclosed?

8 THE WITNESS: Correct.

9 THE COURT: So can you tell me how you know about them  
10 and what you know about them?

11 THE WITNESS: So in the course of the case, I was able  
12 to get access to the imputation.

13 BY MR. FREEDMAN:

14 Q. Let me ask it this way: In conjunction with Dr. Abowd's  
15 report, are you aware of whether the Census Bureau released a  
16 redacted version of one of its memos about its imputation  
17 procedures?

18 A. Yes.

19 Q. Is that memo referred to as J12?

20 A. Yes.

21 Q. Is that your basis for what you can say about the Census  
22 Bureau imputation procedures?

23 A. Yes.

24 Q. OK. Are you aware whether the Census Bureau has other  
25 analyses of imputation that have not been released?

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1 A. Yes.

2 Here is the key point, is that these are about 2010,  
3 so my understanding is that the exact imputation procedures  
4 planned for 2020, I don't know what those are. The key issue  
5 is if they still rely on the hot deck imputation within  
6 geographic partitions that they used in 2010, that the same --  
7 there is still reason to believe that that is going to  
8 underestimate the size of noncitizen households.

9 Q. Why don't we just focus on what we know about 2010 and what  
10 we've been able to glean from that memo.

11 In terms of the ignorable versus non-ignorable, what did  
12 the 2010 imputation process assume?

13 A. So it requires assumption that the people who didn't  
14 respond are like their neighbors. And there is recognition  
15 from census researchers that that assumption is not -- you  
16 know, it is a big assumption.

17 Q. So in 2010, the Census Bureau assumed that the missing data  
18 was ignorable?

19 A. Correct.

20 Q. That it was not missing at random?

21 A. That it was missing at random. Conditional on observed  
22 data.

23 Q. This is why you're the expert and I'm just faking it.

24 So what is wrong with that assumption?

25 A. Again, it just relies on the assumption that those who

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1 are -- that those who are not responding, that they aren't  
2 different from those who do respond conditional on the observed  
3 variables.

4 I think there is compelling evidence that because household  
5 size is related to census participation, because Hispanics and  
6 noncitizens are documented to have larger household sizes on  
7 average, that it is not reasonable to assume that the household  
8 size of those individuals who failed to respond will be the  
9 same as those who do.

10 Q. All right. You testified earlier that what the Census  
11 Bureau was doing in 2010 was not cutting edge and not  
12 appropriate.

13 What did you mean by that?

14 A. Well, I just, you know, Dr. Abowd recognized that there are  
15 non-ignorable imputation procedures. He's done work in this  
16 area. The former academic in his position, Dr. Little, also  
17 has done work in this area. There are procedures available for  
18 being able to correct to do non-ignorable imputation. It is a  
19 different, as he acknowledged, a different set of expertise  
20 than what their post enumeration survey employees are equipped  
21 to do.

22 Q. Why don't we talk about the third bullet, the evidence that  
23 missing data is non-ignorable.

24 Could you just explain what that is and what evidence  
25 you're referring to?

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1 A. Again, it is not possible to know from those who actually  
2 respond, if those who didn't respond are the same or different.  
3 You have to rely on external data. And a common, you know, a  
4 reasonable thing to look at is to look at, for instance,  
5 American community survey data.

6 But there is evidence that household size is related  
7 to census participation. That is the key for saying that the  
8 missing data is non-ignorable because the missingness is  
9 related to the quantum that we're trying to impute.

10 Q. Are you aware of any Census Bureau research on this topic?

11 A. Yes. It is cited on the bottom of the page.

12 Q. OK. So why don't we look at some of this.

13 Can we pull up the Griffin article, PX 400.

14 Dr. Hillygus, do you recognize PX 400?

15 A. Yes.

16 Q. What is it?

17 A. Well, this is looking at some of the issues related to  
18 imputation.

19 Now, the focus here is on characteristic imputation,  
20 which is, again, one of the topics in terms of the  
21 non-ignorability that has been acknowledged within the Census  
22 Bureau.

23 Q. Do you know who Dr. Griffin is?

24 A. A researcher of the Census Bureau, based on ...

25 Q. Did you consider this article in conjunction with

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1 performing your opinions?

2 A. Yes.

3 MR. FREEDMAN: Plaintiffs move Exhibit 400 into  
4 evidence.

5 MR. TOMLINSON: Your Honor, we object on the same 401,  
6 403 two bases.

7 THE COURT: Same ruling. It is admitted.

8 (Plaintiffs' Exhibit 400 received in evidence)

9 BY MR. FREEDMAN:

10 Q. What is the conclusion of this article with regard to  
11 non-ignorable or ignorable or non-ignorable?

12 A. That -- that basically Hispanic origin is not ignorable.

13 Q. Lets look at another one of the studies on imputation.  
14 Can we see 397.

15 Dr. Hillygus, do you recognize Exhibit 397?

16 A. I do.

17 Q. What is it?

18 A. A publication, but I've seen it both as a working paper  
19 within the Census Bureau as well as a publication by two census  
20 researchers looking at the comparison of proxy responses and  
21 administrative records.

22 Q. Do you know who the authors are?

23 A. Census researchers.

24 Q. Did you consider this article in forming the opinions you  
25 reached in this case?

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1 A. Yes.

2 MR. FREEDMAN: Plaintiffs move Exhibit 397 into  
3 evidence.

4 MR. TOMLINSON: Your Honor, we object under 401, 403.

5 THE COURT: I'll admit this also as reliance material  
6 for the moment, just for lack of foundation.

7 (Plaintiffs' Exhibit 397 received in evidence)

8 BY MR. FREEDMAN:

9 Q. What is the conclusion in this material?

10 A. This article shows that, that with the problems basically  
11 in proxy respondents or proxy responses and administrative  
12 records, that both of them have errors that, you know, are  
13 creating inaccuracies in the census.

14 Q. OK. Can we take a look at the slide you prepared PDX 14.

15 Dr. Hillygus, what is this slide?

16 What does it indicate?

17 A. So what this does is it is bringing the evidence to bear on  
18 making that critical link between, you know, why it is that,  
19 you know, what the evidence is that links the differential  
20 self-response of the Census Bureau is predicting to a likely  
21 differential undercount.

22 Q. OK. We've seen or discussed some of this research, others  
23 we haven't.

24 Can you just walk through the evidence that you're citing  
25 and significance for your conclusion, starting just bullet by

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1 bullet. Starting with the first one.

2 A. Yes. So post enumeration surveys and demographic analyses  
3 consistently find that noncitizens and Hispanics are more  
4 likely to be omitted from the census.

5 Q. Is that Dr. Mule's memo that we --

6 A. It is just one example. There is, you know, I have 175  
7 footnotes in my report, and there are multiple research  
8 evidence of this.

9 Q. The next point, aggregate analyses show a correlation  
10 between self-response rates and census omissions, what does  
11 that mean?

12 A. So as I was saying earlier, you know, the direct connection  
13 between the two has not been evaluated by the Census Bureau.  
14 So what we have to do instead is find these links, and we know  
15 that when we look at those geographically, those areas that  
16 are -- have census omission, more census omissions, we also  
17 have lower self-response rates.

18 Q. What do you mean by census omissions?

19 A. So people being missed, so more people being missed.

20 THE COURT: Again, that is based on this sort of post  
21 enumeration --

22 THE WITNESS: Some of this research is post  
23 enumeration surveys, but others -- so we also can -- so it is  
24 also possible to look at demographic analyses.

25 The final bullet point I have here is those are better

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Hillygus - Direct

1 for some groups than others. So, for instance, birth records  
2 are really great. So that means that you can really get a  
3 clean comparison between the census count and the enumeration  
4 of young people, but those administrative records are -- you  
5 know, they get messier as people get older. So all of this is  
6 coming at and pointing to this link, but the Census Bureau has  
7 not explicitly made a comparison.

8 Q. OK. The third bullet, empirical research finds Hispanics  
9 and immigrants more likely to live in crowded, complex  
10 households, what are you referring to there?

11 A. Again, there is external -- so there is research that shows  
12 that Hispanics and immigrants have larger households, more  
13 complex households, that other research, as we already talked  
14 about, shows harder to enumerate are more likely to be omitted  
15 from the census.

16 Q. How does that figure into your overall conclusion?

17 A. Again, these are the same individuals who the Census Bureau  
18 documents and predicts are going to be less likely to respond  
19 to citizenship question, and so it follows that we are also  
20 going to see it with the differential undercount.

21 Q. OK.

22 A. Because of the problems with proxy and imputation.

23 Q. The fourth bullet, research finds a positive association  
24 between household size and risk of omission of individual  
25 household members and ethnographic research, what do you mean

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Hillygus - Direct

1 by that?

2 A. So where we most directly see this link between  
3 self-response and differential undercount, there has been  
4 decades of ethnographic research conducted about different  
5 censuses where they go in and they talk to households and have  
6 found out that Hispanics and noncitizens are being missed by  
7 the census count and that ethnographic research, you know,  
8 offers us really a direct link.

9 Other research has also found empirically that the larger  
10 the household size, the more likely those households -- that  
11 household members are going to be omitted. You know, so what  
12 that results is a systemic underestimation of Hispanics and  
13 noncitizens because they have larger household size on average.

14 Q. OK. Looking at the next bullet, experimental and  
15 ethnographic research have found deliberate concealment of  
16 household members based on concerns about confidentiality,  
17 deportation, and their general trust in government.

18 What do you mean by that?

19 A. So, again, this is research that quite directly finds that  
20 in talking to the field staff, that field staff report that  
21 they are not able to get a full count of a household, and that  
22 will happen where individual members are being excluded because  
23 of fears of disclosure.

24 Q. What is your evidence for that?

25 A. This is the Terry, et al. citation.

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Hillygus - Direct

1 Q. Why don't we pull up the Terry article, 385.

2 Dr. Hillygus, do you recognize 385?

3 A. Yes.

4 Q. What is it?

5 A. It is research by census researchers in which they look at  
6 ethnographic research, and as part of that find these fears of  
7 deportation are related to people being omitted from the  
8 roster.

9 Q. Did you consider this in forming your opinions in this  
10 case?

11 A. Yes.

12 MR. FREEDMAN: Plaintiffs move for admission of 385.

13 MR. TOMLINSON: Your Honor, the same relevance  
14 cumulative hearsay foundation objections that we have made to  
15 similar documents.

16 THE COURT: All right. I think since it identifies  
17 them as U.S. Census Bureau employees, I'll admit this in its  
18 totality.

19 Go ahead.

20 (Plaintiffs' Exhibit 385 received in evidence)

21 BY MR. FREEDMAN:

22 Q. Is this an example of what you're referring to in your  
23 bullet as the ethnographic research?

24 A. Yes.

25 Q. And what is ethnographic research?

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Hillygus - Direct

1 A. So it is quantitative research where people are doing  
2 in-depth discussions and observations, and ethnographic  
3 research is sometimes able to get at things that doing a survey  
4 just is harder to do.

5 Q. Why don't we go back to PDX 14.

6 The last bullet is a mouthful, but could you explain what  
7 you mean by demographic analysis of birth records found a large  
8 net undercount of young children (especially Hispanic young  
9 children) in the 2010 decennial count. This undercount was  
10 estimated to be larger than that identified in the 2010 post  
11 enumeration survey.

12 We'll start with that part. What do you mean by that?

13 A. So this demographic analysis refers to an alternative way  
14 of evaluating the accuracy of the census count. So you rely on  
15 essentially administrative records to compare what was found by  
16 the census count to what is documented in this case by, say,  
17 birth records.

18 The demographic analyses, because birth records are such a  
19 strong comparison point, was used to look at the undercount of  
20 young children and was found that Hispanic young children, when  
21 you look at demographic analyses compared to census count, that  
22 the census count had systematically underestimated the number  
23 of Hispanic young children. So this is one of those direct  
24 links to the differential undercount.

25 Q. Who is the O'Hare referred to there?

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1 A. This is census research. There were several different  
2 reports that were issued:

3 Just to finish this point, again, linking it to the NRFU  
4 operations, this undercount was attributed in part to a  
5 knowledgeable or unwilling proxy respondents in this report.

6 Q. OK. Just for clarification, do you know whether Dr. O'Hare  
7 is employed by the Census Bureau or if he is an independent  
8 researcher?

9 A. I believe he is a census researchers.

10 Q. We may be hearing from him later in this trial.

11 A. You probably know better.

12 Q. We can ask him directly.

13 With regard to the Census Bureau analysis at the end, I  
14 want to show you Plaintiffs' Exhibit 378.

15 Do you recognize this?

16 A. I do.

17 Q. What is it?

18 A. One of the reports that was conducted by the Census Bureau  
19 about the undercount of young children.

20 Q. Did you rely on this in forming your opinions in this case?

21 A. I did.

22 MR. FREEDMAN: Plaintiffs move admission of Exhibit  
23 378.

24 THE COURT: Any objection?

25 MR. TOMLINSON: Your Honor, we object to this under

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Hillygus - Direct

1 relevance and its cumulative.

2 THE COURT: Overruled.

3 Admitted.

4 (Plaintiffs' Exhibit 378 received in evidence)

5 BY MR. FREEDMAN:

6 Q. What is the import of this study?

7 A. It is, even though it is only this subset, young children,  
8 it offers very clear documentation about the undercount of  
9 Hispanics and provides links to the undercount as associated  
10 with the NRFU operations.

11 Again, the Census Bureau agrees that there is going to be a  
12 differential self-response of noncitizen households, and this  
13 is part of the evidence that leads to my conclusion that they  
14 are not going to be able to fully address that differential  
15 self-response through the NRFU operations.

16 Q. This analysis looked at NRFU operations in 2010?

17 A. Um-hmm.

18 Q. I'm sorry?

19 A. Yes.

20 Q. Um-hmm doesn't ...

21 Just taking it a step back, can you summarize your views,  
22 on the efficacy of your views on the efficacy of NRFU  
23 operations with regard to addressing the decline in  
24 self-response and Hispanic and noncitizen populations?

25 A. Yes. There is, I think, considerable evidence to suggest

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1 that the NRFU operations will result in a systemic  
2 underestimation of Hispanic and noncitizen households. I would  
3 add that it is also possible, there are still some uncertainty  
4 about the use of administrative records, at least what I'm  
5 familiar with, but administrative records are really available  
6 for some portions of the population more than others.

7 So what -- there is a potential to even exacerbate the  
8 differential undercount if what happens is the administrative  
9 records make it easier to count and overcount some portions of  
10 the population while undercounting the Hispanic and noncitizen  
11 households.

12 THE COURT: So maybe that is what that last comment  
13 was getting at.

14 But just so I understand, is it your testimony that  
15 the NRFU operations will not be sufficient to eliminate the  
16 differential in self-response rates, or that they may even  
17 exacerbate those and make the undercount greater at the end of  
18 the day than it would be solely based on the self-response  
19 rates?

20 THE WITNESS: So I feel very confident in saying that  
21 the evidence suggests that it will not reduce -- that it will  
22 not fully address the undercount. It may also exacerbate by  
23 increasing the overcount.

24 BY MR. FREEDMAN:

25 Q. Lets just unpack that last point.

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1 Just we've covered a lot of this in going through the  
2 detail, but what features of the NRFU operations do you think  
3 have the potential to exacerbate the undercount?

4 A. Well, so the administrative records, because the  
5 administrative records are being used to enumerate households,  
6 and we know that those households, that those records are more  
7 available for some portions of the population than others, then  
8 the use of administrative records could do that.

9 The other people -- and maybe this gets off on a tangent  
10 that you guys can shut me down on -- is that there is also the  
11 potential for individuals to respond who are not in the master  
12 address file. So the master address file is this collection of  
13 addresses where they are going to put all the efforts in  
14 getting nonresponse followup.

15 But if you're in a new household or you were missed from  
16 the master address file, then there is an option for you to go  
17 onto the Internet and/or make a phone call and make sure that  
18 you're counted. That requires self-motivation for you to make  
19 sure that you're counted, and it seems unlikely that that  
20 option will be used by noncitizens or those concerned about the  
21 confidentiality.

22 So to the extent that that is going to be used by some  
23 portions of the population is going to be more likely to add --  
24 it could potentially, again, exacerbate.

25 I want to be clear that I think the evidence is clearest

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Hillygus - Direct

1 about the NRFU failing to fully address the undercount, but I  
2 would have loved to have seen more analysis coming out of the  
3 Census Bureau about the potential for exacerbating the  
4 overcount.

5 MR. FREEDMAN: OK. We are going to move to another  
6 topic.

7 It is a shorter one than the two that we have covered.  
8 I don't know what the court had a break time in mind.

9 THE COURT: One p.m. You have another half an hour.

10 MR. FREEDMAN: Perfect.

11 BY MR. FREEDMAN:

12 Q. Could we pull up PDX 1. We are going to jump ahead and  
13 talk about conclusion four.

14 Dr. Hillygus, could you explain your fourth conclusion?

15 A. Sure.

16 So everything we've been talking about so far with  
17 respect to the differential undercount and the undercount is  
18 really about the accuracy and completeness of the survey.  
19 Accuracy and completeness are portions of objective, one of the  
20 dimensions of the Census Bureau quality standards.

21 This fourth point is saying that, in addition, that I  
22 expect that a citizenship question will also undermine the  
23 utility and integrity of the data as well, these other  
24 dimensions of census quality.

25 THE COURT: Is there a distinction between accuracy

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1 and completeness?

2 THE WITNESS: Yes.

3 So as with that first -- we can have accurate across  
4 the population as a whole, which is what happened in 2010.  
5 Completeness means that we are getting accuracy in the sub  
6 groups as well.

7 It is important that -- and the standards of the  
8 Census Bureau is that it is not just about overall accuracy, it  
9 is also about is it complete, is it getting those sub groups  
10 accurate, is it fair.

11 BY MR. FREEDMAN:

12 Q. You have a slide that sort of unpacks these concepts in  
13 more detail. Why don't we put that up.

14 PDX 18.

15 Could you tell us what PDX 18 is?

16 A. These are the Census Bureau statistical quality guidelines,  
17 and these are the requirement that the information collected  
18 and disseminated by the Census Bureau are designed to ensure  
19 and maximize the utility, objective and integrity of the data.  
20 I can ...

21 Q. By objective, you have referred to that in the last slide  
22 and in other terms.

23 Could you explain the connection between objective  
24 and --

25 A. Sure.

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1           The explicit language used by the Census Bureau is the  
2 information is accurate, reliable, and unbiased, but they  
3 commonly use the phrase complete, and that is like the  
4 unbiased.

5           So that means that it is not accurate only for the  
6 population as a whole, but is also unbiased for sub groups.

7 Q. To try to connect this up with concepts we have been  
8 discussing for the last hour or so.

9           Could you just explain the relationship between the  
10 NRFU operations we were just discussing and objective?

11 A. Sure.

12           So, I mean, everything that we have been talking about  
13 so far in terms of the differential undercount and the  
14 undercount and the NRFU operations are my conclusion is that  
15 the addition to the citizenship question is going to have an  
16 impact on both the accuracy and the completeness or the unbias  
17 as necessary.

18           The Census Bureau completely agrees that the addition  
19 of the citizenship question is going to reduce the accuracy of  
20 the data, that is there is recognition by many census  
21 researchers that we are going to see an increase in NRFU  
22 operations, increasing in NRFU workload and increase in proxy  
23 responses and increase in imputation, and from Census Bureau  
24 research, we know that that reduces the accuracy of the data.

25 Q. Just to walk it through each component of the NRFU that you

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1 just walked through the chain very nicely, but what does the  
2 impact of having more NRFU, more cases going to NRFU have on  
3 data?

4 A. So you add a citizenship question. You have fewer people  
5 who are self-responding. You have fewer people who are  
6 self-responding and you have an increase in NRFU. You have an  
7 increase in the number of people who are enumerated through  
8 proxy respondents, which reduces accuracy. You have an  
9 increase in the number of imputations, which reduces accuracy.

10 Q. You said the Census Bureau acknowledges that.

11 Do you have anything in particular in mind?

12 A. So, I mean, there is a number of different --

13 Q. Why don't we look at Dr. Brown's memo again.

14 Could we see 162 at page 41.

15 The language talking about proxies. I think we may have  
16 actually --

17 THE COURT: I think we --

18 MR. FREEDMAN: I think we talked about this too.

19 Q. Relative to data quality, what is the point here?

20 A. I mean, again, it is just one of many Census Bureau, you  
21 know, research products that recognized that proxy respondents  
22 give lower quality, less accurate data.

23 Q. Lets go back to PDX 18. I want to talk about some of the  
24 other concepts.

25 So just starting with this slide, what are the Census

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Hillygus - Direct

1 Bureau statistical quality guidelines?

2 A. These are the guidelines that the Census Bureau is  
3 required to follow. I believe the OMB also has them. They are  
4 designed -- so the census data collections and products are  
5 designed to follow these quality standards.

6 Q. We have talked about objective. I want to talk about  
7 integrity next, and we'll circle back to utility.

8 What does integrity mean in this sense?

9 A. So this is just the security of the information. So is it  
10 protected from being accessed or revised in some way. On the  
11 one hand, right, you know, the Census Bureau has been saying  
12 for a very long time, like, trust us because of Title 13. And  
13 so Title 13 does govern, you know, this integrity. However, I  
14 would argue that that citizenship question has an impact on the  
15 integrity of the data.

16 Q. How so?

17 A. So data breaches happen. It just happened. Ask Canada.  
18 You have policies that can change and you can have mistakes  
19 happen where data are accidentally released.

20 The harm, the disclosure risk is related not only to Title  
21 13, but also to the harm that comes to someone from that  
22 information being disclosed, and there is no doubt that you  
23 have increased, right, the harm associated with accidental or  
24 deliberate disclosure with a citizenship question.

25 You know, in 2010, if somebody accidentally got their hands

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Hillygus - Direct

1 on the individual level census data, they would know your age  
2 and your race and your gender. If there is disclosure  
3 associated with 2020, they now have what the Census Bureau  
4 designates as sensitive information, and the risk of harm is  
5 substantially increased.

6 THE COURT: Is it your testimony not only that it  
7 increases the risk of harm or the consequences of disclosure,  
8 but it increases the probability of disclosure?

9 THE WITNESS: Both are true, yes. And I addressed  
10 this in my report. The one I just talked about is the harm  
11 that comes with the disclosure. The second piece, does it  
12 increase the probability of disclosure. We now have more  
13 information about individual households.

14 Now, the Census Bureau has been working on disclosure  
15 risk avoidance procedures. There was recognition that the  
16 disclosure risk avoidance procedures that had been in place  
17 needed to be updated to address risks that we now face in, you  
18 know, a more connected with -- the key risk that the Census  
19 Bureau recognized is that you could do database reconstruction.  
20 So even using aggregate numbers that you could re-identify  
21 someone.

22 So this is what Dr. Abowd has been working on at the  
23 Census Bureau is to improve the disclosure avoidance of the  
24 data. It is uncertain how that changes with this additional  
25 information. The calculations were based on no citizenship

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Hillygus - Direct

1 questions.

2 So my understanding is that the 2018 test was supposed  
3 to be when the new disclosure avoidance procedures were put in  
4 place, and it didn't include citizenship.

5 THE COURT: Are there any reasons that one would think  
6 that the addition of the citizenship question would marginally  
7 affect the disclosure risks?

8 THE WITNESS: Yes, because you now have a new piece of  
9 information for that database reconstruction. To the extent  
10 that you have to correct for it, what it ends up doing is  
11 impacting the utility of the data.

12 So if the Census Bureau is able to make it so that  
13 adding the citizenship question does not increase that risk,  
14 they have to do that through what is called noise infusion. So  
15 they would have to make the data less useful.

16 THE COURT: Let me see if I understand this.

17 So basically the question is by providing more data  
18 concerning individual respondents, by disclosing that data, it  
19 may enable people in the world to essentially reverse engineer  
20 or reconstruct and, therefore, figure out who the data  
21 corresponds to? Is that essentially --

22 THE WITNESS: The Census Bureau is required by law to  
23 not allow that to happen. What they have to do in order to not  
24 increase that risk is make the data less useful.

25 THE COURT: Which relates to how it impacts on the

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Hillygus - Direct

1 utility?

2 THE WITNESS: Utility.

3 THE COURT: Lets let Mr. Freedman do something here.

4 BY MR. FREEDMAN:

5 Q. I might have one question that might help.

6 Lets talk about specifically the integrity specifically in  
7 the question of the intended use here, releasing census block  
8 level citizenship data.

9 What are the risks associated with that?

10 A. I mean, census block is small. Census block is really  
11 small. So as a political scientist, one of the things I think  
12 about is, could you take a census block, look at voter files,  
13 and between the two, reconstruct who are the people that are  
14 being the noncitizens versus citizens.

15 So imagine, take a census block, it is one apartment  
16 building in New York City, and everyone is registered to vote  
17 except for one household, right. Those voter registration  
18 files, at least in North Carolina, are public record. You  
19 could identify who is the noncitizen from that data matching.

20 Of course, the Census Bureau can't allow that to be  
21 released, because that would violate integrity, violate  
22 Title 13. So you have to infuse noise. You have to make it  
23 possible so that you can release the data.

24 Q. So in the absence of disclosure avoidance procedures, what  
25 is the risk that an individual's citizenship could be unmasked

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Hillygus - Direct

1 through the release of block level data?

2 A. So the hypothetical, if the Census Bureau decided not to do  
3 disclosure avoidance procedures, there would be, yes, an  
4 increased risk of re-identification from an addition of a  
5 citizenship question.

6 But the Census Bureau can't, right. They have -- I mean,  
7 they already were doing noise infusion to protect the data.

8 Q. It is always dangerous when your own expert fights your own  
9 hypothetical.

10 Just explain the relationship between integrity and the  
11 data avoidance procedures. Like why are there data avoidance  
12 procedures, just so that is clear for the record?

13 A. Because of the risk of re-identification that comes from  
14 data collections.

15 So, you know, the Census Bureau had already had disclosure  
16 avoidance procedures in place called. They did swapping. They  
17 made it harder for there to be re-identification.

18 Dr. Abowd is the foremost expert in this, he can talk  
19 more about it, but the research has been working towards  
20 updating a more -- a better disclosure avoidance system, but  
21 there is recognition by the experts in this field that there is  
22 this inherit tension between the integrity and utility of data.

23 And that is really, really the case here, because what the  
24 Census Bureau is going to have to do, the noise they are going  
25 to have to add to the data to be able to make it so that the

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1 block level citizenship data can be provided, it really affects  
2 the utility of that data.

3 Q. All right. So lets just take a step back and make sure we  
4 understand.

5 What do you mean by utility?

6 A. So fitness for use is another way that it is sometimes  
7 described. It is just how useful the information is for the  
8 intended users.

9 Q. What is the stated reason for collecting the citizenship  
10 question data?

11 A. To protect the voting rights of minority citizens.

12 Q. All right. Through what means?

13 A. So the DOJ has requested block-by-block hard count of race  
14 and citizenship status.

15 Q. What is the tension between integrity and utility as  
16 relevant to the citizenship question?

17 A. I can't imagine that you can provide the hard count. You  
18 have to infuse noise. And the question is, do you have to put  
19 in so much noise that actually the value of adding it to the  
20 decennial census is lower than what you get from other sources.

21 THE COURT: Could you just explain what you mean by  
22 infusing noise?

23 I mean, I get the general, you know, meaning of it,  
24 but specifically what it entails?

25 THE WITNESS: So in previous censuses, what that meant

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Hillygus - Direct

1 is you did household swaps so that, you know, you make it  
2 harder to re-identify individual households.

3 But it is essentially adding -- think about it as  
4 adding a margin of error, right, and adding more uncertainty  
5 into an estimate.

6 THE COURT: You've used a couple terms or you used the  
7 term census block a few times.

8 Can you explain what that is and other units of  
9 measurement?

10 I think census tract may be another one.

11 THE WITNESS: Yeah.

12 Census block is the one that I believe has been the  
13 request made and is the smallest unit by which demographic  
14 characteristics are calculated.

15 THE COURT: What is it?

16 What is a census block?

17 THE WITNESS: So I think it can be like three to 6,000  
18 people even, and I should probably get one of those census  
19 people here to verify that.

20 MR. FREEDMAN: We'll have additional expert testimony  
21 on this. I think that it can be considerably smaller.

22 THE COURT: All right. We'll await the testimony then  
23 from an actual witness.

24 Go ahead.

25 BY MR. FREEDMAN:

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Hillygus - Direct

1 Q. Just taking a step back, you're familiar with Secretary  
2 Ross' decisional memo in this matter, right?

3 A. Yes.

4 Q. Does Secretary Ross talk about concepts of disclosure  
5 avoidance in his memo?

6 A. No.

7 Q. Does he talk about noise infusion in his memo?

8 A. No.

9 Q. Does Secretary Ross talk about data integrity in his memo?

10 A. No.

11 Q. Do you remember what Secretary Ross says about fitness for  
12 use in his memo?

13 A. No.

14 Q. Why don't we pull that up.

15 Lets pull up PX 26.

16 Can we look at the last page.

17 So Secretary Ross concludes, I have determined that  
18 reinstatement of a citizenship question on the 2020 questions  
19 essential census is necessary to provide complete and accurate  
20 data in response to the DOJ request.

21 Do you have a view about his conclusion?

22 A. It is factually inaccurate.

23 Q. What aspects of it are factually inaccurate?

24 MR. TOMLINSON: Your Honor, we would object to the  
25 extent she is going into the usefulness of this data

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Hillygus - Direct

1 specifically for the purpose of VRA enforcement. That was not  
2 something that was included in her expert report. She  
3 certainly has not been designated as an expert for that  
4 purpose.

5 THE COURT: All right. I am assuming that her  
6 testimony will be with respect to the quality of the data  
7 rather than its use for Voting Rights Act litigation.

8 MR. FREEDMAN: That is correct, your Honor.

9 THE COURT: Overruled to that extent.

10 I'll consider it only to that extent.

11 Go ahead.

12 BY MR. FREEDMAN:

13 Q. The question is whether, what aspects of this are --

14 A. So I think that based on the Census Bureau's own research,  
15 and all the evidence that I have reviewed, that, number one, it  
16 is not a reinstatement. It is a different question. A  
17 citizenship question on the 2020 census will reduce the  
18 completeness and accuracy of the data. And, in fact, because  
19 of potential impacts on integrity, that it very well could make  
20 the census data less useful in response to the DOJ request.

21 Q. Thank you.

22 MR. FREEDMAN: Your Honor, I have one more segment  
23 that I expect is going to go about 45 minutes. I can start it  
24 now or we can --

25 THE COURT: You'll do ten minutes of it now and then

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Hillygus - Direct

1 we'll take a break.

2 MR. FREEDMAN: Thank you, your Honor.

3 Q. Lets go back to the PDX 1 and the third conclusion.

4 Dr. Hillygus, could you explain your third conclusion in  
5 your own words?

6 A. Yes.

7 It is my conclusion that a citizenship question on the  
8 census without explicit pretesting violates the Census Bureau  
9 guidelines and survey methodology practices.

10 Q. Lets start with some basics.

11 What do you mean by Census Bureau guidelines?

12 A. So we have talked about those quality standards. Remember  
13 what it says is that data collections need to be designed to  
14 ensure and maximize data quality along those dimensions.

15 Part of that design for maximizing data quality involves  
16 pretesting. There is also, you know, specific guidelines about  
17 pretesting.

18 Q. What is the relationship between what you write here,  
19 Census Bureau guidelines and survey methodology standard  
20 practices?

21 A. So I think, as I have already alluded to, there are  
22 terrific survey methodologists at the Census Bureau and they  
23 are both, you know, following and contributing to academic  
24 knowledge about how best to do data collections to produce the  
25 highest quality data.

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Hillygus - Direct

1 Q. Why is it important to follow the standard practices?

2 A. I mean, that is how you get -- that is the only way that  
3 you can meet those quality standards is by following those  
4 guidelines.

5 Q. You mentioned pretesting earlier in conjunction with the  
6 Census Bureau guidelines.

7 Why is pretesting important?

8 A. As the Census Bureau recognizes by their own internal  
9 standards, but also all of the academic research also  
10 recognizes that pretesting is critical for figuring out  
11 potential problems that you might encounter with respect to  
12 unit nonresponse, item nonresponse, response accuracy.

13 Q. Does the sensitivity of a question bear on whether it  
14 should be pretested?

15 A. There is considerable academic research -- and I believe  
16 some census researchers as well have emphasized that because of  
17 the potential impact of sensitive questions on data quality, it  
18 is especially important to pretest so that you can design the  
19 survey in a way that minimizes the impact on data quality of  
20 including sensitive items.

21 Q. OK. Does pretesting just involve a question, or does it  
22 involve a survey instrument?

23 A. So there's -- so the Census Bureau guidelines are quite  
24 detailed about the different types of pretesting that is  
25 recommended to do, but you both can pretest an individual item,

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Hillygus - Direct

1 you can also pre -- and should pretest the entire questionnaire  
2 and that both of those are part of those guidelines.

3 Q. Why is it important to pretest the entire questionnaire?

4 A. As I've already mentioned earlier today, what matters is  
5 not only an individual question wording, but where it is placed  
6 within a survey.

7 And so, you know, question order is just one of the  
8 things that can matter in terms of testing the entire  
9 questionnaire.

10 Q. I want to introduce Plaintiffs' Exhibit 260.

11 Do you recognize Plaintiffs' Exhibit 260?

12 A. Yes. My, you know, my quick little summary and bullet  
13 points were pulled from this about the quality of standards.

14 MR. FREEDMAN: This has been admitted into evidence, I  
15 believe.

16 MR. TOMLINSON: That's right. No objection.

17 THE COURT: All right. This is on one of the lists  
18 from this morning, I take it?

19 Yes.

20 MR. FREEDMAN: I don't believe there was an objection  
21 to this one.

22 THE COURT: Seems to be on attachment one.

23 Go ahead.

24 BY MR. FREEDMAN:

25 Q. What do the sensitive quality of standards provide as

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Hillygus - Direct

1 relevant to the issues we have been talking about today?

2 A. They institutionalize what is exactly needed in terms of  
3 the goal of a data collection.

4 Q. Why don't we turn to the eighth page of this sub  
5 requirement A2-3.3.

6 Dr. Hillygus, could you summarize what this requirement is  
7 as relevant to the issues we have been talking about?

8 A. Sure. Let me read it first.

9 Data collection instruments and supporting materials  
10 must be pretested with respondents to identify problems (e.g.  
11 problems related to content, order context effects, skip  
12 instructions, formatting, navigation, and edits) and then  
13 refined prior to implementation, based on the pretesting  
14 results.

15 Q. What is the importance of this requirement?

16 A. This is -- this is how you are able to ensure that the data  
17 collected will meet the quality standards.

18 Q. Was the pretesting that is described here used in the  
19 process to add this citizenship question?

20 A. No.

21 Q. Do you have a view on the decision not to pretest the  
22 question?

23 A. I think that it contravenes surveyed methodology research  
24 and the Census Bureau's own standards and puts at risk the  
25 quality of the 2020 census.

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Hillygus - Direct

1 Q. OK. Before the decision was made to add the citizenship  
2 question, are you familiar with the pretesting of the 2020  
3 census survey instrument that occurred?

4 A. There was a decade of various pretesting conducted.

5 Q. When did that start?

6 A. I mean, it actually, I think, starts even before the  
7 previous census, but really for a decade the Census Bureau has  
8 been working on conducting as a content tests, there are field  
9 tests, there are, I think, somewhere in my report I give the  
10 full list of different tests that were conducted. There is  
11 consultation with stakeholders, there is consultation with  
12 congress, there is engagement with the advisory committees  
13 about the pretesting, and the results of the pretests. The  
14 pretests are designed to focus specifically on content,  
15 focus -- the focus on all aspects of the decennial with, at the  
16 end, the end-to-end test.

17 So the idea is, you do various pretesting and various  
18 aspects, then you do a final dress rehearsal in the end-to-end  
19 test. The end-to-end test does not include a citizenship  
20 question.

21 THE COURT: Mr. Freedman, lets stop there for lunch,  
22 our lunch break.

23 Counsel anything that we need to discuss before we  
24 take our break?

25 MR. TOMLINSON: I don't.

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Hillygus - Direct

1 MR. FREEDMAN: I don't believe so for plaintiffs.

2 MR. TOMLINSON: Not from the government, your Honor.

3 THE COURT: It is 12:59. We will be ready to go at  
4 two sharp. The witness should be on the stand at that time,  
5 and I'll see you then. Enjoy your break.

6 (Luncheon recess)

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Hillygus - Direct

## AFTERNOON SESSION

2:00 p.m.

THE COURT: You may be seated.

We are back.

Dr. Hillygus, you remain under oath.

One housekeeping matter before we get going. I gather we've gotten a couple requests from the press for the videotaped depositions that will be part of the record in the Gore deposition and the Comstock deposition, I think.

My view is that once you guys determine that the videotapes are actually edited properly and confined to the portions that have been designated or counterdesignated that they should be released because they are judicial documents. Does anyone disagree with that? I think the point is that I'll wait until I get confirmation of that, but once you've determined, I think that they should be available to the press and the public.

Any disagreement?

MS. BAILEY: No, your Honor.

MR. FREEDMAN: No, your Honor Choi.

MR. HO: Perhaps, your Honor, what would make the most sense is we'll file the transcripts on the docket tonight, and then once there's confirmation that the video excerpts are correct, we'll file a notice with the Court that provides those links.

Ib5Wnys4

Hillygus - Direct

1 THE COURT: Sure, but I remind you there's not yet  
2 agreement on whether the transcripts should include the  
3 portions that haven't been designated.

4 MR. HO: Understood.

5 THE COURT: I'm saying barring agreement that it's OK  
6 to include them, my ruling is that the nondesignated portions  
7 should just be redacted because they're not actually part of  
8 the record. All right?

9 MR. HO: Understood.

10 THE COURT: That's the default.

11 All right. With that, you may proceed, Mr. Freedman.

12 MR. FREEDMAN: Thank you, your Honor.

13 I want to just clean up one thing from this morning.

14 Q. Dr. Hillygus, earlier we were looking at PDX 8.

15 MR. FREEDMAN: John, can you pull that.

16 Oh, I have the wrong one. Let's start PDX 9. Yes.

17 Q. Dr. Hillygus, where did you get the image in this slide  
18 from?

19 A. I believe from the Census Bureau website. It's a slide  
20 from the national advisory committee presentation.

21 THE COURT: Just a reminder to all the speakers to  
22 make sure you speak loudly, clearly and directly into the  
23 microphones, please.

24 MR. FREEDMAN: Thank you, your Honor.

25 THE COURT: All right.

Ib5Wnys4

Hillygus - Direct

1 MR. FREEDMAN: Can we see PDX 662.

2 Q. Dr. Hillygus, do you recognize this document?

3 A. Yes.

4 Q. What is it?

5 A. The CBAMS of key findings.

6 MR. FREEDMAN: I understood we have an agreement with  
7 defendants that this can come in, so plaintiffs move this into  
8 evidence.

9 MR. TOMLINSON: That's correct, your Honor.

10 THE COURT: All right. It is admitted.

11 (Plaintiffs' Exhibit 662 received in evidence)

12 MR. FREEDMAN: Thank you.

13 Can we see PX 364.

14 Q. Dr. Hillygus, do you recognize what this document is?

15 A. Yes, Census Bureau standard regarding pretesting  
16 questionnaires and materials for surveys and censuses from  
17 2003.

18 Q. How does this relate to the quality standards that we were  
19 looking at earlier?

20 A. So, this offers some detail regarding the, I think, intent  
21 of the pretesting standards. There was some discussion about  
22 whether those standards allowed for an exception or not, and  
23 these -- these standards have pretty explicit -- not pretty,  
24 very explicit language that I think explains the importance of  
25 pretesting in this circumstance.

Ib5Wnys4

Hillygus - Direct

1 Q. Did you consider this document in forming your opinions in  
2 this case?

3 A. Yes.

4 MR. FREEDMAN: Plaintiffs move 364 into evidence.

5 THE COURT: Any objection?

6 MR. TOMLINSON: Yes, your Honor. We object under 401,  
7 403 and 901.

8 THE COURT: 901?

9 MR. TOMLINSON: On the ground that she's not the  
10 correct witness to authenticate this and bring it into  
11 evidence.

12 THE COURT: Isn't it self-authenticating?

13 MR. TOMLINSON: Your Honor, it certainly was produced  
14 by defendants in this case, but in terms of the actual  
15 authenticity and origin of it, we think it should be somebody  
16 from the Census Bureau.

17 THE COURT: All right. That's overruled. It's  
18 admitted.

19 (Plaintiffs' Exhibit 364 received in evidence)

20 BY MR. FREEDMAN:

21 Q. Could you explain what portions of this you think are  
22 salient?

23 A. It talks about the importance of pretesting to evaluate the  
24 impact on response rates. I believe we have a highlighted  
25 line.

Ib5Wnys4

Hillygus - Direct

1 If not, then I can summarize.

2 Q. Yeah.

3 A. The key point is, is that in evaluate -- in doing a  
4 pretest, what you're looking for is, is there going to be an  
5 impact on other -- the addition of the question, is it going to  
6 have an impact of how people respond to other questions on the  
7 survey or on responses to the survey, so that unit nonresponse  
8 that is so critical here. And, and so what we're talking about  
9 is the addition of the citizenship question to the decennial,  
10 so it very much applies there.

11 Q. Thank you.

12 Before we went to lunch, we were talking about the testing  
13 that was done for the 2020 decennial prior to the decision to  
14 add the question. Do you recall that?

15 A. Correct.

16 Q. During that testimony, you were describing the testing, and  
17 you mentioned something about the end-to-end test. Could you  
18 explain to the Court what the end-to-end test is?

19 A. Again, end-to-end test is the full dress rehearsal. It is  
20 supposed to be everything that is going on with, with the  
21 census as a way to make sure that all the operations are in  
22 place, all of the -- everything is being tested out in the  
23 field.

24 And so, in my discussion of pretesting, in my expert  
25 report, I distinguish between pretesting that is field-testing

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Hillygus - Direct

1 versus pretesting that is prior to field-testing and the end to  
2 end is the final dress rehearsal with field-testing.

3 Q. And has that occurred for the 2020 census?

4 A. It has. The 2018 end-to-end test has occurred.

5 Q. Do you remember what locations were used for that test?

6 A. Rhode Island. There were other locations that were  
7 cancelled.

8 Q. And did the 2018 end-to-end test include testing of the  
9 citizenship question?

10 A. It did not.

11 Q. And beyond the end-to-end test, has there been any  
12 pretesting of the citizenship question in the 2020 census?

13 A. My understanding is no.

14 Q. Putting aside the citizenship question, prior to the  
15 decision to add a citizenship question, do you know whether  
16 there was testing of particular questions for the 2020 census?

17 A. Oh, sure. There was -- well, No. 1, there was lots of  
18 testing, pretesting of the decennial, and there were two  
19 specific questions that were being tested over the course of  
20 the decade for potential modification.

21 One was a combined race and ethnicity question. I believe  
22 it was actually proposed and kind of started planning before  
23 even the 2010, but over the course of the decade, there has  
24 been multiple content tests, engagement with stakeholders to  
25 evaluate what are the, you know, attitudes about changing this;

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Hillygus - Direct

1 what were the implications of changing it; what would be the  
2 impact on all the aspects of data quality that the Census  
3 Bureau cares about? Ultimately, decision was made not to make  
4 the change, but that process is strikingly different from what  
5 has occurred here.

6 The other question that was modified was relationship to  
7 head of household. Again, there was extensive pretesting,  
8 pretesting both in terms of, say, cognitive interviews as well  
9 as within the field, and ultimately, that revision was made,  
10 again, another example where there was a change in the  
11 decennial, but an entirely different process was used, one that  
12 engaged with stakeholders about the change and explicitly did  
13 pretesting.

14 Q. In your opinion, has the citizenship question been  
15 adequately tested to place on the 2020 census?

16 A. No.

17 Q. Why do you say that?

18 A. There has been no pretesting of the revised questionnaire.  
19 The question is different from what has appeared in other  
20 census products.

21 I believe I have a slide, if now is the right time to use  
22 it.

23 Q. We'll get to that in a second.

24 Does the sensitivity of the citizenship question speak to  
25 the adequacy of the testing that's been conducted?

Ib5Wnys4

Hillygus - Direct

1 A. Sorry. Can you say that one more time?

2 Q. Does the sensitivity of the citizenship question relate to  
3 your view about whether testing's been adequate?

4 A. Well, we know from survey methodology work that it's  
5 especially important to pretest sensitive items, but any  
6 revisions -- the standards say any revisions necessitate  
7 pretesting. So yes, the fact that it's a sensitive item makes  
8 it all the more important, and it makes it all the more  
9 important that everything -- all of the evidence that both the  
10 Census Bureau has looked at and others have looked at outside  
11 in communicating with the Census Bureau about the addition of  
12 the citizenship question have pointed to a likely negative  
13 impact. Given that, there is especially -- it's especially  
14 surprising and shocking that there is not testing planned.

15 Q. Why isn't the testing from the citizenship question that  
16 was performed for the ACS sufficient?

17 A. So, and I want to distinguish between, there is a  
18 citizenship question that has been decided to be added to the  
19 decennial short form. It is not exactly the same as what is on  
20 the American Community Survey.

21 MR. FREEDMAN: Why don't we look at PDX 17.

22 Q. Dr. Hillygus, what is PDX 17?

23 A. It just gives my explanation for why it was inappropriate  
24 to rely on testing of a -- of the citizenship question that's  
25 on the ACS as the basis for making judgments about the impact

Ib5Wnys4

Hillygus - Direct

1 on the decennial short form.

2 Q. Thank you.

3 And I just want to walk through each of these five to  
4 understand what you mean. The first bullet is "prominence of  
5 question." What do you mean by that?

6 A. Yeah, and we've already talked about this, but there's a  
7 fundamental difference between the prominence of the question  
8 on the short form compared to how it appears on the ACS. I  
9 believe we showed earlier it's, you know, on page 8, whereas on  
10 the short form it is one of now 11 questions. And it, as I  
11 said before, survey methodology research would suggest that,  
12 again, that difference in prominence would, you know,  
13 necessitate testing to make sure that respondents were  
14 interpreting it and the intent of the question and the  
15 sensitivity of question the same in this different context.

16 Q. Looking at your next bullet, "branched question," what do  
17 you mean by that?

18 A. So, the question, as adopted for the decennial short form,  
19 is different from what is on the ACS, where on the ACS it is a  
20 follow-up question to place of birth.

21 MR. FREEDMAN: Why don't we look at the ACS form  
22 again. Could we pull up 255 and if we could jump to page 8  
23 where the question is.

24 Q. Could you just explain, using 255, what you mean by a  
25 branched question?

Ib5Wnys4

Hillygus - Direct

1 A. Sure. The first question that is asked on the ACS, and  
2 also similar branching was used previously when citizenship was  
3 on the decennial, asks where was this person born. This is the  
4 nativity question or place of birth question. For those people  
5 who select in the United States, they are not asked, Is this  
6 person a citizen of the United States in the online ACS. It is  
7 branched. There's branching -- there's logic that leads to  
8 someone seeing, "Is this person a citizen of the United  
9 States?" That, that first question is not going to be included  
10 on the 2020 short form.

11 Q. And why is that significant for your views?

12 A. Again, survey methodology research emphasizes the  
13 importance of context in which a question is asked in a  
14 questionnaire, so this is a fundamentally different context if  
15 you have that first item to start versus without it. Context,  
16 the research suggests that context is especially important when  
17 you're dealing with a sensitive question.

18 MR. FREEDMAN: Let's go back to PDX 17.

19 Q. Could you talk about the next bullet, "order of questions"?

20 A. Sure. The citizenship question in the ACS is in the  
21 context, again, of a number of different items. And in fact,  
22 some of those items are ones that people have complained about  
23 violating their privacy before, and it is the case that --  
24 again, that the order of the questions, the context in which a  
25 question is asked, matters.

Ib5Wnys4

Hillygus - Direct

1 In the short form, the order of the question are a set of  
2 very basic household characteristics. There is nothing about  
3 disabilities or flushing toilets or -- you know, there's none  
4 of the additional detailed information that's asked in the ACS.  
5 It is only very basic demographics and citizenship, and so that  
6 ends up mattering.

7 Secretary Ross, in his memo, says in order to mitigate the  
8 effects of adding a citizenship question that it will be placed  
9 at the end.

10 Q. And in your view, why wouldn't placing it at the end --  
11 would that mitigate the sensitivity?

12 A. Well, No. 1 is that it's not exactly clear what that means.

13 No. 2, it seems to be recognition that it's going to have  
14 an impact, and if you look at where it's asked in a  
15 questionnaire -- so you ask information about the household and  
16 then you ask information about individual members of the  
17 household. This is a person-level question. So into the  
18 questionnaire for a household of five isn't, in fact, at the  
19 end of the questionnaire. It is the end of asking about --  
20 it's asked at the end of asking about person 1. Then you start  
21 over with person 2, and so exactly what Secretary Ross thought  
22 that placing it at the end would accomplish is unclear. It  
23 certainly highlights the importance of doing testing to figure  
24 out if this presumed mitigation would, in fact, happen or not.  
25 Q. I think we've talked about placement at the end, so why

Ib5Wnys4

Hillygus - Direct

1 don't we go to "additional questions." What do you mean by  
2 additional questions?

3 A. Sure. You notice from that question wording --

4 Q. Why don't we pull up 255, actually, and see.

5 A. OK.

6 MR. FREEDMAN: Can we go back to 255, page 8, the  
7 question.

8 Q. Go ahead.

9 A. My understanding is that the DOJ requested citizenship, and  
10 yet this is a question that asks not only are you a citizen or  
11 not, but were you born in -- are you a citizen because you were  
12 born in Puerto Rico, Guam, or another U.S. territory? Were you  
13 born of U.S. citizens abroad, and year of naturalization.

14 These are all pieces of information that, in terms of  
15 utility -- right -- it's unclear why they're being asked.

16 My -- it is also the case that, I can imagine, that some people  
17 who might have recognized that the citizenship question was  
18 being asked because of VRA would question why is it it was  
19 necessary to know why they were born in Puerto Rico versus in a  
20 particular state within the contiguous United States.

21 So it just calls into question this link between how it's  
22 going to be used and the question that's being asked, and we  
23 know from survey methodology research that people's  
24 interpretation of the intent of the question can have an impact  
25 on if and how they respond.

Ib5Wnys4

Hillygus - Direct

1 I guess the final thing I would say on this is that the  
2 Census Bureau had planned an RCT that would test -- in addition  
3 to the citizenship question and the particular wording, I think  
4 they termed it a more culturally appropriate question wording  
5 different from the one that is going to end up on the 2020  
6 census. But that RTC was not conducted.

7 THE COURT: What's an RCT?

8 THE WITNESS: Randomized control trial. It's kind of  
9 the gold standard for evaluating the causal effect of, in this  
10 case, adding a citizenship question.

11 BY MR. FREEDMAN:

12 Q. And why is conducting a randomized control trial important?

13 A. Well, it's a -- it is, it would offer the most compelling,  
14 direct evidence about the impact of citizenship question on the  
15 outcomes that we're interested in. It could also, in the one  
16 that they propose, test the particular question wording.

17 Q. And just so our record is clear, what is a controlled group  
18 test?

19 A. So, a randomized control trial is an experiment in which  
20 you would randomize, so in this case some would receive a form  
21 with a citizenship question and some would receive a form  
22 without a citizenship question, and by comparing those two, and  
23 you had randomization of who was assigned it, you have kind of  
24 exactly the information that is most directly testing the  
25 impact.

Ib5Wnys4

Hillygus - Direct

1 MR. FREEDMAN: Can we see -- since you mentioned the  
2 proposed test, can we see Plaintiffs' Exhibit 165.

3 Q. Dr. Hillygus, do you know what this is?

4 A. Yes, it's a discussion regarding the proposal.

5 Q. Which proposal?

6 A. The RCT to test citizenship question.

7 Q. Do you know who proposed this?

8 A. A member of the survey methodology group at the Census  
9 Bureau.

10 Q. Do you remember their name?

11 A. Victoria -- and I'm forgetting her last name. Sorry.

12 MR. FREEDMAN: Why don't we look at 164 quickly.

13 Q. Do you recognize 164?

14 A. Yes.

15 Q. Does this refresh your recollection as to who the author of  
16 the RCT is?

17 A. Yes.

18 Q. Your recollection having been refreshed, what is the name  
19 of the author?

20 A. Victoria Velkoff.

21 Q. Do you know what role she plays at the Census Bureau?

22 A. Division chief of the ACS.

23 MR. FREEDMAN: Let's go back to 165.

24 Q. What was the test that was being proposed by the Census  
25 Bureau?

Ib5Wnys4

Hillygus - Direct

1 A. So, the design actually had not just citizenship in one  
2 condition and no citizenship question in another condition; it  
3 also had revised response categories, and so the three test  
4 panels were the ACS with the modified response category, a  
5 question with binary response category, and then no citizenship  
6 question.

7 Q. Did you consider this proposed RCT in forming your opinions  
8 in this case?

9 A. I mean, yes, in the sense of both a -- they actually had  
10 what I would have liked to have seen in terms of pretesting,  
11 but, I mean, I guess -- yes, so I did use this in forming my  
12 opinion. Yeah.

13 MR. FREEDMAN: Plaintiffs move 165 into evidence.

14 THE COURT: Any objection?

15 MR. TOMLINSON: Yes, your Honor. We object under 401,  
16 403 and 802.

17 THE COURT: Overruled.

18 (Plaintiffs' Exhibit 165 received in evidence)

19 BY MR. FREEDMAN:

20 Q. Just in your own words, what would the value of this test  
21 have been?

22 A. It would be the most direct empirical evidence about the  
23 impact of a citizenship question on the cooperation of all  
24 numbers of different subgroups of the population, depending on  
25 the size.

Ib5Wnys4

Hillygus - Direct

1 Q. Was this test ever done?

2 A. It was not.

3 Q. I want to circle back to the sufficiency of the testing on  
4 the ACS.

5 MR. FREEDMAN: If we could go back to the quality  
6 standards, Exhibit 260. On page 8, if we could highlight the  
7 note.

8 Q. The note says, in the standard: "Note: Pretesting is not  
9 required for questions that performed adequately in another  
10 survey." Are you familiar with that language?

11 A. I am.

12 Q. Do you have a view as to its applicability to what we've  
13 been talking about?

14 A. Well, I -- yes, I have a couple different things that I  
15 would say about this note. One is that even if there is a  
16 process in place to avoid pretesting in some circumstances, I  
17 would never imagine that they would make the decision on the  
18 decennial census -- right? In terms of using this as an out  
19 for not doing testing, it is, it is -- just because it is  
20 possible doesn't make that it's right.

21 The other thing is, is that it is not clear that, in fact,  
22 it is a reasonable interpretation given that this says  
23 pretesting is required for questions that performed adequately  
24 in another survey. And my view of Dr. Abowd's scrutiny of ACS  
25 would question whether the citizenship question also performs

Ib5Wnys4

Hillygus - Direct

1 adequately there for the purposes needed.

2 Q. I want to just break down your response and go through each  
3 part more carefully. Just help us understand, or can you help  
4 the Court understand, why even if it's not, pretesting's not  
5 required, that decision doesn't make sense given the decennial  
6 census or the citizenship question?

7 A. So, if you look at the process used for adding a question  
8 to the ACS, there is a well-documented, five-year process to  
9 add a question, and you know, this -- it is understood that if  
10 you're going to pose a question, you're going to go through  
11 extensive testing and engagement, and they say it's going to  
12 take five years.

13 It is true that the short form hasn't had an addition to  
14 the question, and so the question is, could we really have a  
15 weaker standard than that of what we hold the ACS to? And so  
16 it just is surprising to say that you could add, at the last  
17 minute, a question without, without pretesting.

18 Q. OK. And then on the second point that you made about the  
19 questions about whether the citizenship question is performing  
20 adequately, could you explain what you mean?

21 A. So, roughly 30 percent -- according to analysis by  
22 Dr. Abowd, roughly 30 percent of people identified as  
23 noncitizens by administrative records reported themselves as  
24 citizens in the ACS.

25 Q. Let's actually look at Dr. Abowd's memo.

Ib5Wnys4

Hillygus - Direct

1 MR. FREEDMAN: Could we see Plaintiffs' Exhibit 22.

2 Q. The language that we've highlighted says, "When the  
3 administrative data indicated that the respondent was not a  
4 citizen, the self-report was citizen 29.9 percent, noncitizens  
5 66.4 percent and missing 3.7 percent." Is that the language  
6 you were just referring to?

7 A. Yes.

8 Q. And what is the significance of that?

9 A. The significance is just that it is hard to look at the  
10 available evidence and think that it is appropriate to add a  
11 citizenship question without additional pretesting. And  
12 although we didn't have that call-out of the quote from the  
13 pretesting standards, I think it's important to reiterate that  
14 the, you know, that the impact, the evidence is suggesting that  
15 the impact is both on the quality of the information that will  
16 be collected -- right -- the item nonresponse, the accuracy of  
17 those data, as well as people's willingness to answer at all.  
18 And both of those things are at risk here.

19 Q. And Dr. Abowd has other similar findings in his memo,  
20 right?

21 A. Yeah.

22 Q. Like, if we look at the language highlighted here, "In 2010  
23 and 2016, individuals for whom the administrative data indicate  
24 noncitizen respond citizen in 32.7 and 34.7 percent of the ACS  
25 questionnaires, respectively," are you familiar with that

Ib5Wnys4

Hillygus - Direct

1 language?

2 A. Yes.

3 Q. And how does that support your view?

4 A. It, again, suggests the necessity of doing pretesting  
5 before adding a citizenship question.

6 Q. There's one more passage from Dr. Abowd's memo: "If the  
7 administrative data indicate noncitizen, the self-report is  
8 citizen at a very high rate (never less than 23.8 percent)."

9 Are you familiar with that language?

10 A. Yes.

11 Q. How does that support your opinion?

12 A. Again, it suggests that there is evidence about the need  
13 for pretesting before adding to the decennial short form.

14 THE COURT: That's Plaintiffs' Exhibit 22, is that  
15 correct?

16 MR. FREEDMAN: Yes, Plaintiffs' Exhibit 22.

17 THE COURT: Thank you.

18 BY MR. FREEDMAN:

19 Q. Dr. Hillygus, do you have an opinion whether the  
20 citizenship question is performing adequately on the ACS?

21 A. So, I think that there is sufficient evidence to suggest  
22 that there is a real need to do pretesting prior to adding a  
23 citizenship question to the decennial short form.

24 Q. Are you aware of anyone else who thinks that more testing  
25 is needed?

Ib5Wnys4

Hillygus - Direct

1 A. Essentially everyone I have spoken to, but yes, I know the  
2 former directors of the census, every social science  
3 organization that has shared opinions. There's a long list of  
4 people who agree, but I think the former directors of the  
5 census offer a particularly compelling opinion.

6 MR. FREEDMAN: Why don't we look at their comments, if  
7 we could turn to PDX 11057.

8 Q. Dr. Hillygus, do you recognize -- this is from the  
9 administrative record, but do you recognize this letter?

10 A. I do.

11 Q. What is it?

12 A. The letter from former directors of the census, who served  
13 under both Democratic and Republican presidents, offering their  
14 opinion about the proposed addition of the citizenship  
15 question.

16 Q. And they wrote, and I'll quote: "There is a well proven  
17 multiyear process to suggest and test new questions. We  
18 strongly believe that adding an untested question on  
19 citizenship status at this late point in the decennial planning  
20 process would put the accuracy of the enumeration and success  
21 of the census in all communities at grave risk." Do you agree  
22 with that?

23 A. I do.

24 Q. If we could turn to the signature page, do you know who  
25 these individuals are?

Ib5Wnys4

Hillygus - Direct

1 A. Yes, they were all census directors.

2 Q. What weight do you give to the views of the former Census  
3 Bureau directors regarding citizenship?

4 A. A lot.

5 Q. Beyond testing, are there other aspects of the Census  
6 Bureau process that were not followed in the decision to add  
7 the citizenship question here?

8 A. They did not engage -- as a member of CSAC, I was not  
9 engaged about the citizenship question. I think that they  
10 have -- the entire process has looked incredibly different from  
11 what we have seen with any other planned modifications to the  
12 ACS or the decennial.

13 Q. Do you have a view whether the failure to follow the  
14 process will have an impact on the accuracy and the success of  
15 the census?

16 A. I do.

17 Q. What is that view?

18 A. So, it's my opinion that failing to pretest the census  
19 citizenship question jeopardizes the accuracy of the decennial,  
20 and it threatens to exacerbate the differential undercount of  
21 Hispanics and noncitizens.

22 Q. How does the failure to follow process affect public  
23 perception about the census?

24 A. Part of the issue -- thinking back to the very beginning,  
25 about what explains why and if people will respond to a survey

Ib5Wnys4

Hillygus - Direct

1 or not, it depends on their own characteristics, the design of  
2 the survey and the macro climate. And part of what happens is  
3 that individuals, in making that decision, take into account  
4 the perceived credibility and legitimacy of the questionnaire.  
5 And what has happened is that by failing to follow the own,  
6 their own guidelines and processes, they have undermined  
7 confidence in the Census Bureau. They politicized the process  
8 and, as such, made it less likely that people will ultimately  
9 participate.

10 Q. I want to call up PDX 1 one last time and ask if you could  
11 just, to close, summarize your opinion one last time for the  
12 Court.

13 A. Sure. My opinion was four goals. One is that looking  
14 across a wide range and variety of different types of  
15 evidence -- some qualitative, some quantitative, some within  
16 the Census Bureau, some outside the Census Bureau by academic  
17 researchers, some survey responses, some behavioral  
18 observations -- that all of them point in the same direction,  
19 that there will be a negative impact on the participation of  
20 Hispanics and noncitizens to the decennial census and that that  
21 will exacerbate the differential undercount.

22 No. 2 is the efforts by the Census Bureau to address the  
23 different -- their expected differential self-response of  
24 noncitizens and Hispanics will not be fully corrected by the  
25 outreach or the NRFU operations;

Ib5Wnys4

Hillygus - Cross

1 That the decision to add the citizenship question without  
2 specific pretesting violates the Census Bureau guidelines and  
3 survey methodology standard practices; and

4 That, finally, that the impact is not only on the  
5 objectivity of the count -- in other words, the accuracy and  
6 completeness of the count -- but also on the integrity and  
7 utility of the data, violating all three aspects of the Census  
8 Bureau quality standards.

9 MR. FREEDMAN: Thank you, Dr. Hillygus.

10 Pass the witness.

11 THE COURT: Cross-examination.

12 CROSS-EXAMINATION

13 BY MR. TOMLINSON:

14 Q. Good afternoon, Dr. Hillygus. Can you hear me OK?

15 A. I can, yes.

16 Q. And I'm pronouncing your name right; it's Hillygus?

17 A. Correct.

18 Q. Dr. Hillygus, you were up until recently a member of the  
19 census scientific advisory committee, correct?

20 A. Correct.

21 Q. And you gave a presentation -- and is it OK if I use the  
22 acronym CSAC, which I believe you've used?

23 A. Yes.

24 Q. And you gave a presentation at the March 29, 2018, CSAC  
25 meeting, correct?

Ib5Wnys4

Hillygus - Cross

1 A. Correct.

2 Q. And just to situate ourselves in time, this was March 29,  
3 2018. just a few days after Secretary Ross issued his decision  
4 to include the citizenship question on the 2020 census, right?

5 A. Correct.

6 Q. Did you know at that time what the specific language of the  
7 citizenship question was going to be?

8 A. I don't believe so. Yeah, I don't think so.

9 Q. And you also didn't know what the specific context of the  
10 citizenship question on the decennial census was going to be,  
11 correct?

12 A. I believe that Ross's memo, if it had been written at that  
13 time, would have already said to recommend including it at the  
14 end.

15 Q. It would've have said putting it at the end, but it  
16 wouldn't have said if there were any questions before or  
17 after -- before it, I guess, if it was -- you mentioned  
18 branched questions earlier?

19 A. Right. Right.

20 Q. So you didn't know for sure that --

21 A. Right.

22 Q. -- it was going to be in this context, correct?

23 And did you know at that time what, if any, testing the  
24 Census Bureau intended to do for the citizenship question?

25 A. I did not.

Ib5Wnys4

Hillygus - Cross

1 Q. And had you done any specific testing or analysis on the  
2 potential impact of the conclusion of the citizenship question  
3 at that time?

4 A. I was the discussant for the 2020 decennial, so in  
5 preparation of that presentation, where I was talking about the  
6 citizenship question, you know, enough to do a presentation.

7 Q. Right, but you hadn't done any specific testing. Right?

8 A. No testing.

9 Q. Now, your presentation at that meeting was accompanied by a  
10 PowerPoint slide show, correct?

11 A. It was.

12 Q. I think you know where I'm going.

13 A. Yes.

14 Q. The second slide of that presentation simply read, in  
15 capital letters, "WTH," is that correct?

16 A. That's correct.

17 Q. And WTH stands for what the hell, is that correct?

18 A. That's correct.

19 MR. TOMLINSON: Beg your pardon, your Honor.

20 Q. And this was to express anger at the decision to include a  
21 citizenship question on the census, correct?

22 A. My shock, yes.

23 Q. During this March 29, 2018, presentation, you also stated  
24 that, "I want to say in no uncertain terms that this is an  
25 absolutely awful decision," didn't you?

Ib5Wnys4

Hillygus - Cross

1 A. Correct.

2 Q. And you also said, later in that presentation, that the  
3 controversy surrounding the inclusion of a citizenship question  
4 on the decennial census might actually cause an increase in  
5 response rates due to the increased awareness of the decennial  
6 census, correct?

7 A. Yes, I said it needed to be tested. Right.

8 Q. Right, but you did say that because --

9 A. That was -- that is an accurate quote, yes.

10 THE COURT: Make sure you wait for the question before  
11 you answer, and vice versa, so the court reporter can do her  
12 job, please.

13 MR. TOMLINSON: Thank you, your Honor.

14 Q. In fact, you said it was a "reasonable hypothesis" that the  
15 reasonableness surrounding the citizenship question may  
16 increase self-response rates, correct?

17 A. Correct, I was explaining the importance of testing.

18 Q. And your comments at this March 29 meeting criticizing  
19 Secretary Ross's decision to include a citizenship question  
20 received some media attention in the days after the CSAC  
21 meeting, didn't they?

22 A. Yes.

23 Q. And you were first approached by plaintiffs in this matter  
24 shortly after that meeting, correct?

25 A. I think I was retained in May, yeah.

Ib5Wnys4

Hillygus - Cross

1 Q. OK. So within five or six weeks, roughly?

2 And initially, it was not clear exactly how you ought going  
3 to be used as an expert in this case, correct?

4 A. Correct. I mean, I was offering opinions on a variety of  
5 different aspects of the case.

6 Q. Dr. Hillygus, I want to turn to this testing issue that you  
7 just testified to. One of the opinions you were offering in  
8 this case, the citizenship question has not been adequately  
9 tested for inclusion in the 2020 census. Did I state that  
10 correctly?

11 A. Yes.

12 Q. And you talked in your report about how the GAO has  
13 classified the 2020 decennial census as "high risk," correct?

14 A. Correct.

15 Q. But that's not solely due to testing; they cited a number  
16 of other issues --

17 A. Correct.

18 Q. -- correct?

19 The GAO also classified the 2010 census as high risk,  
20 correct?

21 A. Correct.

22 Q. And there was no citizenship question on the 2010 census?

23 A. Correct.

24 Q. And GAO also classified the 2000 census as high risk, is  
25 that right?

Ib5Wnys4

Hillygus - Cross

1 A. Correct.

2 Q. And there was no citizenship question on the 2000 short  
3 form, correct?

4 A. Correct.

5 Q. You just talked at length about randomized controlled  
6 trials. I'll use the acronym RCT. You agree that a  
7 randomized -- strike that.

8 You agree that an RCT of the citizenship question -- strike  
9 that again.

10 You agree RCT of the census questionnaire containing the  
11 citizenship question would constitute very helpful testing,  
12 correct?

13 A. Certainly very helpful, yes.

14 Q. In fact, you just testified that it meets the gold  
15 standard, correct?

16 A. Correct.

17 Q. And you can't say for sure that the Census Bureau may not  
18 still conduct an RCT for the questionnaire with the citizenship  
19 question prior to the 2020 decennial, can you?

20 A. I don't know if that's feasible to still do that before the  
21 2020, so I don't -- I don't know if I could rule that out or  
22 not.

23 Q. But you can't --

24 A. It seems unlikely.

25 Q. But you can't rule it out?

Ib5Wnys4

Hillygus - Cross

1 A. OK.

2 THE COURT: Was that a yes?

3 THE WITNESS: Yes?

4 It's -- so we are in November of 2018. In terms of  
5 the feasibility --

6 Q. Thank you. I've got it.

7 A. OK.

8 Q. You answered my question adequately. Thank you.

9 THE COURT: Except I have a question.

10 How long does the RCT process usually take?

11 THE WITNESS: So, my understanding, from earlier  
12 depositions and so on, is that there are constraints on how,  
13 how -- the last point at which changes could be made. Given  
14 that the pretesting process suggests both doing the testing and  
15 then responding to the testing, I don't see how there's any  
16 possibility. They started the race and ethnic question  
17 testing -- they just came out with the report, and it was years  
18 after. It just takes a very long time. I -- so, is it  
19 impossible? I think so, but, but --

20 BY MR. TOMLINSON:

21 Q. But you stated you can't rule it out?

22 A. But I can't -- I can't rule that out, yes.

23 Q. And you also stated in your testimony that one of the  
24 reasons you believe the citizenship question has not been  
25 adequately tested is because of its "prominence," I think was

Ib5Wnys4

Hillygus - Cross

1 the term you used, is different on the decennial than it is on  
2 the ACS, correct?

3 A. Yes.

4 Q. And you stated that you believed this different placement  
5 in context might trigger different sensitivities among  
6 respondents, correct?

7 A. Yes.

8 Q. But you're not aware of any studies done to measure whether  
9 people's perception of the purpose for the citizenship question  
10 specifically changed based on its different placement in  
11 context within a survey, correct?

12 A. Correct.

13 Q. And you would acknowledge that people that respond to these  
14 census questionnaires frequently don't understand the exact  
15 purpose behind the questions, correct?

16 A. The Census Bureaus work very hard to -- as part of the  
17 reaction to the privacy concerns in 2000 and regarding the ACS,  
18 the Census Bureaus worked very hard to try and explain the  
19 rationale behind various questions. Are there still people who  
20 are not aware? Absolutely. But it is not the intent of the  
21 Census Bureau to hide why it is, and so --

22 Q. Sure.

23 You acknowledge that the citizenship question has been  
24 adequately tested for inclusion in the ACS, correct?

25 A. Now that I know about some of the accuracy issues, I would

Ib5Wnys4

Hillygus - Cross

1 hope that the Census Bureau is now revisiting exactly how  
2 they're going to deal with confidentiality concerns and  
3 sensitivity within the ACS as well.

4 Q. You gave deposition testimony in this case on October 9, is  
5 that correct?

6 A. That sounds correct.

7 Q. Almost a month ago?

8 And you were under oath to tell the truth?

9 And you told the truth, correct?

10 A. Uh-huh.

11 Q. Do you remember stating at that deposition that I should  
12 say that the ACS question has been tested?

13 A. That sounds correct.

14 Q. And you acknowledge that the actual text of the citizenship  
15 question on the 2020 decennial census is identical to the text  
16 of the citizenship question on the ACS, correct?

17 A. As long as you define the citizenship question as only that  
18 second part -- you know, only No. 8.

19 Q. Correct.

20 A. Yeah.

21 Q. And you admit that's identical?

22 A. Yes, yes.

23 Q. Another one of the opinions you offer in this case is that  
24 the Census Bureau's NRFU operations are going to be  
25 insufficient to avoid a differential undercount, correct?

Ib5Wnys4

Hillygus - Cross

1 A. Correct.

2 Q. And you testified that one of the reasons it will be  
3 inadequate to minimize this differential undercount is because  
4 you believe the Census Bureau will not be able to hire enough  
5 enumerators with cultural backgrounds and language skills to  
6 accurately enumerate certain subgroups, is that correct?

7 A. That's a possibility. Yeah -- I don't have -- I can only  
8 point to the GAO concerns and then the academic research  
9 expressing the importance of that. I don't have any specific  
10 documentation about the number of people who have been hired  
11 and the match to those neighborhoods, although --

12 Q. OK. So you don't have any documentation?

13 A. I don't have any documentation.

14 Q. And you don't have any quantitative evidence that there are  
15 not enough people with the language and cultural backgrounds  
16 that the Census Bureau could hire to accurately enumerate these  
17 subgroups, do you?

18 A. I think it's just a question of, if cultural background  
19 versus citizenship status is a relevant par, so if you're only  
20 hiring citizens, the question is -- does having a noncitizen  
21 offer additional reassurance to a noncitizen household that  
22 they could share information without, without fear, and I think  
23 that that is a reasonable hypothesis.

24 Q. Well, I understand the hypothesis, but maybe we're talking  
25 about different things. You don't have any evidence that the

Ib5Wnys4

Hillygus - Cross

1 Census Bureau is not going to be able to hire enough citizens  
2 as enumerators with this --

3 A. Correct.

4 Q. -- language and cultural backgrounds? Would you agree with  
5 that?

6 A. Yeah, I just -- I want to be careful about saying cultural  
7 background. So if you're saying language, absolutely, if they  
8 can hire enough Spanish-speaking citizens.

9 Cultural background, I think, is -- can be broadly  
10 construed to potentially have relevance versus citizenship  
11 status so I just want to be sure to be narrow in making sure I  
12 understand what I agree with.

13 Q. Understood.

14 You also testified that it's your opinion that people are  
15 less likely to answer sensitive questions in an  
16 interview-administered survey than they are to do a  
17 self-administered survey, is that right?

18 A. Yes.

19 Q. And the research on which you base this opinion doesn't  
20 include any research or studies of sensitivity questions  
21 specifically about citizenship, does it?

22 A. That's correct.

23 Q. If an enumerator is interviewing a person and the person  
24 declines to answer the citizenship question but all the other  
25 household information has already been conferred, you testified

Ib5Wnys4

Hillygus - Cross

1 that that is still -- that's an item nonresponse, not a unit  
2 nonresponse, correct?

3 A. Correct.

4 Q. So that information is still counted towards the  
5 enumeration?

6 A. Correct.

7 MR. TOMLINSON: Can we pull up plaintiffs'  
8 demonstrative 14.

9 Q. Dr. Hillygus, this is something you discussed earlier in  
10 support of the differential self-response and undercount. None  
11 of these sources specifically dealt with a question about  
12 citizenship, did they?

13 A. No.

14 MR. TOMLINSON: You can take that down.

15 Q. And in fact, you have not performed any data analysis or  
16 estimate yourself as to the expected success rate of NRFU in  
17 regards to this citizenship question, have you?

18 A. That's correct.

19 Q. Now, Dr. Hillygus, you talked about imputation and you  
20 talked about the master address file. Do you remember that?

21 A. Uh-huh.

22 Q. What studies are you relying upon to link the quality of  
23 the master address file to a differential net undercount?

24 A. So, I don't know if you have my demonstrative that you want  
25 me to reference the particular cites that I think indicate --

Ib5Wnys4

Hillygus - Cross

1 that I used in my report, but I don't --

2 Q. You don't remember --

3 A. I don't remember which specific ones off the top of my  
4 head.

5 Q. You don't remember what demonstrative that was?

6 A. I don't, I don't.

7 Is it the imputation slide?

8 Q. We can move on.

9 A. OK.

10 Q. OK. So this is the imputation slide?

11 A. Uh-huh.

12 Q. Are there any sources you're relying upon for that  
13 conclusion other than the ones that were provided on that  
14 imputation slide?

15 A. I may have referenced some more in my report. The general  
16 point that I think is recognized is, is that we can't -- the  
17 Census Bureau is the only people who could directly evaluate,  
18 and so we have to rely on these markers and evidence from other  
19 census products or from external research.

20 Q. So you did not rely on any -- excuse me.

21 You did not rely on any sources that were not generated by  
22 the Census Bureau in making that conclusion?

23 A. I don't recall. I surveyed -- most of that is internal to  
24 the census.

25 Q. Thank you.

Ib5Wnys4

Hillygus - Cross

1 Dr. Hillygus, you also testified that you believe that the  
2 inclusion of a citizenship question will exacerbate a net  
3 differential undercount for Hispanics and noncitizens, is that  
4 correct?

5 A. Uh-huh.

6 THE COURT: You have to say yes or no.

7 THE WITNESS: Yes. Sorry.

8 Q. But you would agree that there has been a differential net  
9 undercount in every decennial census since that's been  
10 measured, correct?

11 A. Yes.

12 Q. In fact, in your expert report you stated that certain  
13 population subgroups have been undercounted since 1940,  
14 correct?

15 A. Yes.

16 Q. And that included a number of decennial census us that did  
17 not ask a question about citizenship, correct?

18 A. Correct.

19 Q. So those differential net undercounts could not have been  
20 due to the presence of a citizenship question?

21 A. Correct.

22 Q. Dr. Hillygus, many of the sources you based your opinion on  
23 as to the idea that the citizenship question will exacerbate a  
24 differential net undercount were, in fact, generated by the  
25 Census Bureau, correct?

Ib5Wnys4

Hillygus - Cross

1 A. Correct.

2 Q. And you noted the census barriers, attitudes, and  
3 motivators surveys, which I'll just call CBAMS; that was one of  
4 the sources you relied upon?

5 A. Yes.

6 Q. And you relied on the 2010 CBAM survey, correct?

7 A. Yes.

8 Q. And that survey did not ask specifically about a  
9 citizenship question, is that right?

10 A. In fact, it did not include citizenship, only place of  
11 birth, which is also the case for the most recent CBAMS, is my  
12 understanding as well.

13 Q. OK. So neither the 2010 nor 2020 CBAMS specifically asked  
14 about citizenship, correct?

15 A. Correct.

16 Q. And one of the purposes of the CBAMS is to identify  
17 potential reasons for nonresponse or nonself-response so that  
18 the Census Bureau can try to address them in advance of the  
19 decennial census, wouldn't you agree?

20 A. Yes.

21 MR. TOMLINSON: Can we pull up plaintiff's  
22 demonstrative 8.

23 Q. Dr. Hillygus, this was a demonstrative you prepared. I  
24 believe all four of these sources identified here were prepared  
25 or the source was people that work for the Census Bureau,

Ib5Wnys4

Hillygus - Cross

1 correct?

2 A. Yes.

3 Q. But none of these four sources specifically analyze  
4 confidentiality concerns in the context of a citizenship  
5 question, correct?

6 A. They predate --

7 Q. Right --

8 A. -- the addition of the citizenship question.

9 Q. So the confidentiality concerns they're talking about here  
10 are not as a result of the citizenship question, correct?

11 A. Correct.

12 MR. TOMLINSON: You can take it down. Thank you.

13 Q. Dr. Hillygus, responding to a census questionnaire is  
14 mandatory, correct?

15 A. Yes.

16 Q. In fact, there's possible criminal penalties for failing to  
17 respond to a census questionnaire, right?

18 A. Yes.

19 Q. And you, in coming to your conclusion, said you relied on a  
20 number of other sources dealing with surveys generally,  
21 correct?

22 A. Yes.

23 Q. But are you aware of any other survey, other than the  
24 census, including the ACS, in which the person who receives the  
25 questionnaire is legally required to respond?

Ib5Wnys4

Hillygus - Cross

1 A. Not in the same way, but imagine that you do an employer  
2 survey and employees might be required. It might create the  
3 exact same -- some of the same dynamics, so I don't want to say  
4 they're -- the ACS and the census are required by law, but  
5 there are other surveys in which it is essentially mandatory to  
6 respond.

7 (Continued on next page)

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IB5sNYS5

Hillygus - Cross

1 BY MR. TOMLINSON:

2 Q. Right.

3 But you're not aware of any other survey context where  
4 there is actually a legal statute mandating response, correct?

5 A. Correct.

6 Q. Dr. Hillygus, you testified that one of the bases for your  
7 opinion is that the burden of this question on the census will  
8 likely lead to lower self-response rates, correct?

9 A. Yes.

10 Q. But you have not yourself done any calculations or  
11 estimates of how much of an impact this increased burden will  
12 have on response rates, correct?

13 A. Correct. I would love it if the Census Bureau did.

14 Q. But you yourself have not done it?

15 A. I have not.

16 Q. One of the reasons you testified that this additional  
17 question will be a significant burden for certain sub groups of  
18 people is because of the sensitivity of the question, is that  
19 correct?

20 A. Yes.

21 Q. You cited to a number of sources on how people are  
22 reluctant to respond to sensitive questions, correct?

23 A. Yes.

24 Q. Can we pull up Plaintiffs' Demonstrative 10.

25 These are several of the sources you relied upon for

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Hillygus - Cross

1 confidentiality concerns, correct?

2 A. They are, yes, the attitudinal basis of that conclusion.

3 Q. Thank you.

4 None of these four surveys or sources specifically had to  
5 do with the citizenship question, did they?

6 A. They did not.

7 Q. In fact, none of these had specifically anything to do with  
8 the census response, correct?

9 A. That is correct.

10 Q. Can we pull up Plaintiffs' Demonstrative 7.

11 Dr. Hillygus, this was another source you cited in support  
12 of your conclusion or your opinion about sensitivity.

13 This paper did not have anything to do with a  
14 citizenship question, did it?

15 A. That's correct.

16 Q. It did not have anything to do with census response, did  
17 it?

18 A. That's correct.

19 Q. Can we pull up Plaintiffs' Demonstrative 6.

20 Dr. Hillygus, this is another source you cited for your  
21 opinion about confidentiality concerns, correct?

22 A. Yes.

23 Q. This did not have anything to do with responding to a  
24 citizenship question, did it?

25 A. That is correct.

IB5sNYS5

Hillygus - Cross

1 Q. It did not have anything to do with responding to a census  
2 questionnaire?

3 A. That is correct.

4 Q. You can take it down. Thank you.

5 Dr. Hillygus, you testified that the Census Bureau  
6 generally makes outreach efforts or communications efforts to  
7 raise awareness of the decennial census, is that correct?

8 A. Yes.

9 Q. You would acknowledge that these outreach efforts or  
10 communications can be very effective sometimes in increasing  
11 self-response rates and cooperation, correct?

12 A. I think that is an empirical question that I think it is  
13 true that I have documented in my own research and that we know  
14 that it increases awareness in terms of effectiveness on the  
15 actual impact of self-response. I withhold judgment unless I  
16 saw explicit empirical evidence of that.

17 The Census Bureau's report about effectiveness offers very  
18 cautious language in terms of the impact on self-response, very  
19 clear language about the impact on knowledge about the census  
20 and awareness of the census, but ...

21 Q. Right.

22 Well, you mentioned your own scholarship. In fact,  
23 you literally wrote the book on the 2000 census, isn't that  
24 correct?

25 A. Yeah.

IB5sNYS5

Hillygus - Cross

1 Q. In that book, you concluded that the Census Bureau  
2 communications efforts and outreach efforts had been effective  
3 in persuading people's concerns about sensitive concerns,  
4 correct?

5 A. Some privacy concerns, increased awareness, yes.

6 Q. And the 2000 decennial census was also during a contentious  
7 presidential election, isn't that correct?

8 A. That's correct.

9 Q. In fact, you stated in your book that the Census Bureau's  
10 communication and outreach efforts had not just been effective  
11 at reducing the general undercount, but had been effective at  
12 reducing the differential net undercount in comparison to the  
13 1990 census, correct?

14 A. That was our conclusion, yes.

15 Q. You haven't changed your mind about that?

16 A. I think that the strength of the evidence is something that  
17 we -- the strength of the evidence is something we now know  
18 RCTs are a much stronger basis of evidence than the observation  
19 national type of work we did and was done in 2010. I will --  
20 yes, I stick by my conclusion.

21 Q. You don't know exactly what the Census Bureau's plans for  
22 its communications and outreach efforts in advance of the 2020  
23 census are, do you?

24 A. Not exactly.

25 I have seen through the decades what the intentions

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Hillygus - Cross

1 were in terms of research, but where exactly they are right  
2 now, I'm not sure.

3 Q. Dr. Hillygus, you're also offering an opinion that the  
4 citizenship question will result in a differential net  
5 undercount of Hispanics, correct?

6 A. Yes.

7 Q. None of the quantitative sources you rely upon for this  
8 conclusion directly analyzed the impact of a citizenship  
9 question on Hispanics, did they?

10 A. This was part of the explanation for why I hoped to have  
11 more pretesting, but I think there is lots of indirect  
12 evidence.

13 Q. There is indirect evidence, but no quantitative evidence,  
14 correct?

15 A. Quantitative evidence that is indirect. The only direct  
16 evidence is the Brown memo and that focused on noncitizens  
17 versus citizen households.

18 Q. Right.

19 So you're not aware of any quantitative evidence  
20 specifically about --

21 A. Correct.

22 Q. -- Hispanics and the citizenship question, correct?

23 A. Correct.

24 Q. A lot of the data quality analysis you used, these indirect  
25 sources distinguish between Hispanics and non-Hispanics, but do

IB5sNYS5

Hillygus - Cross

1 not make any internal distinction between citizenship statuses,  
2 correct?

3 A. I think it is variability. So yes, there are some that  
4 make that finer distinction, like the Pew survey did, for  
5 instance, but a lot of them then only focus on one or the  
6 other. Part of it is an issue of data availability.

7 Q. You yourself have not produced any quantitative analysis of  
8 the potential impact of a citizenship question on self-response  
9 rate of Hispanics, correct?

10 A. Correct.

11 Q. In fact, you have not done any calculations or quantitative  
12 estimate as to how much less likely any sub group of the  
13 population is to respond as a result of the citizenship  
14 question, correct?

15 A. Correct.

16 Q. You haven't done any calculations or quantitative estimates  
17 as to how likely any sub group of the population is to skip the  
18 citizenship question, correct?

19 A. I mean, I did do the calculations based on the para data  
20 for breakoffs and such. But yes, I've relied on the analysis  
21 primarily of particularly Census Bureau researches.

22 Q. You mentioned breakoffs there.

23 You have given the opinion that -- well, you noted  
24 that the breakoff rate for Hispanics was much lower for the  
25 citizenship question than non-Hispanics whites, correct?

IB5sNYS5

Hillygus - Cross

1 A. Yes.

2 Q. Isn't it true that the breakoff rate between for Hispanics  
3 was much higher than non-Hispanic whites for all the questions?

4 A. It is true that there is a higher breakoff rate overall  
5 for Hispanics compared to whites, but there is considerable  
6 variation across individual items. So, like gender, for  
7 instance, there is no real difference.

8 Q. Dr. Hillygus, you have not done any calculations or  
9 quantitative -- strike that.

10 You have not done any calculations or quantitative  
11 estimates as to how much less likely any sub group is to give  
12 an accurate response to the question, correct?

13 A. Correct.

14 Q. In fact, you haven't done any original data analysis to  
15 support any of the four expert opinions you offer in this case,  
16 have you?

17 A. Mostly correct, yes.

18 Q. Well --

19 A. Well, you did the breakoff analysis, but aside from that,  
20 everything else relied on other research.

21 MR. TOMLINSON: Thank you.

22 No further questions.

23 Thank you, Dr. Hillygus.

24 THE COURT: Redirect?

25 REDIRECT EXAMINATION

IB5sNYS5

Hillygus - Redirect

1 BY MR. FREEDMAN:

2 Q. Dr. Hillygus, you were asked a variety of questions about  
3 whether some of the social science research that you consulted  
4 asked specifically about citizenship.

5 Do you recall those questions?

6 A. Yes.

7 Q. Did most of the data you were looking at predate the  
8 announcement of the addition of a citizenship question?

9 A. Much of it, yes.

10 Q. From what you know as a survey methodologist, does the  
11 organization asking the question matter?

12 A. It does.

13 Q. Would there be a difference between one of these  
14 independent research organizations asking about a citizenship  
15 question and the Census Bureau conducting a study, an RCT of  
16 the citizenship question?

17 A. Yes.

18 I think the critical point here is that all of those  
19 questions about the absence of evidence to me are exactly the  
20 reason that we needed to have additional pretesting by the  
21 census.

22 I would love to have been able to answer yes to any of  
23 those questions about I have done original research, but it  
24 would have had to have been in cooperation with the Census  
25 Bureau, because the Census Bureau is really the only one that

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Hillygus - Redirect

1 could offer the most definitive pretesting of the question.

2 And we had to work with the evidence that was available rather  
3 than the absence of evidence that the Census Bureau has failed  
4 to collect.

5 Q. Why does it matter if it is the Census Bureau asking the  
6 question versus another organization asking the question?

7 A. Well, it is not only just the source, but just in terms of  
8 the type of pretesting that is typically done on decennial  
9 changes or ACS changes that both the size, the scope, the  
10 source, all of those things are -- it is one of the reasons  
11 that pretesting happens over the course of a decade and costs  
12 so much money is that these are -- these are very difficult and  
13 important questions that require pretesting at a lot of  
14 different stages.

15 Q. Now, you were also asked questions about the state of  
16 evidence regarding Hispanics as opposed to noncitizens.

17 Do you recall those questions?

18 A. Yes.

19 Q. Did the Census Bureau do analysis showing that Hispanics  
20 have higher sensitivity to the citizenship question than  
21 non-Hispanic whites?

22 A. Yes.

23 So it is not in dispute, Dr. Abowd in his deposition  
24 acknowledged that Hispanics would consider the citizenship  
25 question to be sensitive.

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Hillygus - Redirect

1 Q. The breakoff analysis that you independently looked at what  
2 the Census Bureau had done, did that show differential  
3 sensitivity for Hispanics?

4 A. Yes.

5 Q. Could the Census Bureau have done additional analysis of  
6 the impact on the citizenship question on Hispanics?

7 A. Not only could have, I believe that they were obligated to.

8 Q. You were also asked some questions about whether the CBAMs  
9 asked about the citizenship question.

10 Do you recall that?

11 A. Yes.

12 Q. Can we pull up Exhibit 152. Can we go to page 21.

13 Several of the focus groups, if you look at the dates of  
14 the focus groups, were some of these after the announcement of  
15 the citizenship question?

16 A. Yes.

17 In answering my question, I was referring to the CBAMs  
18 survey rather than the focus groups. The focus groups  
19 conducted by Team Y&R are the only, as far as I know, the only  
20 direct discussion with respondents about the citizenship  
21 question. The CBAM survey is a national survey that has been  
22 tracking various attitudes, and that survey does not include  
23 citizenship as a question. But the focus groups did, in fact,  
24 engage.

25 Q. Putting aside the question of the focus groups, was there

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Hillygus - Redirect

1 evidence that individuals interviewed as part of the CBAMs were  
2 spontaneously raising the citizenship question?

3 A. Well, that was -- so in the focus groups even before -- my  
4 understanding is even before they were talking about the  
5 citizenship question, it was raised. In language testing and  
6 focus groups prior to the addition of the citizenship question,  
7 the respondents were spontaneously talking about  
8 confidentiality concerns. CBAMs back in 2010 showed  
9 differential confidentiality concerns between the groups that  
10 we're talking about.

11 Q. Now, there were also some questions you were asked about  
12 the legal consequences of not responding to the census, right?

13 A. Yes.

14 Q. Now, were those legal consequences any different in 2010?

15 A. No.

16 Q. Was there a differential undercount in 2010?

17 A. Yes.

18 Q. So notwithstanding the legal consequences, there was still  
19 a differential undercount in 2010?

20 A. Yes.

21 Q. Were the legal consequences the same in 2000?

22 A. Yes.

23 Q. Was there a differential undercount in 2000?

24 A. Yes.

25 Q. Were the legal consequences the same in 1990?

IB5sNYS5

Hillygus - Redirect

1 A. I believe so.

2 Q. Was there a differential undercount in 1990?

3 A. Yes.

4 Q. Now, Dr. Abowd, when he was calculating or estimating on  
5 the expected decrease in self-response, he was looking at data  
6 from -- which period of time was he looking for data?

7 A. He was looking at 2010 ACS and decennial. There was some  
8 analysis that brought in 2016 as well.

9 Q. Were the legal consequences the same as the period that he  
10 was studying as they are now?

11 A. Yes.

12 Q. And what did Dr. Abowd conclude with regard to the  
13 estimated decline in self-response for noncitizen households?

14 A. A citizenship question decreases the self-response of  
15 noncitizen households.

16 Q. The same question with regard to Dr. Brown.

17 What period of time was Dr. Brown looking at?

18 A. These are the 2010 analyses.

19 Q. The legal consequences were not answering the citizenship  
20 question were the same for those periods of time as they are  
21 now, right?

22 A. Yes.

23 Q. What decline in self-response does Dr. Brown predict?

24 A. Somewhere between 5.1 and 11.9 percent effect.

25 Q. To your knowledge, has anyone ever been prosecuted ever for

IB5sNYS5

Hillygus - Redirect

1 not responding to the census?

2 A. I think there has been a prosecution, but I think there  
3 hasn't been one since like 1970.

4 MR. FREEDMAN: Thank you. No further questions.

5 THE COURT: All right. Are we done with Dr. Hillygus?

6 MR. TOMLINSON: I'm done, your Honor. Thank you.

7 THE COURT: All right. You may step down. You're  
8 excused.

9 (Witness excused)

10 I'll tell you what, I was going to go for another five  
11 minutes or so before taking our midafternoon break. It seems  
12 like this would be a sensible time to do it.

13 It is 3:17. We'll start up again at 3:27. If you can  
14 have the next witness ready to go at that time, that would be  
15 great.

16 (Recess)

17 THE COURT: Plaintiffs, please call your next witness.

18 MR. FREEDMAN: Plaintiffs call Dr. Jennifer Van Hook.

19 THE COURT: Dr. Hook, please rise and raise your right  
20 hand.

21 THE WITNESS: It is Van Hook.

22 THE COURT: I thought I said that. If I didn't, I  
23 apologize.

24 JENNIFER VAN HOOK,

25 called as a witness by the Plaintiffs,

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Hillygus - Redirect

1           having been duly sworn, testified as follows:

2           If you could state and spell your full name, please.

3           THE WITNESS: My name is Jennifer Van Hook,

4           J-e-n-n-i-f-e-r, Van Hook, V-a-n H-o-o-k.

5           THE COURT: All right. You may proceed.

6           MR. FREEDMAN: Your Honor, Dr. Van Hook, we are  
7           putting her primary testimony in through a signed affidavit.  
8           She has the signed copy before her. There is one evidentiary  
9           objection that we can clarify.

10          THE COURT: All right. I confess that I didn't  
11          realize that there was an affidavit for her. I apologize.  
12          That does mean that I haven't read it. I confess and I  
13          apologize for that.

14          What is the objection?

15          MR. FREEDMAN: It is at paragraph 33, the last two  
16          sentences.

17          THE COURT: Having confessed that I haven't read it  
18          because I didn't realize there was one for her, how much of a  
19          problem is that for proceeding?

20          MR. FREEDMAN: Not at all, your Honor.

21          THE COURT: That is kind of you.

22          The objection?

23          MS. BAILEY: There are two sentences we object on the  
24          ground of lacking personal knowledge and speculation.

25          THE COURT: I'll reserve judgment on it so I can see

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Van Hook - Direct

1 if there is foundation on the basis for personal knowledge.

2 MR. FREEDMAN: If I can just briefly inquire of the  
3 witness to establish personal knowledge?

4 THE COURT: All right. I'll allow a little followup.

5 Go ahead.

6 DIRECT EXAMINATION

7 BY MR. FREEDMAN:

8 Q. Dr. Van Hook, could you turn to paragraph 33 of your report  
9 at page 14.

10 I'm sorry. The paragraph starts on page 13 and  
11 carries over to 14.

12 A. OK.

13 Q. The sentences in question read: Even though the  
14 citizenship question is not asked during followup interviews,  
15 the respondents would not necessarily know this when contacted  
16 for a followup interview. In fact, they might be expected --  
17 in fact, they might expect to be asked more questions about  
18 citizenship given that they were asked these questions in the  
19 first interview.

20 What was the basis for you making those observations?

21 A. Well, for one thing, I've actually been a CPS respondent in  
22 the past, and I can say from personal experience that I did not  
23 know in advance what questions were going to be asked on any  
24 particular month of the CPS.

25 THE COURT: What is the CPS?

IB5sNYS5

Van Hook - Direct

1 THE WITNESS: This is the current population survey.

2 Q. Were there additional bases that you had for making those  
3 observations?

4 A. Yes.

5 The questions in the current population survey vary  
6 from month to month. In the first month that a respondent is  
7 in the survey, they are asked questions about citizenship. In  
8 other months, the questions change across months. So there  
9 might not be, like, a respondent might not know when or if  
10 another question about citizenship might be asked.

11 Q. With that, your Honor, we believe that the witness has  
12 established a foundation.

13 THE COURT: All right. The objection is overruled.

14 MR. FREEDMAN: Your Honor, may we suggest a brief  
15 recess for the efficiency of the court so that your Honor has  
16 the opportunity to review the declaration?

17 THE COURT: Why don't we not take a recess, since I  
18 don't want to waste time. If you give me just a couple minutes  
19 to scan it and I'll read it more thoroughly later, I think that  
20 might suffice.

21 MR. FREEDMAN: Thank you, your Honor.

22 (Pause)

23 I think we can proceed. I apologize for that.  
24 Somehow I overlooked her testimony had been submitted by  
25 affidavit.

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Van Hook - Cross

1 I'll confess that my son is here, and now he knows  
2 sometimes I don't do my own homework.

3 All right. With that, we'll proceed to  
4 cross-examination.

5 MR. FREEDMAN: If I can ask the witness to raise your  
6 microphone or move the microphone a little bit closer.

7 THE COURT: If you're about two inches away from the  
8 microphone, that is, in my experience, the ideal distance.

9 Ms. Bailey.

10 MS. BAILEY: Thank you, your Honor.

11 CROSS-EXAMINATION

12 BY MS. BAILEY:

13 Q. Good afternoon, Dr. Van Hook.

14 A. Good afternoon.

15 Q. You recently submitted a declaration, the declaration we  
16 were just discussing constituting your trial testimony in this  
17 case, correct?

18 A. Correct.

19 Q. That testimony largely tracked expert reports you have  
20 produced in this case, correct?

21 A. Correct.

22 Q. This is the first time that you've served as an expert  
23 witness in any litigation, correct?

24 A. Yes.

25 Q. And in your expert opinions in this case were primarily

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Van Hook - Cross

1 based on analysis of response rates to the current population  
2 survey, correct?

3 A. It included the population -- the current population  
4 survey, and then in my supplemental report, it included the  
5 American community survey.

6 Q. Correct.

7 But your expert opinions in this case were primarily  
8 based on response rates to the current population survey,  
9 correct?

10 A. They were based on both the analysis of the current  
11 population survey and the American community survey.

12 Q. Can we establish going forward that if I refer to CPS, that  
13 refers to the current population survey?

14 A. Yes.

15 Q. Would it be fair to say that the purpose of the CPS is very  
16 different from the decennial census?

17 A. Yes.

18 Q. The CPS is conducted jointly by the Bureau of the Census  
19 and the Bureau of Labor Statistics, correct?

20 A. Correct.

21 Q. And it gathers labor force statistics, doesn't it?

22 A. It gathers labor force statistics as well as some other  
23 information.

24 Q. Thank you.

25 Would it be fair to say that the design of the CPS is very

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Van Hook - Cross

1 different from the decennial census?

2 A. The design is similar in some ways and different in other  
3 ways.

4 Q. Thank you.

5 Households are selected for participation in the CPS  
6 through statistical sampling, correct?

7 A. Correct.

8 Q. Households that are selected for participation will be  
9 interviewed up to eight times, correct?

10 A. Yes.

11 Q. Isn't it correct that they are interviewed for four  
12 consecutive months and they are given a break for eight months  
13 and then they are interviewed for four more consecutive months,  
14 correct?

15 A. Yes.

16 Q. And isn't it correct that households are interviewed within  
17 the same week of a given month, correct?

18 A. That's my understanding.

19 Q. OK. So if a family were, for instance, on vacation or  
20 otherwise unavailable during the week that the CPS were  
21 conducted in any given month, they may be skipped for that  
22 particular month, right?

23 A. Yes, that's right.

24 Q. Participation in the CPA is not required by law, correct?

25 A. Yes.

IB5sNYS5

Van Hook - Cross

1 Q. The mandatory nature of the decennial census can be  
2 expected to increase the response rate, can't it?

3 A. Yes.

4 Q. The CPS questionnaire is longer than the decennial census  
5 questionnaire, right?

6 A. Yes.

7 Q. The decennial census is not a sample, it is designed to  
8 reach the entire population, all households, correct?

9 A. Yes.

10 Q. So for your study, you looked at both unit nonresponse and  
11 item nonresponse, correct?

12 A. Yes.

13 Q. Unit nonresponse generally means a respondent fails to  
14 participate in a survey altogether, correct?

15 A. Yes.

16 Q. In your analysis, unit nonresponse refers to the likelihood  
17 that a household would skip at least one survey out of the  
18 eight in the CPS, correct?

19 A. Yes.

20 Q. So a household that participated initially the month that  
21 it is selected for participation in the CPS, but was predicted  
22 to miss any one of the eight followup interviews, would be  
23 included in your definition of unit nonresponse, correct?

24 A. That's not quite right.

25 Q. A household who participates initially -- strike that.

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Van Hook - Cross

1 In order to be included in your sample set, a household  
2 must initially respond to the first CPS interview, correct?

3 A. Yes.

4 Q. And then your definition of unit nonresponse would capture  
5 a household that fails to respond or is predicted to respond to  
6 one of the seven followup interviews, correct?

7 A. What it is, it is a likelihood of dropping out of the CPS  
8 in the next interview given that you responded in the previous  
9 interview.

10 Q. And that could be any one of the seven followup interviews,  
11 correct?

12 A. I think the way you're stating it, it is not quite right.  
13 What it is, it is the probability of dropping out in the next  
14 interview, given that you already participated in the previous  
15 interview.

16 So if it is the third interview that you participated  
17 in, it would be the probability of dropping out in the fourth  
18 interview. If it is the fifth interview we're talking about,  
19 it is the probability of dropping out in the fifth interview,  
20 given that they participated in the first through the fourth  
21 interviews.

22 Q. Thank you.

23 So that means that in order to not be captured in your  
24 definition of unit nonresponse, a household would have to  
25 participate or be predicted to participate in all eight

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Van Hook - Cross

1 interviews, correct?

2 A. Excuse me. Can you repeat that question?

3 Q. In order to not be captured by your definition of  
4 nonresponse, a household would have to be predicted to respond  
5 to all eight of eight interviews, correct?

6 A. In any given month, they would not have to participate in  
7 that interview.

8 Q. Right.

9 Full participation includes eight surveys, correct?

10 A. Incorrect.

11 Q. Can you correct me?

12 A. Full participation for any given months means that you  
13 participated in that interview, given that you participated in  
14 previous interviews. So if it is like the second interview, I  
15 would count everybody who participated in the third interview.  
16 Lets say they started and they were in the first interview, and  
17 then among those who were in the first interview I ask, did you  
18 drop out in the second interview. So those who participated in  
19 the second interview would have been counted as participating  
20 and not dropping out. It doesn't matter what happened after  
21 that.

22 Q. I think my question may have been inartfully worded.

23 I meant the unit nonresponse would capture a failure  
24 to or a predicted failure to respond in any one of those eight  
25 surveys that are conducted, correct, eight interviews?

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Van Hook - Cross

1 A. I really am concerned about answering that question the way  
2 you have stated it because it doesn't really capture what I did  
3 in my analysis.

4 Q. Lets take a look at your deposition testimony. Let me  
5 refer to this.

6 THE COURT: Well, let me ask you, if somebody  
7 participated in months one and two but not in three, but  
8 participated again in month four, would that person count as a  
9 unit nonresponse?

10 THE WITNESS: Yes.

11 THE COURT: For all purposes or just --

12 THE WITNESS: I counted the first time they drop out  
13 because I want to capture the timing of the first instance in  
14 which they have failed to followup.

15 THE COURT: All right.

16 MS. BAILEY: Thank you for clarifying.

17 BY MS. BAILEY:

18 Q. I would like to take a look at table one, which is found on  
19 page 13 of your trial testimony.

20 MS. BAILEY: I'm sorry, your Honor.

21 THE COURT: Are you waiting?

22 MS. BAILEY: I was waiting for the visual.

23 THE COURT: Hang on.

24 Unfortunately, in this courtroom, I don't have my own  
25 controls, so I am reliant on my deputy that stepped out for a

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Van Hook - Cross

1 moment.

2 I think we got it. There we go, but not yet on  
3 everyone else's screen.

4 Thank you. Sorry for the delay.

5 MS. BAILEY: Thank you.

6 BY MS. BAILEY:

7 Q. Dr. Van Hook, do you recognize this table?

8 A. I do.

9 Q. This is table one from your trial affidavit submitted in  
10 this case, correct?

11 A. Yes.

12 Q. So this table shows that by the eighth month, 42.4 percent  
13 of Hispanic households are predicted to have skipped that  
14 survey, correct?

15 A. At least once.

16 Q. At least one survey.

17 And that number compares to 46.3 percent of black  
18 households, correct?

19 A. Yes.

20 Q. So does that mean that the unit nonresponse rate for blacks  
21 in your sample set is nearly 10 percent higher compared to the  
22 nonresponse rate for Hispanic households?

23 A. Yes.

24 Q. In the nonresponse rate for Asian households is lower  
25 still, 39.4 percent, correct?

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Van Hook - Cross

1 A. Correct.

2 Q. Is it correct that across all of the ethnic groups which  
3 you analyzed in your study, somewhere between 35 and 42 percent  
4 of households are predicted to miss at least one survey out of  
5 eight, correct?

6 A. Yes.

7 Q. And CPS respondents do not receive the same question set  
8 every month, do they?

9 A. They do not.

10 Q. In fact, they are asked different questions each time,  
11 correct?

12 A. There is a set of core questions that are repeated every  
13 time, and then there are additional questions that are asked  
14 and supplements according to the month in which the interview  
15 occurred.

16 Q. Isn't it correct that there are core workforce  
17 participation or labor force participation questions asked each  
18 month, and then supplemental demographic or other collection  
19 questions added on top?

20 A. Yes.

21 Q. Thank you.

22 THE COURT: Can we just go back for one second?

23 You said that there was a 10 percent difference  
24 between the response rate for Hispanics and blacks.

25 Is that right? I see a 3.9 percent.

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Van Hook - Cross

1 THE WITNESS: Can I clarify?

2 THE COURT: Sure.

3 THE WITNESS: So that difference is three -- what is  
4 it, three --

5 THE COURT: Point nine.

6 THE WITNESS: Point nine percentage points difference.  
7 But a percent in relative terms, it would be a ten -- right --  
8 it is a 10 percent difference between 10 percent of 42.4 is  
9 4.2 percentage points. If you add that -- I'm sorry --

10 THE COURT: I see.

11 THE WITNESS: -- add to 42, you would get about 46.

12 THE COURT: Understood.

13 MS. BAILEY: Thank you, your Honor. A comparison.

14 BY MS. BAILEY:

15 Q. In fact, an individual is only asked about citizenship or  
16 nativity one time during the eight CPS surveys, correct?

17 A. Can you repeat the beginning of your question?

18 Q. Certainly.

19 Isn't it correct that an individual will only be asked  
20 about citizenship or nativity once during the eight surveys  
21 that are conducted as part of the CPS?

22 A. Yes, for any given individual.

23 Q. Correct.

24 And, in fact, an individual will only be asked about  
25 citizenship or nativity on the very first interview, correct?

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Van Hook - Cross

1 A. That's my understanding, yes.

2 Q. I would like to take a look at paragraph 22 of your trial  
3 testimony.

4 So you testified here that -- it is a little long. I  
5 apologize: If nonresponse to the CPS -- which, as noted,  
6 includes a question on citizenship -- increased when the 2020  
7 citizenship question was being proposed and debated, then this  
8 would be consistent with the understanding that the  
9 administration's proposal to add the citizenship question to  
10 the 2020 decennial census is already having an effect on  
11 respondents' willingness to respond to a Census Bureau survey  
12 containing a question on citizenship.

13 Is that correct?

14 A. Yes, that's what I wrote.

15 Q. So if a household responds to the initial CPS interview,  
16 but then skips one of the seven followups, they aren't actually  
17 failing to respond to a survey that included a citizenship  
18 question, are they?

19 A. They won't know in advance what the questions are before  
20 they either agree to participate or not.

21 Q. Isn't it correct that they have not failed to respond to  
22 a survey that contained a citizenship question given that the  
23 citizenship question has already been asked on the first  
24 interview and is not repeated?

25 A. That's correct. They did answer the question to begin

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Van Hook - Cross

1 with.

2 Q. So the individuals who would be captured in your definition  
3 of unit nonresponse have responded to a survey that contained a  
4 citizenship question and then skipped a followup that did not  
5 contain a citizenship question, correct?

6 A. That is correct.

7 Q. Lets turn to the final two sentences of paragraph 33 from  
8 your trial testimony.

9 This is the passage to which our objection was recently  
10 overruled, I might note.

11 You state here that even though the citizenship question is  
12 not asked during followup interviews, the respondents would not  
13 necessarily know this when contacted and might expect to be  
14 asked more questions about citizenship because they were asked  
15 at the first interview.

16 But you don't have any evidence that CPS respondents who  
17 initially participated in a survey containing a citizenship  
18 question for one or more months may expect that question to  
19 reappear, do you?

20 A. I have my own personal evidence and experience.

21 Q. So is it your testimony that you answered a survey  
22 containing a citizenship question and expected that question to  
23 reappear on further surveys?

24 A. Yeah. In fact, when I was preparing for this case and for  
25 my expert report, I had to look it up to find out whether or

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Van Hook - Cross

1 not that question was repeated, and I had actually been a  
2 participant in one of those surveys and, you know, I guess what  
3 I was inferring was based on some of my own experience.

4 Q. Didn't you testify earlier that the questions that are  
5 repeated are labor or workforce participation questions, and  
6 the questions that are supplemental to that are the demographic  
7 supplemental questions that are added each month?

8 In other words, the questions that are repeated are  
9 workforce participation questions, correct?

10 A. The questions that are repeated are labor force questions.

11 Q. OK. So isn't it just speculation that individuals may  
12 expect to be asked the citizenship question again?

13 A. It is certainly a possibility.

14 Q. Thank you. Well, we can leave that.

15 You produced an expert report in this case on September 7,  
16 2018, correct?

17 A. Yes.

18 Q. And you wrote your expert report in this case yourself,  
19 correct?

20 A. Yes.

21 Q. And you were deposed about that expert report on October 5,  
22 2018, correct?

23 A. Correct.

24 Q. And you then supplemented that report and provided  
25 additional information, additional opinions, on October 23,

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Van Hook - Cross

1 2018, correct?

2 A. Yes.

3 Q. And would it be fair to say that you began your study with  
4 the hypothesis that the inclusion of a citizenship question  
5 could decrease survey response rates, especially among  
6 immigrant households?

7 A. That was the question I was asked to conduct analysis that  
8 would have some implications for.

9 Q. Did you begin that study with a hypothesis about what that  
10 analysis might show?

11 A. Yes, I did have a hypothesis.

12 Q. What was your hypothesis?

13 A. My hypothesis was that -- and it was based on prior  
14 studies -- that the introduction of a citizenship question  
15 or -- actually, in general, questions about citizenship have  
16 become increasingly sensitive for certain groups, and those  
17 certain groups included groups that have high levels of  
18 noncitizens, high levels of undocumented immigrants, Hispanics  
19 especially.

20 Q. Thank you.

21 And you were, in performing your analysis, you were  
22 interested in particular in the behavior of Hispanics and  
23 Asians, correct?

24 A. Yes.

25 Q. And you testified in this case that that was because

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Van Hook - Cross

1 Hispanics and Asians may also be sensitive to  
2 immigration-related questions because a large share are  
3 immigrants, correct?

4 A. Yes.

5 Q. And you testified that one third of Hispanic adults are  
6 noncitizens, one third of Asian adults are noncitizens,  
7 correct?

8 A. Yes.

9 Q. Isn't it true that on November 1, 2018, so last Thursday,  
10 you signed an errata changing portion of your deposition  
11 testimony to reflect errors in your initial expert report  
12 produced in this case?

13 A. Yes.

14 Q. And the expert report you produced on September 7 was based  
15 on incorrect figures for the share of Asian and Hispanic adults  
16 who were noncitizens, wasn't it?

17 A. Correct.

18 Q. So I would like to take a look at your initial report on  
19 page three.

20 A. I don't have that in front of me.

21 Q. That's OK. I have them all.

22 So the report you produced on September 7 incorrectly  
23 stated that half of Asian adults are noncitizens and one-fifth,  
24 of Hispanic adults are noncitizens, didn't it?

25 A. Yes.

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Van Hook - Cross

1 Q. You you just testified, I believe, it is actually one-third  
2 and one-third?

3 A. Yes.

4 Q. I am going to show you figure one from your trial testimony  
5 produced in this case.

6 Do you recognize this figure?

7 A. Yes.

8 Q. So that figure shows that 29.6 percent of Asian adults are  
9 noncitizens, correct?

10 A. Yes.

11 Q. And it shows that 46.2 percent of Asian adults are  
12 naturalized citizens?

13 A. Yes.

14 Q. I would like to compare that with figure one from your  
15 initial report.

16 These charts look an awful lot a like, don't they?

17 Isn't it correct that the labels here are switched?

18 A. Yes.

19 Q. So in the initial report, it shows that 29.6 percent of  
20 Asians are noncitizens, whereas in the trial testimony report,  
21 it shows that 29.6 percent, in fact, are citizens, correct?

22 A. Yes.

23 Q. So if we just compare these two figures, the colors look  
24 the same, but the labels have been reversed, correct?

25 A. Yes.

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Van Hook - Cross

1 Q. So doesn't that mean that the graph used in your initial  
2 expert report represented that a substantially greater share of  
3 the Asian population are noncitizens, that is actually the  
4 case?

5 A. Yes. That was -- I'm sorry. My original report showed  
6 that a larger share were naturalized -- I'm sorry. Which one?

7 I'm sorry. Just a minute.

8 Q. I'm sorry. It is a little confusing.

9 A. So the original report was the one on the right?

10 Q. I'm sorry. The original report is on the top left and the  
11 revised report is on the bottom right.

12 MR. FREEDMAN: Objection.

13 THE COURT: I think that is incorrect, Ms. Bailey.

14 MS. BAILEY: Is it?

15 THE WITNESS: It is the other way around.

16 THE COURT: Judging from the call-out and what is  
17 behind it, I think the left is the affidavit of her testimony  
18 today. Is that correct?

19 MS. BAILEY: It is. Thank you.

20 Sorry. They do look a lot alike.

21 THE COURT: All right. What's the question?

22 BY MS. BAILEY:

23 Q. The question is: Isn't it correct that the graph used in  
24 your initial report represented that a substantially greater  
25 share of the Asian population are noncitizens than is actually

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Van Hook - Cross

1 the case?

2 A. Yes, that's true.

3 Q. It wasn't just the chart, the body of your expert report  
4 also contained inaccurate percentages of noncitizens for both  
5 Asians and Hispanics, correct?

6 A. Yes.

7 Q. OK. Do you remember discussing figure one during your  
8 October 5 deposition?

9 A. It came up at the end of the deposition. I do remember  
10 there were some references, but we didn't talk specifically  
11 about figure one.

12 Q. During that deposition, you did not indicate that those  
13 figures were incorrect, did you?

14 A. No.

15 Q. So during your deposition, when we discussed the makeup of  
16 Asian and Hispanic communities by reference to the preference  
17 of noncitizens, the numbers that were presented in your report  
18 and that we were discussing were not the correct figures,  
19 correct?

20 A. That is right.

21 Q. And the supplemental report that you produced in this case  
22 on October 23, it did not correct this error, did it?

23 A. I'm trying to remember. I think -- I think that might be  
24 right.

25 Q. Do you recall changing this figure in your supplemental

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Van Hook - Cross

1 report?

2 A. We corrected it in the errata for the deposition.

3 Q. That was actually my next question. In fact, the first  
4 time you acknowledged that figure one from your expert report  
5 was incorrect was in the errata to your deposition transcript  
6 that you signed last Thursday, correct?

7 A. Yes.

8 Q. OK. So turning back to the corrected figure one, that is  
9 the version on the left in the trial testimony.

10 We can turn to just that. Thank you.

11 Can we look at just figure one. Sorry.

12 So with the corrected graph, it is still correct that --  
13 yes.

14 A. This is the incorrect graph.

15 Q. Thank you.

16 Thank you, Dr. Van Hook.

17 So turning back to the corrected figure one, it is still  
18 correct that the racial or ethnic group, it contains the  
19 greatest share of immigrants is the Asian population, correct?

20 A. Yes.

21 Q. And that is because 24.2 percent of Asian adults in the  
22 U.S. are born versus about half of Hispanics, correct?

23 A. Yes.

24 Q. OK. And so leaving figure one for now, that wasn't the  
25 only error that you corrected in your expert report, was it?

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Van Hook - Cross

1 A. Correct.

2 Q. In fact, you made additional substantive changes to your  
3 deposition testimony through your errata that corrected errors  
4 contained in the initial report, correct?

5 A. Correct.

6 Q. So now I'm going to show you figure 5-S which appears on  
7 page 51 of your trial testimony in this case.

8 As I understand, this graph shows us monthly unit  
9 nonresponse broken down by race and ethnicity for each quarter  
10 between the third quarter of 2014 and the first quarter of  
11 2018.

12 Do I have that correct?

13 A. Yes.

14 Q. In the text of your report describing this chart, you state  
15 in your trial testimony that you examined trends in unit  
16 nonresponse rates across racial ethnic groups and did not find  
17 strong temporal patterns, correct?

18 A. Yes.

19 Q. And you state immediately after that that there is no  
20 obvious widening of racial/ethnic differences in unit  
21 nonresponse over the time period, but an exception is that unit  
22 nonresponse rates appear to have increased among Hispanics and  
23 blacks during the first quarter of 2018, correct?

24 A. Yes.

25 Q. I'd like to refer to the expert report at page 10.

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Van Hook - Cross

1           So as I understand figure five was originally contained in  
2           the body of your September 7 expert report, correct?

3           A. Correct.

4           Q. But your trial testimony moves the corrected figure back to  
5           the appendix, right?

6           A. Correct.

7           Q. And in your original expert report, in the text that is  
8           describing figure five which you can see there at the top,  
9           isn't it true that it incorrectly states that there had been an  
10          increase in nonresponse among Hispanics and Asians in the first  
11          quarter of 2018?

12          A. That's correct.

13          Q. And so didn't figure five in your expert report show that  
14          Hispanics and Asians are the ones having the uptick in  
15          nonresponse during the first quarter of this year rather than  
16          Hispanics and blacks?

17          A. Yes, that's true.

18          Q. OK. I would like to put those two together if we can.

19                To be clear, we have the expert report graph in the top  
20          left this time and the corrected graph in the bottom right. Is  
21          that correct, Dr. Van Hook?

22          A. Yes.

23          Q. Isn't it correct that figure 5-S, the corrected version in  
24          the trial testimony, shows blacks as having the highest level  
25          of nonresponse generally and having the largest spike in the

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Van Hook - Cross

1 first quarter of 2018, correct?

2 A. In general, it has the highest rates of unit nonresponse  
3 across the time period until the end of the time period.

4 Q. At the end of the time period, don't blacks still have the  
5 highest level of unit nonresponse?

6 A. They do not.

7 Q. Is that because the difference between blacks and Hispanics  
8 is not statistically significant?

9 A. Correct.

10 Q. But it is correct, isn't it, that blacks and Hispanics are  
11 the group in the corrected graph that do show an increase in  
12 unit nonresponse in the first quarter of 2018?

13 A. It looks that way.

14 Q. So isn't it correct that the version of this graph that was  
15 produced in your September 7 report had the lines for Asian  
16 nonresponse and black nonresponse switched, correct?

17 A. Correct.

18 Q. So the statement in the original report, which you can see  
19 there in the top left, that states that Hispanics and Asians  
20 were an exception in showing increased nonresponse in 2018,  
21 that was incorrect, right?

22 A. Yes.

23 Q. And if we refer to the corrected graph in the bottom right,  
24 that represents that the nonresponse rate of Asians has instead  
25 fallen during the Trump administration, hasn't it?

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Van Hook - Cross

1 A. Correct. And that was also shown in my adjusted figure  
2 seven.

3 Q. Thank you.

4 In fact, the nonresponse rate of Asians dropped to a level  
5 that is very close to that for non-Hispanic whites during the  
6 end of the time period, correct?

7 A. Correct.

8 Q. And the nonresponse level for Asians specifically fell  
9 between the first and third quarters of 2017, correct?

10 A. I'm sorry. Just a minute.

11 You said between the first and third quarters?

12 Q. Of 2017.

13 A. Just a minute.

14 Q. Between the second and third quarters of 2017.

15 A. Yes, between the second and the third quarter.

16 Q. And the nonresponse level for Asians fell specifically  
17 again in the first quarter of 2018, correct?

18 A. Excuse me. Can you say that again?

19 Q. The nonresponse level for Asians fell again in the first  
20 quarter of 2018, correct?

21 A. Incorrect, because it is not statistically significant.

22 Q. Because the change from one quarter to the next is not  
23 statistically significant there, correct?

24 A. Yes.

25 Q. But overall, the drop in nonresponse for Asians during the

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Van Hook - Cross

1 Trump administration has been statistically significant,  
2 correct?

3 A. Yes.

4 Q. Do you recall that we spoke about this figure fairly  
5 extensively during your October 5 deposition?

6 A. Yes.

7 Q. I'm sorry?

8 A. Yes.

9 Q. And during that deposition, you didn't disclose that the  
10 data displayed in figure five of your expert report and the  
11 discussion that immediately preceded it were wrong, did you?

12 A. I didn't realize it at the time.

13 Q. Thank you.

14 I would now like to look at figure seven from your trial  
15 testimony which occurs on page 20 of your trial testimony.

16 So as I understand, this graph shows the nonresponse rates  
17 broken down by race and ethnicity, so similar to figure five  
18 that we were just discussing. But as I understand, the  
19 difference here is that you have accounted for the effects of  
20 various factors that are unrelated to immigration, to quote,  
21 provide a less noisy depiction of the trends and behaviors,  
22 making it better suited for judging whether noncitizens and  
23 Hispanics change their behaviors in response to changes in the  
24 political climate more the debate about the citizenship  
25 question.

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Van Hook - Cross

1 Do I have that right?

2 A. Can you tell me where you have read that from?

3 Q. Certainly.

4 We can take a look at it, if you would like. It is in  
5 paragraph 39 of your trial testimony.

6 MR. FREEDMAN: Counsel, what page? You were citing  
7 something on page 19 or page 20.

8 MS. BAILEY: Page 39.

9 THE COURT: Mr. Freedman, can you put the microphone  
10 closer to you, please.

11 MR. FREEDMAN: Sure.

12 BY MS. BAILEY:

13 Q. Can we take a look at paragraph 39 of the trial testimony.

14 A. OK. I see what you're reading.

15 Yes, I see it. Thank you.

16 Q. So was that description accurate that -- I think we can go  
17 back, I'm sorry -- that this is the same monthly unit  
18 nonresponse broken down by race or ethnicity, but adjusted to  
19 remove the noise of factors unrelated to immigration, is that  
20 an accurate description?

21 A. No, because you said unrelated to immigration. It is  
22 really unrelated to the demographic factors that may have  
23 changed over time as well as item nonresponse to questions that  
24 are not related to immigration.

25 Q. So you have adjusted these figures to remove some of the

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Van Hook - Cross

1 noise in a way that, as you stated, makes it better suited for  
2 judging whether noncitizens and Hispanics change their behavior  
3 and responses to the political climate for the debate about the  
4 citizenship question, correct?

5 A. Correct.

6 Q. Do you recall that we also discussed this figure during  
7 your deposition?

8 A. Yes.

9 Q. Do you recall that during your deposition, I asked you,  
10 question: Specifically whether given that these estimates have  
11 been adjusted to reduce the noise of demographic changes and  
12 blacks have the consistently higher nonresponse rate but much  
13 lower rates of noncitizens, wouldn't that be most consistent  
14 with some other factor besides immigration-related concerns  
15 causing the breakoff?

16 A. Are you speaking about blacks in this case?

17 Q. Yes.

18 A. Yes, I would say so.

19 Q. Do you recall being asked that question at your deposition?

20 A. Not specifically, but I can look.

21 Q. Can we take a look at 182:23 through 183:12 of the  
22 deposition transcript?

23 182:23 through 183:12. I think it is one we already  
24 had.

25 I think you see the top there the question that I had

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Van Hook - Cross

1 just read.

2 Isn't it true that in response to the question that I just  
3 read, you testified that this was attributable to a suppression  
4 effect evidenced by the fact that the nonresponse rate for  
5 blacks is higher in the adjusted figures than it was previously  
6 in the nonadjusted figures in figure five, correct?

7 A. I did say that during the deposition, but --

8 Q. Thank you.

9 A. -- given -- OK.

10 Q. So in figure 5-S, as directed, blacks are in the middle,  
11 they have the highest nonresponse, they are at the top,  
12 correct?

13 A. Yes.

14 Q. Doesn't that make your testimony here where you're  
15 explaining the existence of a suppression effect in response to  
16 my question about the nonresponse rate for blacks, this  
17 testimony is incorrect, isn't it?

18 A. Yeah, and I actually corrected that in the errata.

19 Q. You corrected that in the errata that you signed last  
20 Thursday, correct?

21 A. Correct.

22 Q. Thank you.

23 In your errata, you changed the testimony that is shown  
24 here on the screen to instead state: There is an error in the  
25 labels, blacks and Asians are switched. So blacks are at the

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Van Hook - Cross

1 top with the highest nonresponse rates.

2 Does that sound correct?

3 A. Yes.

4 Q. OK. And that is not the only substantive change you made  
5 to your testimony discussing figures five and seven, isn't it?

6 A. Can you please remind me?

7 Q. Certainly.

8 Can we look at 183:24, through 184:3. It is the next  
9 tear-out.

10 OK. Here, in response to a question that I asked, you  
11 stated: They have now higher nonresponse. They were not  
12 higher before the adjustment.

13 Correct?

14 A. Yes.

15 Q. In your errata, you also changed this testimony to reflect  
16 that blacks have the highest nonresponse both before and after  
17 adjustment, didn't you?

18 A. Yes.

19 Q. OK. If we can turn back to figure seven from the trial  
20 testimony.

21 So in figure seven, after you have removed, as you put it,  
22 the noise in controlled for multiple factors, blacks have the  
23 highest nonresponse, correct?

24 A. They have higher nonresponse up until the last couple  
25 quarters of the time period in question.

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Van Hook - Cross

1 Do you see how the error bars overlap near the end of  
2 the time period between Hispanic and blacks? So we can no  
3 longer say that blacks are the highest at that point.

4 Q. You changed your trial testimony, your deposition  
5 testimony, to state that blacks have the highest nonresponse  
6 and are on top before and after adjustment, correct?

7 A. That's true, yes.

8 Q. So in your errata you stated that blacks are on top and  
9 have the highest nonresponse both before and after adjustment,  
10 correct?

11 A. That's correct.

12 Q. Thank you.

13 The nonresponse rates for Asian after controlling  
14 various factors are now even lower for non-Hispanic whites,  
15 correct?

16 A. Incorrect.

17 Q. I'm sorry. The nonresponse rate for Asians is lower than  
18 for non-Hispanic whites --

19 A. Which time period are you talking about?

20 Q. Through the end of the Trump administration.

21 A. Actually, they are not different because their error bars  
22 overlap with error bars for whites, I believe.

23 I'm sorry. Just a minute. It is. The whites are the  
24 yellow line.

25 Q. So the nonresponse rate for Asians is now commensurate with

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Van Hook - Cross

1 what it is for non-Hispanic whites, correct?

2 A. Correct.

3 Q. And in your trial testimony, you state that patterns  
4 changed in the first quarter of 2018, when adjusted unit  
5 nonresponse rates along Hispanics significantly increased above  
6 the level seen among Asians and non-Hispanic whites, correct?

7 A. Correct.

8 Q. But this statement didn't acknowledge that the rate for  
9 Asians has dropped through the latter half of the current Trump  
10 administration, correct?

11 A. It doesn't say anything about Asians.

12 Q. It doesn't acknowledge that.

13 Well, it compares the rate among Hispanics among the  
14 rate among Asians and non-Hispanic whites, correct?

15 A. Yes.

16 Q. And isn't try that the adjusted unit nonresponse rate for  
17 Asians has been lower for much of the Trump administration than  
18 it was during the Obama administration?

19 A. The rates for Asians dropped below the levels for Hispanics  
20 during the Trump administration.

21 Q. My question was: Isn't it correct that the adjusted unit  
22 nonresponse rate for Asians has been lower for much of the  
23 Trump administration than it was during much of the Obama  
24 administration?

25 A. I would say "much of" is a little bit of an exaggeration.

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Van Hook - Cross

1 It is about half.

2 Q. It is lower currently, correct, than it was during the  
3 Obama administration?

4 A. Correctly, and that is in the last quarter.

5 Q. OK.

6 MR. FREEDMAN: Objection.

7 THE COURT: Hold on.

8 MR. FREEDMAN: I think --

9 THE COURT: Microphone, please.

10 MR. FREEDMAN: Objection. That is miscasting the  
11 exhibit. The objection is to the word "current."

12 THE COURT: The witness can answer the question and  
13 she did.

14 Objection is overruled.

15 BY MS. BAILEY:

16 Q. In figure seven, adjusted to remove the noise shows that  
17 the nonresponse rate for blacks actually increased at the time  
18 that it increased for Hispanics, correct?

19 A. It did.

20 Q. Didn't you acknowledge that nonresponse is associated with  
21 more than one social factor, when I asked at your deposition  
22 for you to explain how the rate for blacks being higher than it  
23 is for Hispanics is consistent with your conclusion that the  
24 Trump administration policies and the citizenship question  
25 specifically is causing increased nonresponse?

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Van Hook - Cross

1 A. I had said in the deposition that the different groups have  
2 different reasons for their nonresponse. So different  
3 hard-to-count groups that have different -- there is different  
4 reasons for why you would see nonresponse.

5 Q. You stated specifically nonresponses associated with more  
6 than one social factor, correct?

7 A. Yes.

8 Q. Isn't it true that your initial September 7 report  
9 contained a conclusion not found in your trial testimony.  
10 Specifically it stated that the unadjusted increase seen for  
11 Asians in figure five can be attributed to compositional change  
12 in the Asian population; do you recall that?

13 A. This is the figure five that has been corrected now,  
14 correct?

15 Q. I believe that it is a passage comparing figures five and  
16 seven, but we can take a look. It is at page 11 of the initial  
17 report.

18 We no longer see a parallel increase in unit nonresponse  
19 among Asians in 2018, which suggests that the unadjusted  
20 increase seen for Asians in figure five can be attributed to  
21 compositional changes in the Asian population?

22 A. Yeah, I agree with you on that. That probably should have  
23 been corrected as well.

24 Q. Isn't it true that you moved the statement from your trial  
25 testimony because it was wrong, given that it is comparing

IB5sNYS5

Van Hook - Cross

1 figure seven to the faulty data in the original figure five,  
2 correct?

3 A. Yes. Yes, I should have made that correction.

4 Q. Thank you.

5 Lets take a look at figure three from your trial testimony.

6 So this shows, as I understand, percentage of unit  
7 nonresponse by the eighth CPS interview broken down by race and  
8 ethnicity, correct?

9 A. Correct.

10 (Continued on next page)

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Van Hook - Cross

1 BY MS. BAILEY:

2 Q. And this chart shows that the racial group with the  
3 highest level of nonresponse is blacks, correct?

4 A. Yes.

5 Q. But as a group, blacks cite low levels of immigrants  
6 correct?

7 A. Yes.

8 Q. And the nonresponse rate for Asians is substantially lower,  
9 39.4 percent, correct?

10 A. Yes.

11 Q. But as a group, Asians have the highest percentage of  
12 immigrants, right?

13 A. Yes.

14 Q. And your trial testimony describing this graph states that,  
15 comparing Hispanics to non-Hispanic whites, the difference is 7  
16 percentage points, correct?

17 A. Yes.

18 Q. But isn't the nonresponse rate for Asians 7 percentage  
19 points lower than the nonresponse rate for blacks?

20 A. Yes.

21 Q. And in your trial testimony, you examined more closely the  
22 nonresponse rates over time broken down by citizens versus  
23 noncitizens for Asians and Hispanics specifically, correct?

24 A. Yes.

25 Q. And you testified that this was, that you undertook this

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Van Hook - Cross

1 analysis because large shares of Hispanics and Asians are  
2 immigrants, correct?

3 A. Yes.

4 MS. BAILEY: I'd like to take a look at paragraph 42,  
5 which is on page 22 of trial testimony. That's the passage I  
6 was just referring to, and can we go to paragraph 44, please.

7 Q. Here, you state that, "among Asians, the adjusted unit  
8 nonresponse rate increased gradually for noncitizens while it  
9 declined among citizens, and that the divergence started in  
10 2016, before the start of the Trump administration, although  
11 the gap widened in early 2017, and that another way Asians  
12 differed from Hispanics is that Asian noncitizens did not  
13 experience a sharp increase in unit nonresponse during the  
14 first quarter of 2018," is that correct?

15 A. Yes.

16 Q. Now, let's look at figure 10, which is on 24 page of your  
17 trial testimony. As I understand, this figure reflects the  
18 adjusted unit nonresponse for Asians broken down by  
19 citizenship, is that correct?

20 A. Yes.

21 Q. And figure 10 shows that Asian noncitizens, which is the  
22 orange line, actually experienced a decrease in the first  
23 quarter of 2018, correct?

24 A. I'm sorry. Which year are you talking about?

25 Q. The first quarter of 2018.

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Van Hook - Cross

1 A. The first quarter of 2018, that decrease is not  
2 statistically significant.

3 Q. The difference between noncitizens and citizens is  
4 statistically significant in the quarter preceding it, correct?

5 A. Oh, you're talking about the gap between the two groups.

6 Q. Correct?

7 A. Not the change for any particular group.

8 Q. Well, there is a gap in the third quarter -- prior to the  
9 first quarter of 2018, and then that gap closes as the rates  
10 become nonstatistically significant, correct?

11 A. That's true, yes.

12 Q. OK. So your testimony that we just looked at stated that  
13 Asians differed from Hispanics in that they did not experience  
14 a sharp increase, correct?

15 A. Correct.

16 Q. But in fact, the gap between noncitizens and citizens  
17 closed to the level where it's not statistically significant in  
18 the first quarter of 2018, correct?

19 A. Yes.

20 Q. And doesn't that time frame coincide with the time frame in  
21 which there was discussion of the citizenship question in the  
22 media?

23 A. Yes.

24 Q. And doesn't this reflect that Asian noncitizens experienced  
25 a decrease, although one that is not statistically significant

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Van Hook - Cross

1 from the rate at which citizens were responding? Correct?

2 A. I -- can you please repeat that question, because it's a  
3 very confusing -- when you said even though.

4 Q. There had been a gap prior to the first quarter in 2018  
5 between nonresponse rates for noncitizens being higher than  
6 citizens, and that gap closed such that there's not a  
7 statistically significant difference in nonresponse rates,  
8 correct?

9 A. Yes.

10 Q. And the nonresponse rate of Asian noncitizens did  
11 experience a decline between the second and third quarters of  
12 2017, correct?

13 A. Are you talking about citizens or noncitizens? Can you  
14 repeat that again?

15 Q. Sorry. Withdrawn.

16 In fact, isn't the nonresponse rate for Asian noncitizens  
17 in first quarter of 2018 commensurate with what it was for much  
18 of the Obama administration?

19 A. There is hardly any change across the entire time period  
20 among these groups because the error bars are so large.

21 Q. Fairly flat, correct?

22 A. Yes.

23 THE COURT: Can I interrupt for one second.

24 You said error bars a couple times. Am I right that  
25 the hash marks, if you will, on the lines, that that's the

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Van Hook - Cross

1 margin of error? Is that what you're referring to?

2 THE WITNESS: Yes, those are 95 percent confidence  
3 intervals.

4 THE COURT: All right. So really, the line doesn't  
5 necessarily reflect accurately. The error margin is the more  
6 accurate way of looking at it.

7 THE WITNESS: Yeah, if you'd like me to explain what  
8 those are, I can do that.

9 THE COURT: Sure. Please.

10 THE WITNESS: OK. So, a 95 percent confidence  
11 interval tells us how precise the estimate is. If you were to  
12 repeat a study 100 times, 95 of the times you would get an  
13 estimate that would cover the true estimate in the population  
14 for that confidence interval, so surveys that have, or studies,  
15 samples that have large sample sizes will have narrower  
16 confidence intervals, and some of them are confident in the  
17 estimate.

18 THE COURT: All right. Thank you.

19 BY MS. BAILEY:

20 Q. Isn't it correct that none of the changes you see in Asian  
21 noncitizens during the Trump administration -- none of those  
22 are statistically significant changes, correct?

23 A. Exactly.

24 Q. I'd like to turn to paragraph 49 of your trial testimony.  
25 You state that: "Asian noncitizens experienced more gradual

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Van Hook - Cross

1 increases in unit nonresponse starting as early as 2016. It is  
2 difficult to say for certain why unit nonresponse increased  
3 earlier for Asian noncitizens than it did for Hispanic  
4 noncitizens." Correct?

5 A. Yes.

6 Q. But in fact, the rate for Asian noncitizens did not  
7 increase over the entire time frame, did it?

8 A. Yeah, that's probably true. I think I was probably  
9 referring to the growing gap between the two groups.

10 MS. BAILEY: Can we go back to figure 10.

11 Q. So the testimony we just looked at said that: Asian  
12 noncitizens experienced more gradual increases in unit  
13 nonresponse starting as early as 2016. It is difficult to say  
14 for certain why unit nonresponse increased earlier for Asian  
15 noncitizens than it did for Hispanic noncitizens," but in fact,  
16 what we see here is not a gradual increase throughout the time  
17 frame, is it?

18 A. What we see is a gradual widening of the gap between  
19 citizens and noncitizens.

20 Q. And at the end of the time period, that gap is closed to  
21 the point where it's not statistically significant, correct?

22 A. In one of the time points, the last quarter -- the first  
23 quarter of 2018, you do not see a significant gap anymore.

24 Q. And that was the time frame in which your study was  
25 particularly focused because it coincided with discussion of

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Van Hook - Cross

1 the citizenship question in the media, correct?

2 A. Yes.

3 Q. And I believe you just testified that no change during the  
4 Trump administration was statistically significant, correct?

5 A. Yeah, among citizens, if you take noncitizens by themselves  
6 or citizens by themselves.

7 Q. And in paragraph 49 of your trial testimony, when you were  
8 discussing the rates among Hispanics, you stated there that an  
9 increase seen among Hispanics was especially noteworthy in the  
10 first quarter of 2018 because it coincides with the discussion  
11 of the 2020 citizenship question, but the convergence of those  
12 two lines for Asian noncitizens and citizens also coincides  
13 with that same time period, so isn't the convergence of the  
14 rates for Asian people equally noteworthy?

15 A. It is important.

16 Q. Thank you.

17 And I'd like to turn to paragraph 50, which is page 27 of  
18 your trial testimony. In summarizing your unit nonresponse  
19 data, you conclude that CPS unit nonresponse data is consistent  
20 with the understanding that noncitizens, and particularly  
21 Hispanic noncitizens, have become less responsive to a survey  
22 containing questions concerning citizenship since the onset of  
23 the Trump administration, particularly during the first quarter  
24 of 2018, correct?

25 A. Yes.

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Van Hook - Cross

1 Q. But the rate for Asian noncitizens has not increased, has  
2 it?

3 A. That's true.

4 Q. And Asians have the greatest incidence of immigrants among  
5 the population in the U.S., correct?

6 A. They don't. They -- actually -- sorry. Higher share of  
7 immigrants, that's true.

8 Q. OK. And since you defined unit nonresponse as skipping at  
9 least one follow-up survey after a household participated in  
10 the initial CPS interview, the surveys that households in your  
11 study failed to respond to did not actually contain the  
12 citizenship question, correct?

13 A. It's not clear that they did not contain a citizenship  
14 question, because --

15 Q. Didn't you testify earlier that a household or an  
16 individual would only be asked citizenship on the very first  
17 interview, and in order to be in your sample set they have to  
18 have participated in that interview?

19 A. I testified that an individual will not get that question,  
20 but if a new person joins the household, then they will get a  
21 repeat of that citizenship question --

22 Q. But my question is --

23 A. -- and your question to me was about households.

24 Q. So an individual who fails to respond to a survey, an  
25 individual captured in your definition of unit nonresponse, has

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Van Hook - Cross

1 not failed to respond to a survey that contains a citizenship  
2 question because they already answered a survey that contains a  
3 citizenship question, correct?

4 A. I don't know if they would know whether or not they --

5 Q. That wasn't my question, Dr. Van Hook.

6 I'm looking at your testimony here, and you're saying that  
7 the nonresponse data is consistent with the understanding that  
8 noncitizens, and particularly Hispanic noncitizens, have become  
9 less responsive to a survey containing questions concerning  
10 citizenship. So my question to you is, isn't it correct that  
11 individuals who would be captured within your definition of  
12 unit nonresponse have already answered a survey that contains  
13 citizenship and therefore are not failing to respond to a  
14 survey that contains citizenship? Right?

15 THE COURT: Ms. Bailey, please just slow down a little  
16 bit for the court reporter.

17 MS. BAILEY: Sorry.

18 THE COURT: Thank you.

19 A. When I'm referring to surveying, I'm thinking about CPS as  
20 an instrument, and that instrument contains a question about  
21 citizenship.

22 Q. But they've already answered that instrument containing  
23 citizenship in order to be collected in your sample, Dr. Van  
24 Hook, isn't that right?

25 A. They answered it in the first interview.

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Van Hook - Cross

1 Q. Thank you.

2 You next looked at item nonresponse, meaning households who  
3 declined to answer the citizenship question but otherwise  
4 participated through the CPS survey, correct?

5 A. I'm sorry. Can you say that again?

6 Q. Certainly. I'm shifting gears here. I apologize. We're  
7 shifting to item nonresponse, which was the second. You also  
8 produced expert opinions on item nonresponse, so the question  
9 was you looked next at item nonresponse, meaning households who  
10 declined to answer the citizenship question but otherwise  
11 participated in the survey. Correct?

12 A. Yes.

13 Q. And the data showed you that item nonresponse had been  
14 increasing for each of the racial or ethnic groups you studied  
15 except for Asians since 2013, correct?

16 A. Can we look at the graph for that?

17 Q. Certainly. Let's look at paragraph 56, page 29 of the  
18 trial testimony.

19 You stated here that item nonresponse increased  
20 significantly between 2013 and 2018 for Hispanics, blacks and  
21 non-Hispanic whites.

22 A. OK. I see what you're saying. Can we turn to figure 13 to  
23 look at that?

24 Q. Not yet.

25 My question is the data showed you that item nonresponse

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Van Hook - Cross

1 had been increasing for each of the groups except Asians since  
2 2013, correct?

3 A. That's what it says here, yes.

4 Q. OK. Let's take a look at figure 14 --

5 A. OK.

6 Q. -- which as I understand it graphs the change in item  
7 nonresponse among immigrant households broken down by race,  
8 correct?

9 A. Uh-huh.

10 THE COURT: You have to say yes or no.

11 THE WITNESS: Yes, yes.

12 BY MS. BAILEY:

13 Q. I'd like to juxtapose this figure with table A10, which I  
14 believe provides the numbers that give the confidence intervals  
15 for this figure. Is that correct?

16 A. Yes.

17 Q. And so isn't it correct that the way you determine whether  
18 a change is statistically significant is by comparing the lower  
19 and upper bounds such that if they overlap, then the change is  
20 not statistically significant? Correct?

21 A. Correct.

22 Q. So isn't it correct that -- and I'm sorry. I'd like to  
23 clarify that this is item nonresponse, failing to answer the  
24 citizenship question, and it's specifically broken down by  
25 individuals who are in immigrant households, correct?

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Van Hook - Cross

1 A. Yes. This is figure 14.

2 Q. Yes.

3 A. Yes.

4 Q. Isn't it correct that for Asians in immigrant households,  
5 none of the year-over-year fluctuations between 2013 and 2018  
6 is statistically significant for any of the years, correct?

7 A. That's right.

8 Q. And isn't it true that for blacks in immigrant households,  
9 there is no statistically significant increase from any year to  
10 the next? Correct?

11 A. Yes.

12 Q. And the same is true for whites in immigrant households?

13 A. Yes.

14 Q. And isn't it correct that for Hispanics in immigrant  
15 households, the only year-over-year change here that's  
16 significantly significance is between 2014 and 2015?

17 A. If you compare adjacent years, that's correct.

18 Q. If you compare one year to the next, and you testified that  
19 item nonresponse increased even faster among Hispanics in  
20 immigrant households as compared to all immigrants and said of  
21 note much of the increase occurred after 2016, correct?

22 A. Is this for the unadjusted numbers or the adjusted numbers,  
23 in the text?

24 Q. We can take a look. It's in paragraph 57, which is page  
25 29.

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Van Hook - Cross

1 A. These are the unadjusted numbers.

2 Q. Does that refresh your recollection?

3 A. So, what I was referring to is that if you compare the  
4 change -- I'm sorry, between 2013 and 2018, the percentage  
5 point change was greater in figure 14 than it was in figure 13.

6 Q. But my question is you testified here that item nonresponse  
7 increased even faster among Hispanics in immigrant households  
8 as compared to all immigrants and that of note much of the  
9 increase occurred after 2016, correct?

10 A. Yes.

11 MS. BAILEY: We can go back to the chart, please, the  
12 figure 14 split screen. Thank you.

13 Q. Isn't it true that the increase in item nonresponse between  
14 2017 and 2018 was not statistically significant? Correct?

15 A. Yes.

16 Q. And so for the conclusion we were just looking at, which  
17 was paragraph 57, you relied on the facts that the increase  
18 between 2016 and 2018 is statistically significant, correct?

19 A. Yes.

20 Q. But isn't the increase from 2013 to 2015 also statistically  
21 significant?

22 A. Yes.

23 Q. And that, obviously, predates the current administration or  
24 the discussion of the citizenship question, correct?

25 A. Correct.

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Van Hook - Cross

1 Q. You then adjusted the status to reduce the noise by  
2 adjusting to account for changes in population composition,  
3 correct?

4 A. Yes.

5 Q. Similar to figure 7 we looked at before, correct?

6 A. Uh-huh.

7 Q. And in your trial testimony, you wrote that the trends in  
8 item nonresponse among blacks and Hispanics remained even after  
9 making these adjustments, correct?

10 A. The trends in nonresponse for blacks? Can we -- where is  
11 it?

12 Q. It's trial testimony paragraph 60, page 31. So you wrote  
13 the trends in item nonresponse among Hispanics and blacks  
14 remained even after making these adjustments. So this is the  
15 adjusted figures?

16 A. OK. Yes.

17 Q. Correct?

18 A. Yes.

19 MS. BAILEY: Now, if we can do the split screen  
20 between figure A3 in the bottom half of table A13F, so that's  
21 going to be, as I understand, the table with the adjusted  
22 figures, so this is the same data we were looking at, item  
23 nonresponse in immigrant households broken down by race or  
24 ethnicity, but these are adjusted to reduce the noise, and it's  
25 displayed there with the table that provides the data that

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Van Hook - Cross

1 allows you to compare whether the changes are statistically  
2 significant, correct?

3 A. Correct.

4 Q. So this chart and the accompanying table still represent  
5 only those in immigrant households, correct?

6 A. Yes.

7 Q. And isn't it true that no racial or ethnic group shown on  
8 this chart experienced a statistically significant change from  
9 any year-to-year period?

10 A. If you compare adjacent years, that's correct.

11 Q. So from any year-to-year period, there are no statistically  
12 significant changes from one year to the next year, correct?

13 A. Hang on just one second, though.

14 Q. Certainly.

15 A. I would like to compare 2016 with 2017 for Hispanics.

16 OK.

17 Q. They're not about --

18 A. I'm sorry.

19 Q. -- right?

20 A. This is for immigrant households, is that right?

21 Q. Yes, Dr. Van Hook, this is immigrant households --

22 A. OK.

23 Q. -- adjusted to account for any --

24 A. OK. Change between 2016 and 2017 is significant.

25 Q. The upper and lower bounds are both 9.0; when they

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Van Hook - Cross

1 coincide, is that statistically significant?

2 A. Yes, because -- well, they butt up against one another, but  
3 they don't overlap.

4 Q. They don't overlap and they're both at 9.0?

5 A. Yes.

6 Q. Isn't it true that -- withdrawn.

7 Isn't it true that the increase in Hispanic immigrant  
8 nonresponse between 2017 and 2018 is not statistically  
9 significant?

10 A. Correct.

11 Q. And isn't it true that the lowest item nonresponse among  
12 any of the groups is among Asians in immigrant households?  
13 Correct?

14 A. Correct.

15 Q. And that, again, was the group adults in the U.S.  
16 population that has the greatest incidence of immigrants,  
17 correct?

18 A. Correct.

19 Q. And that rate stayed flat over time, didn't it?

20 A. Yes.

21 Q. And the increase in nonresponse rate for Hispanic  
22 immigrants that you point to between 2016 and 2018, even that  
23 same trend of an increase from -- in a two-year period, that  
24 same trend isn't evident for any other group of immigrants, is  
25 it?

Ib5Wnys6

Van Hook - Redirect

1 A. I'd like to correct that question. It's not a two-year  
2 period. It's a one point -- 1.25-year period. It's not two  
3 years.

4 Q. No other group of immigrants in the U.S. population in this  
5 data set shared that trend, correct?

6 A. Yes. I only see it for Hispanics.

7 Q. OK. And so none of the changes year over year in Asian,  
8 black or non-Hispanic whites in immigrant households is  
9 statistically significant, correct?

10 A. Yes.

11 MS. BAILEY: Thank you. No further questions.

12 THE COURT: Redirect.

13 REDIRECT EXAMINATION

14 BY MR. FREEDMAN:

15 Q. Good afternoon, Dr. Van Hook. So, we had a lot of  
16 questions about Asians and we had a lot of questions about  
17 blacks. We didn't have a lot of questions about Hispanics, did  
18 we?

19 A. Correct.

20 Q. Could we maybe look at some of your analysis that we  
21 skipped over that discusses Hispanics?

22 MS. BAILEY: Objection. I would ask counsel to limit  
23 the scope of redirect to the scope of the cross-examination.

24 THE COURT: Overruled. Yes. He needs to restrict it,  
25 but this is within the scope.

Ib5Wnys6

Van Hook - Redirect

1 Go ahead.

2 BY MR. FREEDMAN:

3 Q. Dr. Van Hook, you looked at a chart and actually spent a  
4 fair amount of time on figure 10, which is the chart of  
5 adjusted monthly unit nonresponse rates in CPS among Asians?

6 A. Uh-huh.

7 Q. Do you have a similar analysis for Hispanics?

8 A. I do.

9 MR. FREEDMAN: Could we look at figure 9.

10 MS. BAILEY: Objection. Beyond the scope of cross.

11 THE COURT: Ms. Bailey, if I overrule an objection,  
12 making the same objection one question later doesn't really  
13 make a whole lot of sense. Overruled.

14 MS. BAILEY: I'm sorry. I thought I understood your  
15 Honor to say limited to the cross.

16 THE COURT: Yes, but I think this is within the scope,  
17 reasonably construed. Overruled.

18 MR. FREEDMAN: Could we see figure 8 -- I'm sorry,  
19 figure 9, on page 23.

20 THE COURT: All right. There we go.

21 BY MR. FREEDMAN:

22 Q. What does this show, Dr. Van Hook?

23 A. OK, so what we're looking at here is a comparison of unit  
24 nonresponse by quarter between 20 -- the third quarter of 2014  
25 and first quarter of 2018 for Hispanics.

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Van Hook - Redirect

1           The blue line shows the trend for citizens. The orange  
2 line shows the trend for noncitizens. And keep in mind  
3 everybody in this sample was first interviewed about their  
4 citizenship prior to the beginning of the Trump administration,  
5 and so presumably, they would not have had the same -- it  
6 wouldn't have been the same kind of environment that they were  
7 answering that question in. And so everything here is about  
8 subsequent follow-up rates for these two groups. And what we  
9 see here is up until the second quarter of 2017, the two groups  
10 are indistinguishable from one another and showed no  
11 significant differences.

12           Now, I believe it was in the first and -- I can't remember.  
13 I'd have to go look at the table when those become  
14 significantly different from one another, but they are  
15 certainly significantly different from one another in the first  
16 quarter of 2018, when we see an increase in unit nonresponse  
17 for noncitizens who are Hispanic.

18 Q. Thank you.

19           Now, did you also present an analysis that didn't break  
20 down by ethnicity but just looked at citizens versus --

21 A. I did. I did.

22           MR. FREEDMAN: I'm sorry.

23           THE COURT: Let's try that again.

24           MR. FREEDMAN: And I will.

25           THE COURT: Dr. Van Hook, please wait until he

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Van Hook - Redirect

1 finishes his question before you start your answer.

2 Go ahead.

3 BY MR. FREEDMAN:

4 Q. Did you also look at the same trends not breaking down by  
5 ethnicity but just looking down citizen by noncitizen?

6 A. I did.

7 MS. BAILEY: Objection.

8 A. And that's shown in figure 8.

9 MS. BAILEY: Your Honor, I understand you previously  
10 overruled my objection, but this is well beyond the scope of  
11 what I asked Dr. Van Hook about. I did not touch on this data  
12 or this analysis at all.

13 THE COURT: All right. Overruled.

14 Go ahead.

15 MR. FREEDMAN: Could we see figure 8.

16 Q. Dr. Van Hook, what is this?

17 A. OK. What I'm doing here is I'm comparing unit nonresponse  
18 over time between citizens and noncitizens. You'll see less  
19 noise in this graph than we saw before, because this is built  
20 on a larger sample size, and so it smooths things out a little  
21 bit. And basically what we see is that before the beginning of  
22 the Trump administration took office, there was no significant  
23 difference in unit nonresponse between citizens and  
24 noncitizens. However, starting in the first quarter of 2017,  
25 we see a significant increase in unit nonresponse for

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Van Hook - Redirect

1 noncitizens. That is maintained throughout the rest of the  
2 time period, and the gap even widens by the first quarter of  
3 2018.

4 Q. Thank you.

5 Now, in conjunction with the discussion of paragraph 56, on  
6 page 29 of your report, do you remember Ms. Bailey asked you  
7 about that?

8 A. I'm sorry. What -- this is paragraph 56?

9 Q. Paragraph 56.

10 THE COURT: Dr. Van Hook, it's on the screen, if  
11 that's easier.

12 THE WITNESS: Oh, yeah.

13 Q. Do you remember she was asking you about that?

14 A. Yes.

15 Q. And you asked to see figure 13 in conjunction with that  
16 questioning, correct?

17 A. Correct.

18 Q. And Ms. Bailey showed you figure 14?

19 A. Yes.

20 Q. And said that she would come back to figure 13.

21 MR. FREEDMAN: Can we see figure 13.

22 Q. What's figure 13 tell you?

23 A. So these are unadjusted numbers. They are unadjusted item  
24 nonresponse on the citizenship or the place of birth question,  
25 and this is done for all of the people in all households, not

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Van Hook - Redirect

1 just immigrant households. And so what we see for Hispanics,  
2 if we just compare from 2013 to the end of the time period,  
3 2018, we do see a significant increase in item nonresponse on  
4 these questions throughout the time period.

5 For the other groups, it's less clear that there is any  
6 change happening across the time period.

7 Q. And Ms. Bailey asked you to compare the -- granted with a  
8 different figure, figure 14, the year-to-year comparisons and  
9 you volunteered to look at the change, say, from 2016 to 2018.  
10 Are the changes from the end, from 2016 to 2018, does that  
11 reflect a statistically significant change in Hispanics?

12 A. Yes. For both charts, for both figure 13 and figure 14, we  
13 see a significant increase for Hispanics between 2016 and 2017,  
14 and then when we compare 2016 and 2018. In neither chart do  
15 you see a significant change between '17 and '18.

16 Q. So we're seeing it for figure 13.

17 MR. FREEDMAN: Why don't we pull up figure 14, just to  
18 make that clear.

19 Q. What does this show?

20 A. Again, we're seeing a significant increase in item  
21 nonresponse among Hispanics between the beginning of the time  
22 period and the end of the time period, and it's a steady  
23 increase, although not every year-to-year change is  
24 significant. If you look across, you see a steady increase,  
25 and you know, if you compare, for example, 2013 to 2015,

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Van Hook - Redirect

1 there's a significant change. If you compare 2016 to 2018,  
2 there's a significant change among Hispanics. None of the  
3 other groups -- we don't see any significant changes in item  
4 nonresponse.

5 Q. Now, Ms. Bailey asked you about figures 5 and 7.

6 MR. FREEDMAN: It may be a tall order to ask for a  
7 split screen on the fly, but let's see if we can do it.

8 And can you do 5 as well?

9 (Discussion off the record)

10 MR. FREEDMAN: Actually, that's from the report rather  
11 than the testimony.

12 Oh, we don't have that. OK.

13 Q. Do you know which, do you remember being asked about those  
14 charts?

15 A. Yes.

16 Q. About those figures?

17 A. Yes.

18 Q. Which figure is more probative for your analysis?

19 A. The adjusted figures are more probative for my analysis.

20 Q. That was figure 7?

21 MR. FREEDMAN: Why don't we pull up figure 7.

22 A. Yes, figure 7 was.

23 THE COURT: Counsel, are you referring to figure 5F?

24 MR. FREEDMAN: That may be the issue.

25 THE WITNESS: Yeah.

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Van Hook - Redirect

1 THE COURT: I think it's on page 51.

2 MR. FREEDMAN: Thank you, your Honor.

3 OK. We can just focus on figure 7.

4 Q. Why is this more probative for your analysis?

5 A. OK. So what I did was I made -- I made some adjustments to  
6 the raw figures, the figures that looked at unit nonresponse.  
7 What was -- my concern was that some of the changes that we  
8 might see in unit nonresponse could be due to changes in the  
9 composition of the groups that were being interviewed, so every  
10 population changes with respect to their demographic  
11 characteristics over time. And, and so what I really was  
12 trying to do was isolate the behavioral changes in unit  
13 nonresponse from the other kinds of factors that might be  
14 attributable to unit nonresponse. So I adjusted for factors  
15 like age, sex, state of residence, educational attainment, and  
16 two other factors that I adjusted for were particularly  
17 important.

18 I adjusted for nonresponse on age and sex, and that was  
19 very helpful because it purges the results from trends that we  
20 might normally see in item response in general as opposed to  
21 responsiveness related to factors related to immigration. And  
22 then the second -- the other thing that was important was to  
23 adjust for the month of the interview. And this is important  
24 because people go on vacation. They might not be able to  
25 follow up in this interview for the CPS, and so controlling for

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Van Hook - Redirect

1 month became a very important factor here.

2 Q. You were asked about a number of corrections. One of them  
3 was a correction to figure 5. Did the correction to figure 5  
4 impact in any way your summary of conclusions?

5 A. No, not at all.

6 Q. Did either of the other corrections that we talked about in  
7 any way affect your summary of conclusions?

8 A. No.

9 Q. If we could turn in your trial testimony, I just want to  
10 look at pages 46 and 47.

11 MR. FREEDMAN: Can we do a split screen in order to  
12 show both of those.

13 Q. So these are all the tables and figures you present in your  
14 testimony, right?

15 A. Yes.

16 Q. Do you remember how many you were asked about that you  
17 corrected?

18 A. Two.

19 Q. OK. You were also -- and neither of those corrections  
20 impact in any way your conclusions in this matter?

21 A. Correct.

22 Q. OK. You were also asked, Ms. Bailey asked you a number of  
23 times about the experience taking the CPS, and her questioning  
24 was to the effect of once you've been asked this citizenship  
25 question, you're not going to be asked it again. Do you

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Van Hook - Redirect

1 remember those questions?

2 A. Correct.

3 Q. And you tried to correct that at one point. Do you  
4 remember that exchange?

5 A. Yes.

6 Q. Could you just, for the Court, so the Court is clear, state  
7 the circumstances under which citizenship question can be asked  
8 again on the CPS?

9 A. The citizenship question can be asked again if the -- a new  
10 person enters the household, like, moves into the household,  
11 and then that question will be repeated during that interview.  
12 Given that in the CPS there's generally one respondent who  
13 reports on behalf of the rest of the household, then that same  
14 respondent would be, in fact, asked that question again about  
15 the citizenship of the different person in that household.

16 Q. OK. Thank you.

17 And finally, final series, Ms. Bailey asked you, at the  
18 start of her examination, about CPS and its purpose. Do you  
19 remember that questioning?

20 A. Yes.

21 Q. Just in your own words, why is studying the CPS relevant to  
22 the questions we're here to address in this proceeding?

23 A. I chose to look at the CPS for a number of different  
24 reasons. The first reason has to do with the fact that the CPS  
25 provides data that was made public that extends well into 2018.

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Van Hook - Redirect

1 OK? The other data set that I might have used, and in fact  
2 used in my supplement, only was released, at the time when I  
3 wrote the report, through the end of 2016. I felt it was very  
4 important to provide data that was more recent because I felt  
5 like more recent data was going to be more relevant to this  
6 question about the sensitivity of these questions for the 2020  
7 census.

8 Q. OK. And why did you think more recent data would be more  
9 relevant?

10 A. Certainly the change in the political climate about  
11 immigration and about the policies and rhetoric directed  
12 towards immigration -- immigrants, and especially Hispanic  
13 immigrants, led me to think that responsiveness to surveys and  
14 surveys conducted by the U.S. government could have been  
15 dampened or suppressed -- you know, reduced since the start of  
16 the Trump administration.

17 Q. OK. And at the time you did your original report, why  
18 couldn't you have looked at the ACS data?

19 A. The ACS data was only released up through the end of 2016  
20 when I first did my report.

21 Q. And when did the 2017 data become available to you in a  
22 form that you could use?

23 A. It became available on October 18.

24 Q. OK.

25 A. Of this year.

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Van Hook - Redirect

1 Q. And you discuss, in your supplemental report and in your --

2 MS. BAILEY: Objection. Your Honor, she's now  
3 testifying or being asked to testify about a report that is a  
4 different than the report we just discussed on cross.

5 THE COURT: She was just asked about --

6 MS. BAILEY: Her supplemental report, which is not  
7 what we discussed.

8 THE COURT: I understand. Overruled, at least for  
9 now.

10 BY MR. FREEDMAN:

11 Q. In your trial testimony, you discussed the 2017 ACS data,  
12 correct?

13 A. Yes.

14 Q. Could you say, could you just advise the -- could you just  
15 speak to what your findings with regard to the 2017 ACS data  
16 were?

17 A. Sure.

18 THE COURT: Sustained.

19 MR. FREEDMAN: OK.

20 Q. Did you find additional evidence for your conclusions about  
21 the CPS data that you analyzed in your report elsewhere?

22 A. Can you -- can you restate that question?

23 Q. Sure. You reached a number of conclusions in your trial  
24 testimony about CPS data. Is there another analysis in your  
25 report that supports those conclusions?

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Van Hook - Redirect

1 A. Yes.

2 Q. What is that?

3 A. OK. I saw a number of different increases in item  
4 nonresponse and unit nonresponse for the adjusted data, so --  
5 and especially with respect to Hispanics. I think it was  
6 table -- figure A2.

7 Q. Can we --

8 A. Oh, did we already do that?

9 Q. I don't think we've seen -- we looked at A3. I don't think  
10 we looked at A2.

11 THE COURT: Are we in her testimony or report?

12 MR. FREEDMAN: The numbering is the same, so it would  
13 be from her testimony.

14 THE WITNESS: I'm sorry. That's wrong. That's not  
15 the one I was thinking about. It's figure, not table.

16 MR. FREEDMAN: Can we see figure A2.

17 THE COURT: Page 32.

18 THE WITNESS: OK. So in this figure, these are  
19 adjusted figures for item nonresponse, and what we see is that  
20 the -- there was a change, a significant change in item  
21 nonresponse between 2013 and the first quarter of 2018 for  
22 Hispanics, and the change between 2016 and the first quarter of  
23 2018 was greater than the change earlier than that.

24 MR. FREEDMAN: We can pull that down.

25 Q. So, Ms. Bailey asked, and I started here, but Ms. Bailey

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Van Hook - Redirect

1 asked a lot of questions about Asian response rates.

2 A. Uh-huh.

3 Q. And the trends in Asian response rates differ from Hispanic  
4 response rates, correct?

5 A. Correct.

6 Q. Why would nonresponse trends for one group of immigrants  
7 differ from another group of immigrants?

8 A. I would say the first thing that is an important thing to  
9 consider is the fact that the percentage of Hispanics who are  
10 undocumented immigrants is much higher than for any other  
11 group. I have a footnote in my original report and in the  
12 declaration about this. I believe -- I don't know if we want  
13 to go to that? I'd like to -- I'd like to give the  
14 percentages.

15 Q. Sure, if you can find it. Or if it's in your declaration,  
16 then it's already before the Court.

17 A. It's in the declaration, correct. It's something like 28  
18 percent of Hispanics, immigrants are undocumented compared to  
19 less than 10 percent of the Asians.

20 Q. OK.

21 THE COURT: Mr. Freedman, any estimate on how much  
22 longer you have?

23 MR. FREEDMAN: I was actually about to pass the  
24 witness. No further questions.

25 THE COURT: There you go. I'll start asking that

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Van Hook - Recross

1 question more.

2 Is there any --

3 MS. BAILEY: Just a couple, if I may.

4 THE COURT: Sure. We have only a couple more minutes  
5 in our day, but let's try and get Dr. Van Hook off the stand so  
6 that she doesn't have to return.

7 RECROSS-EXAMINATION

8 BY MS. BAILEY:

9 Q. You were just speaking with Mr. Freedman about the  
10 frequency with which an individual may be asked about  
11 citizenship on the CPS, correct?

12 A. Correct.

13 Q. And you testified that it is common as one individual to  
14 serve as the respondent for a particular household, correct?

15 A. Yes.

16 Q. And when that individual is interviewed and serves as a  
17 respondent for that household, isn't it true that they are  
18 typically asked about all members of that household during that  
19 initial interview?

20 A. Yes.

21 Q. And they will only be asked about other individuals if  
22 members -- if the composition of that household changes,  
23 correct?

24 A. Yes, so at the beginning of the interview, they will ask,  
25 Did anybody join the household, did anybody leave the

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Van Hook - Recross

1 household?

2 Q. Right. So an individual, in the first CPS interview, is  
3 asked about the citizenship of every member of that household,  
4 correct?

5 A. Yes.

6 Q. And so the citizenship question would only repeat if  
7 additional members joined the household, correct?

8 A. Yes.

9 Q. OK. And so it still is accurate that an individual is only  
10 asked about citizenship one time unless members join that  
11 household, correct?

12 A. Yes.

13 Q. I'd like to take a quick look at figure 13, which I believe  
14 you were just speaking with Mr. Freedman about. It'll come up  
15 on the screen momentarily.

16 I believe you just testified that there is a statistically  
17 significant increase in the item nonresponse among Hispanics  
18 from 2016 to 2018, correct?

19 A. Yes.

20 Q. Isn't it true that there is also a statistically  
21 significant increase in item nonresponse among non-Hispanics  
22 between 2013 and 2015, correct?

23 A. In the unadjusted data, yes.

24 Q. I believe you referred to the unadjusted data in your  
25 redirect, correct?

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Van Hook - Recross

1 A. I was referring to the adjusted data. That came from  
2 figure A2.

3 Q. We discussed the adjusted data on your cross, Dr. Van Hook,  
4 and I believe you referred to figure 13, correct; and asked to  
5 look at figure 13, as Mr. Freedman pointed out?

6 A. OK. Yes, we did do that.

7 Q. OK. And so my question was item nonresponse increased  
8 among Hispanics between 2013 and 2015, correct?

9 A. Correct.

10 Q. So the item nonresponse that you point to that increased  
11 between 2016 and 2018, that also occurred for the two-year  
12 period during the end of the Obama administration, correct?

13 A. It occurred for the one --

14 Q. Or the two-year period. I'm referring to 2013 to 2018.

15 A. Oh.

16 Q. I apologize for being imprecise.

17 A. OK.

18 Q. For the two-year period it increased there, correct?

19 A. Correct.

20 Q. You were referring a moment ago, in speaking with  
21 Mr. Freedman, about figure 5. I believe you testified that out  
22 of all of the charts or figures, graphs, in your report that  
23 there were two figures that were wrong, correct?

24 A. Correct.

25 Q. But it wasn't just the figures that were wrong; the body of

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Van Hook - Recross

1 the text, statements you made in your expert report also were  
2 wrong and had to be corrected?

3 A. Correct.

4 Q. Didn't they?

5 A. Correct.

6 Q. And your errata had to make substantive changes to your  
7 deposition testimony because you testified in reliance on both  
8 the charts and the body of your report, correct?

9 A. Yes.

10 Q. So it was more than just two graphs, right?

11 A. Out of the 50 graphs, there were two.

12 Q. But there were more errors in your report than only the  
13 graphs, correct?

14 A. Correct.

15 Q. So you had relied on those graphs in writing the body of  
16 the report, correct?

17 A. In -- in part, I relied on those.

18 Q. And finally, on cross, I asked you if you remembered  
19 testifying about figure 5 in your deposition, correct?

20 A. Yes.

21 Q. And I believe you told me that you recalled speaking about  
22 it at the end, correct?

23 MR. FREEDMAN: Objection. Beyond the scope of  
24 redirect.

25 THE COURT: Overruled.

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Van Hook - Recross

1 A. In the end of what?

2 Q. I believe you testified in response to a question from  
3 Mr. Freedman just now on redirect that figure 5 is not the data  
4 which you considered most probative or on which you mainly  
5 relied in reaching your conclusions, correct?

6 A. Correct, and I said that in the deposition.

7 Q. And in the dep, and on your cross a moment ago, you  
8 testified that you remembered speaking about figure 5 shortly  
9 at the end?

10 A. Yes.

11 MS. BAILEY: OK. Can we put up the deposition  
12 designation.

13 Q. Referring to a section of your deposition designation here,  
14 I asked you:

15 "Q. What factual basis exists for expecting any difference  
16 that remains" -- this is referring to figure 7, which is  
17 adjusted figures. I said, "any difference that remains to  
18 relate to either the political climate or the debate about  
19 citizenship." And you responded that, "for one thing a lot of  
20 the variation that you see between groups goes away in this  
21 analysis. You might think that there's differences here, but  
22 most of those differences are not significant compared to what  
23 you saw in figure 5, so that's the comparison."

24 THE COURT: Slow down.

25 MS. BAILEY: Thank you.

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Van Hook - Recross

1 Q. So here, in response to a question I asked you about figure  
2 7, you respond by comparing the changes between the unadjusted  
3 figures in figure 5 with the adjusted figures in figure 7,  
4 correct?

5 A. Yes.

6 Q. So you were testifying and drawing conclusions based on the  
7 comparison between the wrong data in figure 5 and the  
8 correct-but-adjusted data in figure 7, weren't you?

9 A. This particular statement that I made here is correct even  
10 with the corrected figure.

11 Q. But you were testifying based on the wrong data in figure  
12 5, weren't you?

13 A. The data was not incorrect. The labels were incorrect.

14 Q. You had Asians labeled as having the highest incidence of  
15 nonresponse, so you had Asians labeled as having the wrong  
16 level of nonresponse, didn't you?

17 A. This particular text talks about the differences among the  
18 groups and that they became less -- the differences between the  
19 groups became smaller in the adjusted numbers.

20 Q. I apologize for being imprecise, but that's not my  
21 question. My question is here I asked you in the deposition  
22 the question about figure 7, and responded by comparing figures  
23 5 and 7, so you were testifying about figure 5, correct?

24 MR. FREEDMAN: Objection. Beyond the scope of  
25 redirect.

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1 THE COURT: I think we got the point in any event.

2 MS. BAILEY: Thank you.

3 THE COURT: Anything further?

4 MS. BAILEY: No, your Honor.

5 THE COURT: All right. Can we let Dr. Van Hook step  
6 down?

7 MR. FREEDMAN: Yes. No further questions.

8 THE COURT: Doctor, you're excused.

9 (Witness excused)

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1 THE COURT: All right. It is the end of the day.  
2 I'll speak as Dr. Van Hook is getting off the stand just to  
3 save some time.

4 First is to remember to docket the materials I  
5 mentioned this morning; second, to discuss the list of  
6 exhibits, the attachments, I guess, in particular -- well, not  
7 just attachment 4 but the other ones, just to make sure that  
8 they're comprehensive and everybody is in agreement about what  
9 is and isn't in evidence; and third, to coordinate about the  
10 videos so that we can resolve any disagreements there.

11 I would like a copy, to the extent that either side  
12 uses demonstratives in court, if you could provide a copy to  
13 me, just email it to chambers, of whatever is displayed in  
14 court. I don't want to see a demonstrative if it wasn't used  
15 in this part of the testimony, but if it was used, if you could  
16 send it to me just so that I have it as I review the record,  
17 that would be helpful.

18 And finally, could somebody give me the lineup for  
19 tomorrow and make clear, to ensure that I know, which are  
20 testifying by affidavit and which are not, so I can review it  
21 in advance.

22 MR. COLANGELO: Yes, your Honor.

23 One question about the demonstratives before we do the  
24 lineup, are you asking that the parties send the demonstratives  
25 to you after they been used during witness examination, or do

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1 you want them to be exchanged --

2 THE COURT: After.

3 MR. COLANGELO: After?

4 THE COURT: Yes.

5 MR. COLANGELO: OK. We can give the Court the  
6 expected witness lineups, in fact, I think through early next  
7 week. We've gotten a helpful preview from defense counsel of  
8 how they intend to treat the fact witness objections without  
9 prejudice to them revising their views before they file that at  
10 9:00 tonight. But in light of that guidance, we will not be  
11 bringing Mr. Vargas here tomorrow, and at this point, we  
12 anticipate that we may need none of the fact witnesses to  
13 appear in plaintiffs' case in chief.

14 What the plaintiffs would propose is that if the  
15 Court could hold time on Tuesday or Wednesday after hearing  
16 argument the Court wants to hear on those evidentiary  
17 objections, that way if there are any fact witnesses for whom  
18 we think their physical presence in the courtroom would allow  
19 us to secure an objection, we can still make final plans before  
20 we rest our case, but otherwise, we don't anticipate needing to  
21 bring them here at this point.

22 THE COURT: Meaning Tuesday or Wednesday, tomorrow or  
23 the next day.

24 MR. COLANGELO: Correct.

25 THE COURT: All right. I'll see what the objections

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1 are tonight and then we can take it from there.

2 MR. COLANGELO: OK.

3 THE COURT: So who do we have coming?

4 MR. COLANGELO: Tomorrow we will have Dr. Habermann.  
5 His testimony was submitted by affidavit, and we have that.  
6 Dr. Salvo will also be testifying tomorrow. His direct  
7 testimony will be live. We do not have written testimony from  
8 him.

9 THE COURT: All right.

10 MR. COLANGELO: On Wednesday, we expect to have  
11 Dr. O'Hare and Dr. Reamer. Both of those witnesses have  
12 submitted written testimony, and their direct testimony will go  
13 in on their written affidavits, not live. We anticipate that  
14 Wednesday is likely the only day that we won't have a full  
15 trial day at this point. We think we've been able to arrange  
16 the experts through the rest of the calendar that the other  
17 will be full or largely full, but we just wanted to advise the  
18 Court that at this point we don't think Wednesday is full day.

19 THE COURT: How full do you think it is?

20 MR. COLANGELO: It's hard to predict, your Honor,  
21 without knowing how long the cross-examination will likely be.  
22 That's because these witnesses are going in on written direct  
23 testimony; it's a function of how long their cross is and any  
24 redirect.

25 THE COURT: All right. And it's not possible at this

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1 point to adjust to get somebody else in on that day?

2 MR. COLANGELO: Unfortunately, we haven't been able to  
3 bring another expert in to fill that afternoon, no.

4 THE COURT: All right. I'm slightly annoyed, but I'll  
5 let you get away with it.

6 MR. COLANGELO: Thank you, your Honor.

7 Friday we expect to call Dr. Barreto and Mr. Thompson.

8 THE COURT: By affidavit?

9 MR. COLANGELO: Dr. Barreto's direct testimony is  
10 being submitted live, and Mr. Thompson is going in in writing,  
11 by affidavit.

12 THE COURT: All right.

13 MR. COLANGELO: Tuesday we anticipate calling  
14 Professor Warshaw, Dr. Handley and Dr. Abowd. I'm talking  
15 about Tuesday, the day after the Veterans holiday.

16 THE COURT: Sorry. The third one was?

17 MR. COLANGELO: Dr. Abowd.

18 THE COURT: I'm sorry. The second.

19 MR. COLANGELO: Let me start over. Tuesday, the day  
20 after Veterans Day, we anticipate calling Professor Warshaw.

21 THE COURT: By affidavit?

22 MR. COLANGELO: By affidavit.

23 THE COURT: OK.

24 MR. COLANGELO: Dr. Handley also by affidavit --  
25 sorry, Dr. Handley live. Thank you.

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1 Dr. Handley we'll do live.

2 THE COURT: And Dr. Abowd live as well.

3 MR. COLANGELO: And Dr. Abowd live as well.

4 THE COURT: OK.

5 MR. COLANGELO: And we anticipate being able to  
6 conclude our case by Wednesday.

7 THE COURT: All right. Very good.

8 Anything else to discuss?

9 MR. COLANGELO: Not for plaintiffs, your Honor.

10 THE COURT: Ms. Bailey.

11 MS. BAILEY: No, your Honor. Thank you.

12 THE COURT: All right. Please be ready to go at 9,  
13 particularly if there's anything we need to discuss before we  
14 get started with testimony, but certainly we will start with  
15 testimony at 9:15 tomorrow.

16 With that, we are adjourned for the day and I'll see  
17 you in the morning. Thanks.

18 (Adjourned to November 6, 2018, at 9:00 a.m.)  
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